

The complaint

Mr G complains about the transfer of his Stocks and Shares ISA from King & Shaxson Asset Management Limited (referred to as “the transferor” or “the business”), to a cash ISA with a new provider (referred to as “the transferee”) in October 2018.

What happened

In early May 2022, I issued my provisional decision, a copy of which is stated below and forms part of my final decision. In the decision I said:

“...provisionally, I’m going to uphold this complaint.

On the face of the evidence, and on balance, despite what the transferor says, I don’t think it behaved reasonably. In other words, I’m persuaded that it was responsible for the delays between October 2018 and January 2019 which resulted in financial loss to Mr G.

I note the business concedes that: “Ultimately, the delay came down to a miscommunication between the fund management department and the central services departments within our firm.”

I also note that on 4 January 2019 – “subsequent to a follow up from the IFA” – the business instructed the transfer of Mr G’s portfolio. It’s not clear why it needed prompting or why it took so long when it had already encashed Mr G’s holdings a week or two before Mrs G’s holdings. I note the valuation was subsequently sent on 8 January 2019.

On balance, I note that had the business not delayed matters, the transfer was more likely (than not) to have completed by 12 December 2018, enabling Mr G to invest his money sooner.

On the face of the evidence, and on balance, I think the redress recommended by the investigator is reasonable. I note in her latest view she said:

“But as a result of that initial delay, he wasn’t able to invest the funds as he wanted to. The evidence he’s provided confirms if the transfer had been completed by 12 December 2018 - which was when his wife’s portfolio was - the value of the funds would have been worth £91,558.81. But by the time the transfer was completed, the value of his portfolio was £88,244.61 so it’s clear there’s been a financial loss.

... I still think King and Shaxson need to put Mr G (name anonymised) back into the position he would have been in if the initial delay hadn’t happened. As the financial loss has been calculated as £3,318, I think this is what King and Shaxson should pay to Mr G, along with the £150 gesture of goodwill payment.”

Whilst I can’t say that the figure is incorrect, it may not be as suggested by Mr G’s IFA and the actual figure could be higher or lower. So, in the circumstances, I think the business should compare the value of Mr G’s portfolio on the date of investment which I believe is 14 February 2019, with what the value would’ve been if he had invested on 12 December 2018. If there’s a difference – as there appears to be according to Mr G’s IFA – the transferor

should pay that loss.

Like the investigator, in the circumstances, I'm not minded to award an amount for interest to the amount that is payable. Whilst there are several ways to calculate redress, it seems to me that Mr G is content to receive the difference in cash.

In this instance, I think '12 December 2018' is a reasonable date for completion of the transfer. Whilst I appreciate that there's nothing to say that the transfer had to complete by this date (the same date as Mrs G's transfer) I still think it's a reasonable comparator.

I'm aware that Mrs G's (similar) transfer request was received on the same date but based on a call note it seems hers was chased up, when Mr G's wasn't. It's possible that there was some confusion about which request had been chased/progressed, but whether (or not) there was confusion that's not Mr G's fault. In any case, in respect of the redress originally suggested by the investigator - based on the business paying lost interest - it appears to broadly accept the relevant dates in question.

Based on the letter provided by Mr G and his subsequent actions, I'm satisfied that he intended to invest his money at the time, therefore I don't think the loss of interest payment following the sale of his portfolio would provide reasonable redress in the circumstances. In other words, it doesn't put Mr G in the position, or close to the position, he would've been in but for the delays.

I also don't think the business' offer to pay half the loss contingent upon the transferee accepting equal blame is fair or reasonable in the circumstances. I'm mindful that a separate complaint against the transferee has been considered and upheld on a separate basis. I note the transferee was ordered to pay £150 compensation.

Despite my decision to uphold this complaint I acknowledge that the business acted in accordance with Mr G's instructions to sell his portfolio, and by doing so prevented Mr G from being subject to any changes in the market so far as his cash was involved. I don't think there's any criticism of the business in that respect. However, this doesn't excuse or justify the delay in carrying out Mr G's instructions to transfer that resulted in financial loss to him.

In the circumstances the business isn't responsible for the increase in share prices. I acknowledge the value is dependent on the stockmarket, and it seems Mr G accepts that it's not something that the business can predict or control. However, I think the business is responsible for Mr G not receiving the additional shares that he could've bought if the transfer had completed on 12 December 2018, or the equivalent value."

I gave the parties an opportunity to respond to my provisional decision and provide any further submissions they wished me to consider before I considered my final decision.

Mr G responded and said that he feels all the salient points have been addressed, and consequently he had no further points to make.

The business also responded but didn't accept my provisional findings. In summary, it made the following points:

1. It hasn't seen a copy of Mr G's portfolio so is unable to compare the values.
2. It doesn't understand why it's being blamed for the delay. Mr G's own view was that there was failure on both sides.
3. Its understanding is that the transferee's normal transfer time is roughly three weeks. The transferee should've been able to invest as of 25 January 2019 at which point the FTSE 100 was lower than it was on December 2018, so there would've still been

- an opportunity for Mr G to take advantage of the market upturn.
4. Mr G's complaint email references a letter sent by the transferee on 10 January 2019, but it hasn't seen a copy. It wonders if there's any proof of delivery (recorded or otherwise). It wanted to see if there was a reason why it didn't receive the letter.

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.

Having done so, notwithstanding the latest submissions, my decision to uphold this complaint remains the same, for the same reasons as set out in my provisional decision.

In other words, I'm satisfied that no new material points have been made that persuade me to change my decision. In this instance I'm still satisfied that the key points remain the same, and have been considered by me, in my provisional decision.

I appreciate what the business says about the transferee, but in this case I'm only considering the actions of the business – whether, or not, the business has made a mistake. Having done so, I'm satisfied that it caused a delay and is therefore responsible for financial loss as set out in my provisional decision.

In other words, nothing that the business has said has persuaded me to change my decision that it was responsible for the delays between October 2018 and January 2019 which resulted in financial loss to Mr G.

I don't think what Mr G thought about who is to blame stops me from making a finding against the business. I still don't think the business' offer to pay half the loss contingent upon the transferee accepting equal blame is fair or reasonable in the circumstances. I'm mindful that a separate complaint against the transferee has been considered and upheld on a separate basis.

Furthermore, Mr G's actions (or lack thereof) don't take away from the business' error. On balance, I still think had the business not delayed matters, the transfer was more likely (than not) to have completed by 12 December 2018, enabling Mr G to invest his money sooner.

On the face of the evidence and on balance, I think the redress methodology proposed by me, which the business hasn't made any specific comments on, is broadly fair and reasonable in the circumstances. So, I still think '12 December 2018' is a reasonable date for completion of the transfer. Whilst I appreciate that there's nothing to say that the transfer had to complete by this date (the same date as Mrs G's transfer) I still think it's reasonable to use this date in the circumstances.

As I said in my provisional decision, in the circumstances the business isn't responsible for the increase in share prices. I acknowledge the value is dependent on the stockmarket, and it seems Mr G accepts that it's not something that the business can predict or control. However, I think the business is responsible for Mr G not receiving the additional shares that he could've bought if the transfer had completed on 12 December 2018, or the equivalent value.

I appreciate that the business would like a copy of the letter referred to by Mr G. Perhaps Mr G (or the transferee) if asked can assist in that regard. But that doesn't stop me from making a final decision. I'm mindful that the business previously accepted the investigator's decision to uphold this complaint.

Putting things right

King & Shaxson Asset Management Limited should calculate and pay redress as set out below:

- Compare the value of Mr G's portfolio on the date of investment (14 February 2019) with the value he would've received on 12 December 2018. If there's a difference, pay the loss.
- Pay Mr G £150 compensation for the distress and inconvenience caused.

My final decision

For the reasons set out above, and in my provisional decision, I uphold this complaint.

King & Shaxson Asset Management Limited should calculate and pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 8 July 2022.

Dara Islam
Ombudsman