DRN-3520661

The complaint

Mr V complains Computershare Investor Services Plc acted against his wishes and sold a shareholding he'd accrued through his membership in an employee share scheme.

What happened

Mr V worked for a company I'll refer to as E. Through Computershare, E offered its employees the opportunity to participate in a stock purchase plan. Under the terms of the plan, money was deducted from Mr V's wages and used to acquire shares in E.

Mr V stopped working for E on 25 September 2020. Under the terms of the plan, this meant he had 90 days to give an instruction to either sell his shares, or arrange for them to be transferred to a new platform. Computershare sent Mr V a letter to this effect on 30 September 2020. In this letter, the firm warned that:

> *"If we do not receive your completed Instruction within 90 days from the date you left the employment of [E], we will arrange for all of your Unrestricted Plan Shares to be sold".*

Mr V wanted to retain his shares in E. And he held a share dealing account with a firm I'll call Platform X. So he set about speaking to Computershare and Platform X with a view to transferring his E shares out of his plan. Ultimately, Computershare received an instruction to transfer all of his E shares to Platform X on 9 December 2020.

Computershare didn't act on Mr V's instruction immediately. It waited until 7 January 2021, past the 90 day deadline it'd given Mr V, to contact Platform X and initiate the transfer. Platform X replied to Computershare within a few short hours to explain it couldn't take the E shares, as it didn't offer trading on the exchange the shares were listed on. As the deadline to make alternative arrangements for the shares had elapsed, and with nowhere else to transfer them, Computershare decided to sell Mr V's entire shareholding.

Mr V complained about what'd happened. He hadn't authorised the sale of his shares and didn't understand why Computershare had acted against his wishes. Computershare replied to explain that after the transfer to Platform X had failed, there was no time to choose another broker as the 90 day deadline had elapsed. The action to sell Mr V's shares was the default option in those circumstances. Computershare accepted however that it'd failed to contact Platform X within the 90 day period. So it offered Mr V £25 to say sorry.

Mr V did not accept Computershare's offer. He'd intended to hold onto his E shares for the long term. And the size and timing of the sale had been most inopportune from his perspective. He argued he'd been deprived of the ability to dispose of the assets with tax efficiency in mind. He also argued that because E's shares aren't listed in Sterling, the relevant rates in the currency markets would've been a significant factor when deciding when to sell the shares. Mr V considered he'd suffered a financial loss as a result of this. Dissatisfied with Computershare's response, Mr V referred his complaint to our service.

An investigator at our service upheld Mr V's complaint, recommending he should be paid £100 for the trouble and upset he'd experienced. They weren't however persuaded to pay Mr V's financial losses, which he estimated were far greater than this sum.

As Mr V didn't accept our investigator's findings, the matter's been referred to me.

I provisionally decided that Mr V's complaint should be upheld. I said that:

"Our jurisdiction to consider this complaint

I'll begin my provisional decision by asserting that, for the avoidance of doubt, I'm satisfied Mr V's complaint falls within our jurisdiction to consider it. Computershare has contested this at times during our investigation, on the grounds that no regulated activity had taken place. But I've not found its arguments on this point to be persuasive.

As far as this complaint is concerned, DISP 2.3.1 R requires that for me to decide its merits, I must be satisfied the complaint relates to a regulated activity, or matters that would be ancillary to a regulated activity. Mr V's complaint alleges both that:

a) Computershare failed to transfer his shares in line with his instructions, and;
b) Computershare sold his shares against his wishes.

In the case of a), I'm satisfied Mr V's complaint relates directly to the regulated activity described in Article 40 of The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (the RAO), "Safeguarding and administering investments". In the case of b), I'm satisfied Mr V's complaint relates to the regulated activity described in Article 21 of the RAO, "Dealing in investments as agent".

The RAO outlines exclusions to certain activities carried out in connection with employee share schemes. But these exclusions don't apply to Computershare in the role it fulfilled in the circumstances of Mr V's complaint. I find therefore that Mr V's complaint is capable of satisfying the requirements of DISP 2.3.1 R and can therefore be considered by our service.

Computershare's obligations to Mr V

I've thought very carefully about Computershare's obligations to Mr V in its role as the administrator of E's share incentive plan. In fulfilling this role, it's my view that to treat Mr V fairly, Computershare would've needed to pay close attention to the following rules:

- *COBS 2.1.1 R requires that a "firm must act honestly, fairly and professionally in accordance with the best interests of its client".*
- *COBS 6.1G.1 R requires that "If a client requests a firm (F) to transfer the title to a retail investment product which is held by F directly, or indirectly through a third party, on that client's behalf to another person (P)… F must execute the client's request within a reasonable time and in an efficient manner".*
- *PRIN 2.1.1 R (2) requires that "A firm must conduct its business with due skill, care and diligence".*
- *PRIN 2.1.1 R (6) requires that "A firm must pay due regard to the interests of its customers and treat them fairly".*
- *PRIN 2.1.1 R (7) requires that "A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading".*

Taken as a whole, it's my view that when handling Mr V's request to transfer his E shares to Platform X, Computershare would've been required to carry out his instructions accurately, efficiently, with his best interests in mind, and within a reasonable timeframe. And also, that it had a duty to consider and meet his information needs throughout. I've kept this in mind as I've looked at the evidence in this case.

Processing Mr V's instructions

In its defence of this complaint, Computershare has explained its timescale for actioning transfer requests is 5 to 20 working days. It's said that given the run of non-working days across the period in question, that it met with this timescale in Mr V's complaint. I shan't contest this. But I'm not persuaded Computershare could've taken as long as it did to action Mr V's instructions, and still be capable of meeting with its obligations to him that I've set out above. I shall explain why.

Mr V submitted a valid instruction through the correct channel at Computershare, to have his shares transferred across to Platform X on 9 December 2020. At this time, there were 15 days remaining of the 90 he'd been given in which to make a decision on his shares. Mindful that when Platform X was contacted about taking the E shares, it was able to reject the request in a few short hours. It strikes me that had Computershare acted on Mr V's instructions sooner, then it's likely this fact would also have come to light sooner. And in that case, Mr V would likely have had the opportunity to arrange another instruction and pick a platform capable of hosting E's shares. I've therefore considered whether it was fair and reasonable of Computershare to take no action on Mr V's instruction until 29 days after it was submitted.

When assessing the fairness of Computershare's actions, I've considered the standards set for similar processes in the Transfers and Re-registrations Industry Group (TRIG) framework that was published in June 2018. The TRIG framework is a voluntary code of practice, principally aimed at pension and investment platforms. I don't know if Computershare has volunteered to become a member of this framework, but I don't consider this to be all that important. It's my view that the function Computershare was fulfilling here, arranging the transfer of Mr V's E shares from one place to another, is effectively the same process discussed by the TRIG framework. And more broadly, when deciding what's fair and reasonable in the circumstances of a complaint before me, DISP 3.6.4 (2) allows me to take account of what I consider to have been "good industry practice at the relevant time". I'm satisfied therefore that it's reasonable of me to take account of the standards set within the TRIG framework.

The TRIG framework asserts that a reasonable standard firms should work towards during a transfer process, is that each step in that process should take no longer than 2 complete working days. It makes allowances for unforeseen complications that might derail a process. But looking at the facts of Mr V's complaint, there was nothing stopping Computershare working on his transfer instruction after 9 December 2020 when it was submitted. On the face of it, it seems that Computershare's quoted timescale is vastly out of step with what I consider good industry practice at the relevant time to have been. If the time taken to process this instruction had no measurable impact and posed no risk of any detriment to Mr V, I wouldn't necessarily find it to be unfair. But it seems to me that the wider process Computershare's timescale forms part of, seems fraught with obvious risks to customers like Mr V who intended to retain their shareholdings.

Mr V was given 90 days to choose whether to transfer his shareholding elsewhere or sell it in its entirety. The timescale Computershare has committed to for processing transfer instructions is so potentially vast, that should a transfer come into difficulties or fail for any reason, there's the risk that a significant portion, or depending on when the instruction was

received, all of that 90 days could have elapsed. There's been no suggestion that Computershare clearly and fairly warned Mr V at the outset that he should speak with his intended platform about whether it could hold a particular asset prior to instructing a transfer. Nor is there any suggestion Mr V was warned that should his transfer fail for any reason, his shareholding would be sold in spite of his explicit wishes. These risks could've been mitigated partially if Computershare was more proactive in warning Mr V about the pitfalls in its process. And could likely have been mitigated entirely if the firm operated a system whereby Mr V's shareholding could be kept intact if he'd expressed a clear desire to retain it. But on the evidence provided, I've not found this to be the case.

With all of the above in mind, it's my opinion that Computershare has failed to treat Mr V fairly from the point he submitted an instruction to transfer his E shares on 9 December 2020. Mindful of the wider process it formed part of, the timescale Computershare worked to came with a significant risk that Mr V could lose his entire shareholding, which the firm knew wasn't what he wanted. The timescale is not in line with what I consider good industry practice to have been at the time. And I consider that Computershare's adherence to that timescale represents a failure to act with "skill, care and due diligence" as required by PRIN 2.1.1R, and a failure to complete the transfer "within a reasonable time and in an efficient manner" as required by COBS 6.1G.1 R.

It seems to me, that had Computershare processed Mr V's instructions in line with the standards set in the TRIG framework, mindful of how quickly Platform X was able to respond to it, it would've known no later than 14 December 2020 that the transfer couldn't proceed. And knowing this, mindful of its obligation to treat Mr V fairly, consider his best interests, and to meet his information needs, I would reasonably expect Computershare to have promptly warned Mr V he'd need to find another platform to preserve his shareholding. At that time, there were still 10 days remaining of the 90 Mr V had initially been set. And on the balance of probability, I think it's more likely than not that Mr V would have been capable of making arrangements with a new broker, and submitting a new transfer instruction within that window. Had this happened, it's my view that Mr V would've been able to avoid the difficulties and losses he's claimed for as part of his complaint.

By itself, I'm satisfied my finding around the time Computershare took to process Mr V's instruction would be sufficient for me to uphold his complaint. But I've also taken the time to explore the decision Computershare made to sell Mr V's entire shareholding without first consulting him, once the transfer had failed.

<u>The decision to sell Mr V's shares</u>

Computershare was clear in its letter to Mr V dated 30 September 2020 that if he took no action, his shareholding would be sold in its entirety. But Mr V very clearly did take action. He corresponded with Computershare across the 90 days he was given and made it clear he wanted to retain his E shares. Ultimately, he submitted a valid instruction through the correct channel. I'm satisfied therefore that Computershare could've been left in no doubt that it was Mr V's intention to retain his shareholding, at least in the short term.

Yet knowing this, Computershare unilaterally made the decision to sell Mr V's entire shareholding once Platform X explained it couldn't accept E's shares. I've considered the fairness of this, mindful of the events that led up to it.

The facts of this case suggest the significance of the 90 day deadline Mr V was given was limited solely to making a choice about what to do with the shares. There were no regulations or laws which required the shares to be sold or transferred inside that 90 day window. And I think this is evidenced by the fact that Computershare waited for more than two weeks after that window had expired before making any attempt to process Mr V's

instructions. In my view, this calls into question whether Computershare had to dispose of Mr V's entire shareholding in the way that it did.

I've questioned Computershare on whether it would've been possible, given that Mr V had made a clear choice within the 90 days he was given, for his shareholding to have been retained whilst he found a new platform. Amongst other things, Computershare replied to say:

> *"It would have been technically possible for Computershare to have retained the shares on its own platform – either on the EquatePlus platform or as part of its Share Registry business. To do so wouldn't have been a breach of any law, rule or regulation – HMRC rules simply require the shares to be removed from the plan, which would be achieved by the sale or transfer of shares, whether internally or externally – but this would have required significant manual intervention (potentially across unlinked business areas) as well as the involvement of our corporate client, Mr V's former employer. It should be borne in mind that the decision not to offer this in general is a commercial decision made in conjunction with our client, Mr V's former employer…*
>
> *Ultimately, although it would have been technically possible for the holding to have been retained by Computershare, I don't think doing so would have been considered due to the manual work involved, the departure from our process and the necessity to involve a large number of internal and external stakeholders".*

I acknowledge Computershare's right to wield its commercial discretion when arranging products and services for its customers. But Computershare is a regulated firm. The commercial discretion it possesses is tempered by its immutable requirement to uphold the rules set by its regulator, which includes a requirement to treat its customers fairly.

In the circumstances of this complaint, Computershare knew Mr V wanted to retain his shareholding. In my opinion, it could not have fairly made the decision to unilaterally sell Mr V's shares, whilst still upholding the requirements of COBS 2.1.1 R. Particularly not when, as I found earlier on in my decision, it'd also failed to process Mr V's instruction in line with its obligations under COBS 6.1G.1 R. A failing which I've found directly contributed to the situation in which Computershare decided to sell the shares.

Because of what'd happened here, whilst I acknowledge it would've come with an unexpected administrative burden to Computershare, I'm satisfied it would've been fair, in these specific circumstances, for the firm to make an exception to its normal process. It's my opinion that Computershare should've refrained from selling Mr V's shares and made arrangements for them to be temporarily safeguarded whilst an alternative to Platform X was sourced. This would've avoided the difficulties and losses Mr V has sustained.

As part of the submission I've referenced above, Computershare's appeared to suggest that Mr V should carry some responsibility for his loss, given that he waited until nearer the end of the 90 days he'd been given to make his choice. I disagree. I don't think any information Computershare gave Mr V would've enabled him to reasonably anticipate the trouble he encountered here, given that he followed the firm's instructions and clearly opted to retain his shares within the timescale he was given. I'm satisfied it is Computershare's failure to treat Mr V fairly that's led to the difficulties he's experienced, not any negligence on his part.

For all of the reasons given above, it's my opinion that Mr V's complaint should be upheld. What remains to be decided is what should be done to fairly and reasonably resolve this dispute.

Putting things right

The most obvious loss in this complaint, is that of Mr V's shareholding. His shares in E were sold against his clear wishes, and I'm satisfied this should not have happened. But in my view, resolving this complaint fairly and reasonably is not a simple matter of reuniting Mr V with his shares.

Following the unauthorised sale, whilst Mr V didn't have his shares, he did have the cash value of those shares as of the day they were sold. I've noted that whilst the value of E's shares did increase in the months following the events of his complaint, barring a notable rally in 2022, their value has decreased steadily ever since. Had Mr V wanted to reinstate his entire shareholding, he will have had opportunities to do so at the same price or better, in the years since the events of his complaint.

Mr V has of course lost out on the opportunity to dispose of those shares at a time of his choosing. Had he retained his shareholding, he would've been in a position to time the market. Therefore I accept Mr V could've perhaps achieved a better price for his shares at a better rate of exchange, than he received from Computershare. I've also considered the possibility that timing the market is not without its risks, and that perhaps had he waited, he may ultimately have achieved a worse price for his shares at a poorer rate of exchange.

Mr V has pinpointed a date at which he says he could've sold his shares for more than he received when they were sold by Computershare. But with respect to Mr V, I think this is inevitably submitted with the benefit of hindsight. I cannot know with any reasonable degree of accuracy that Mr V will have felt compelled to sell at that moment. I can see the price was attractive on the day in question. Perhaps he would have sold. But perhaps he would have decided to hold on longer in anticipation of even greater returns, and miss his moment whilst doing so. I've also considered that Mr V has consistently argued that he saw his E shares as a long term investment, which gives me pause to doubt he'd have chosen to dispose of them all at once.

It is unfortunate that, because of Computershare's failures, I cannot know for certain what Mr V would have done with his shares if they'd been retained. So it's not possible for me to calculate any specific loss, with any reasonable degree of accuracy. I am however empowered to award compensation for the upset and disappointment that comes with a loss of an opportunity such as this, and I will address this later in my decision.

I've moved on to consider the tax liability Mr V says he's incurred as a result of the unexpected sale of his E shares. He's provided evidence of a capital gains tax liability on his self-assessment for the tax year 2020/2021 showing a bill of £455.60. He claims that had he been able to retain the shareholding as a long term investment, he would've utilised his various allowances to avoid paying any tax on the gains made through his E shares.

In the circumstances, I find Mr V's arguments on this point to be persuasive. There were legitimate means available to Mr V to efficiently manage any tax liabilities which arose from his E shares. So I don't think the tax bill he's received was an inevitability. In my opinion, it is a loss which flows directly from Computershare's failure to treat him fairly. And as such, it is fair and reasonable of me to direct Computershare to reimburse Mr V for the £455.60 he's paid, subject to him providing evidence that the bill was in fact paid.

In addition to this, as I'm satisfied Mr V has been left out of pocket as a result of this loss, I direct that Computershare must calculate simple interest at 8% on the outstanding payment of £455.60. This interest must be calculated from the date Mr V settled the bill with the revenue, up until the date Computershare pays its settlement to Mr V.

If Computershare considers it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr V how much it's taken off. It should also give Mr V a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Finally, I must consider the impact the events of this complaint have had on Mr V. As a result of Computershare's failings, he's experienced the confusion and anger of realising his shares had been sold against his wishes. He's endured the subsequent frustration and upset of Computershare's response which offered him £25 for his considerable troubles. He's felt the significant disappointment of missing out on the opportunity to trade in the market with his own shares. And he's had the inconvenience and uncertainty of unexpectedly having to make arrangements for a substantial sum of cash. On top of all of this he's spent considerable time and energy following the matter up.

As I see it, all of this could have been avoided, had Computershare treated Mr V fairly and either processed his instruction in good time, or honoured his wishes and retained his shareholding when the transfer failed. In the circumstances, I consider it to be fair and reasonable to require Computershare to pay Mr V the sum of £500".

Computershare accepted my decision. Mr V did not.

Mr V reiterated his argument that Computershare had deprived him of the opportunity to sell his E shares for far more than he received for them. And that whilst he'd initially intended to hold them long term, there was a moment where it would've been possible to sell for a profit of nearly £10,000. He feels this should fairly be reflected in any redress awarded to him in this complaint. I've revisited my provisional findings with these comments in mind.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I remain sympathetic to the position Mr V has found himself in in this case. But his comments have not persuaded me to depart from the findings I made in my provisional decision. I still uphold his complaint for the same reasons. But I will not be making any additional awards for the losses Mr V has claimed for.

Computershare's actions have caused Mr V to miss out on the opportunity to sell his shares for more than he received for them. But I cannot fairly or reasonably calculate a specific loss that flows from this mistake. It is possible that Mr V could've made the profit he's claimed for. But it is also possible that, through trying to time the market, that he would've missed his opportunity to do so. Especially when, as he told us at the outset, his intention had been to retain his shares for the long term.

In the circumstances, I'm persuaded that the fairest way of accounting for this loss of opportunity is to compensate Mr V for the upset and disappointment he'll have felt as a result. And as per my provisional decision, this was factored into my direction that Computershare must pay Mr V compensation to address the impact the events of this complaint have had on him.

Overall, I'm satisfied it is fair and reasonable in all of the circumstances of this complaint for me to require Computershare to take the following steps:

- Pay Mr V £500 in compensation.
- Reimburse Mr V £455.60 for his tax liability.

- Calculate and pay 8% simple interest on this tax liability from the date Mr V paid it, until the date of settlement.

If Computershare considers it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr V how much it's taken off. It should also give Mr V a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint. I direct that Computershare Investor Services Plc must pay redress to Mr V in line with the directions given above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 18 October 2024.

Marcus Moore
Ombudsman