

The complaint

Mr Z complains about delays in opening an account and in transferring shares with Shard Capital Partners LLP. He says this caused him financial loss. Mr Z also complains that Shard misled him about the opportunities it would offer him once he opened his account.

During the course of his contact with Shard, Mr Z spoke with several Shard employees such as investment managers, heads of departments and brokers. I'll refer to all of Shard's employees as its 'agent(s)'.

What happened

The timeline below is relevant to this complaint (all in 2020):

- 10 September – following initial conversations, Shard sent Mr Z an introductory email. A link to Shard's online application form was included.
- 11 September – Mr Z emailed Shard saying another firm was offering lower fees. The agent responded as follows (bold my emphasis): *“That is a great deal and to be honest, if this broker will take the stock in, execute and release the funds back to you guys in the UK with no quibble then it is well worth taking. If you go down this route please let me know, as it could still be a value enhancing process to sign up with ourselves and be privy to **UK fundraisers we can present to you.**”*
- 2 October (Friday) – Mr Z emailed the agent saying the other firm was *“...messing around far too long...”* and he asked about transferring his shares to Shard. Mr Z then tried to apply for an account using an online application form but he had some technical difficulties with this.
- 6 October (Tuesday) – the agent emailed Mr Z to say the application he made online was incomplete. Later that day he posted Mr Z a paper application form.
- 8 October 2020 – the agent emailed Mr Z to ask if he'd had a chance to complete the application form and noted that shares Mr Z held in a company I'll refer to as 'M', had closed above \$32. Mr Z responded by saying: *“Havent (sic) had a chance yet. Will look at tomorrow as exceptionally busy the last few days.”*
- 12 October – the agent received Mr Z's application form but he (Mr Z) said that he hadn't provided his bank details or date of birth due to security reasons.
- 13 October – the agent spoke to Mr Z by phone and asked questions about Mr Z's employment. Several emails followed with the agent confirming that Shard would require bank statements and more information regarding Mr Z's employment before an account could be opened. Some information was disclosed by Mr Z over the phone. Over the course of the week, the agent emailed Mr Z asking for missing information so that Shard could undertake 'source of wealth' assessments.
- 19 October – Mr Z called Shard expressing dissatisfaction with the delays. Mr Z was extremely upset and said he'd lost a lot of money due to Shard's delays. Shard explained why they needed 'source of wealth' documents and confirmed an account would not be opened until this was received.
- 20 October – the requested bank statements were received by Shard and Mr Z's account (the 'account') was opened on the same day.

- 22 October – The ‘deposit/withdrawal at custodian’ (‘DWAC’) process began. This process allows shares to be transferred electronically. There were several parties involved in the transfer process including a local US dollar sub-custodian who I’ll refer to as ‘B’.
- 27 October – three business days later, Shard contacted the business where the shares were being held (the ‘transferring business’) to provide it with instructions received from B. Over the next few days there were several emails between the transferring business and Shard because there was some confusion over what information was needed to enable the transfer business to progress matters.
- 29 October – Shard contacted B directly in order to try to facilitate the transfer. Several more emails followed between Shard and the transferring business with Mr Z being copied into some of these emails as well as being sent emails directly from the Shard agent dealing with the transfer.
- 4 November – the shares in M were received in Mr Z’s account.
- 6 November – Shard’s agent advised Mr Z that based on the interactions he had with him (Mr Z), Shard wasn’t prepared to offer an advisory service due to not feeling comfortable with Mr Z’s reaction to losses and the risks involved in investing in the stock market. The agent confirmed the account would be a telephone based, execution only service.

Mr Z complained saying that Shard had caused unreasonable delays. He said he’d lost out on around \$97,710 as a consequence of Shard’s actions. Mr Z also said he’d been told by Shard that he would be able to access pre-IPO (pre-initial public offerings) opportunities and an advisory service. He was only told after the transfer this would not be the case.

Shard rejected the complaint. It said that its agents’ kept in touch with Mr Z throughout the account opening process and did make it clear why certain documents were needed. It said it was required to conduct know your customer and due diligence checks before opening an account. And because Mr Z hadn’t fully completed his application form and/ or provided the necessary documents this did delay matters. It noted that because Mr Z was self-employed and between jobs, additional information was required to assess his source of wealth. Shard added that once the DWAC process began there was delays with B processing the request but this wasn’t something it had any control over.

Shard said that in terms of not offering Mr Z an advisory service, which was needed before IPO’s and similar offerings could be recommended to him, it was at its discretion to provide these services. And it had decided that based on Mr Z’s attitude to risk, it took a business decision not to offer this service to him.

Our investigator didn’t recommend upholding the complaint. She thought Shard had acted reasonably in terms of the account opening process. And that it could not be held responsible for matters outside its control such as that was caused by third parties. Our investigator didn’t think Shard had made any promises to Mr Z about pre-IPO opportunities.

Mr Z disagreed. In summary, he said:

- Shard should take responsibility for the actions of B as this was its agent.
- Shard’s agents (its employees) didn’t manage his expectations about how long the process would be.
- He considered Shard’s compliance department found a fault which could have been avoided if Shard had done its job correctly.
- He was encouraged to open an account when he was told he’d have a chance to invest in UK pre-IPO opportunities. He believed Shard had changed its terms without his consent and the investigator had failed to consider this.

Further correspondence ensued. But the investigator didn't change her view. So the matter was passed to me for a decision. I issued a provisional decision on 31 May 2022. In brief, whilst I agreed with the outcome recommended by the investigator, it included different reasons.

Shard accepted my provisional decision. In summary, Mr Z said:

- The Ombudsman made a number of errors including that he was self-employed at the time of his application.
- If Shard had taken him through the application process it would have saved him time. Because he was self-employed, he was unable to spend the time to complete the process. Shard could have helped him with this.
- He had provided documents for the registration process. It was because Shard had been unclear about what it wanted that caused delays.
- The DWAC process should've been done within 48 hours not ten working days – this is the industry standard.
- Shard should take responsibility for any delays caused to the process as B was acting on its behalf.
- Shard rejected him for its advisory service because he 'dared' to complain not because of his attitude to risk. In any event, Shard has incorrectly assessed his attitude to risk because he'd clearly demonstrated he was able and willing to take the risks related to pre-IPO investments. He was never properly assessed at any stage.
- He is entitled to recover his losses from Shard as its actions, and the actions of B acting on its behalf, led to delays and meant he could not sell his investments when he wanted to.

Mr Z ended by saying: "*...the Ombudsman needs to reconsider the decision based on these facts and must deal with the points I've (sic) raised like the failures of the account manager that initially caused delay and misinformation together with the fact that the decision to prevent me from having access to UK pre IPO's was not about my attitude to risk, but because I dared to complain.*" So, the matter has been passed back to me to reconsider.

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.

On the face of the evidence and on balance, despite what Mr Z says, I'm satisfied Shard has behaved reasonably and fairly. But before I explain further why this is the case, I think it's important for me to note I very much recognise his strength of feeling about this matter. He has provided detailed submissions to support the complaint, which I've read and considered carefully. However, my findings focus on what I consider to be the central issues. The purpose of my decision isn't to address every single point raised under a separate subject heading as Mr Z has done – it's not what I'm required to do in order to reach a decision in this case. My role is to consider the evidence presented by Mr Z and Shard, and reach what I think is an independent, fair and reasonable decision based on the facts of the case.

The reasons for my final decision remain the same as that set out in my provisional decision. These reasons are as follows:

In terms of Mr Z's complaint about the delays, I'm satisfied these delays were not the fault of Shard. The timeline above clearly demonstrates that most of the delays in opening the account from 10 September up until 20 October, were due to Mr Z either not submitting his

application form or failing to provide the requested documents. I don't think Shard was being unreasonable given it needed this information to allow it to carry out legal and regulatory duties. I appreciate Mr Z had his own concerns about security. But I don't think Shard has acted unreasonably.

Mr Z said he had technical difficulties with completing the online application form. But I can see as soon as he raised this with Shard, it sent out an application form by post on the day of his call, which was on 6 October. When the agent followed this up with Mr Z, on 8 October, he (Mr Z) said he hadn't had a chance to complete the form. It took a further few days for the completed form to be returned. Once Mr Z provided all the requested documents, the account was opened on the same day these were received (20 October). So, I don't think there's any evidence of Shard unreasonably delaying matters.

Mr Z says Shard hasn't managed his expectations correctly in that it didn't let him know how long the account opening process would take. But I think it told him what he needed to do before it would agree to open the account. And once he provided all the documents, the account was opened on the same day of receipt.

In terms of delays to Mr Z's shares being transferred to his account, I see this process wasn't just reliant on the actions of Shard. There were several third parties involved including the transferring business and the sub-custodian which was needed because the trade was in US dollars. I know Mr Z says B was acting as an agent of Shard, but I can only hold it responsible for its actions. And from what I can see Shard did proactively chase matters with both the transferring business and with B. And it kept Mr Z informed of the actions it was taking to try to resolve matters.

I should also note that as Shard explained to Mr Z the DWAC process is not a standard process and wasn't something it had much experience of. So, it was undertaken under a 'best endeavours' basis and no timescale was given for how long it would take. In the end from beginning to end it took around ten working days to complete which I don't think was an unreasonable amount of time for a stocks and shares transfer. And during the transfer process, I can see Shard proactively chased all parties concerned. I think Shard acted reasonably and fairly in all the circumstances.

Turning now to what services Shard offered to Mr Z. I can see there was discussion at an early stage of: "...UK fundraisers", which Shard has confirmed referred to IPO's. I can hear during a call on 13 October, that the Shard agent asked if Mr Z would still be interested in these opportunities. So, I don't agree with our investigator that these opportunities weren't put to Mr Z. At the same time, during the call, the agent clearly told Mr Z that he'd first need to go through what he (the agent) called Shard's 'KYC' process – he explained to Mr Z this meant he (the agent) would need to carry out an assessment of his (Mr Z's) attitude to risk and investment experience before this service could be offered to him.

Shard has explained further that in order to be advised about IPO's and other similarly high risk investments, a customer needs to be accepted for its advisory service. But because of Mr Z attitude to risk, which it assessed from several calls with him, it wasn't deemed suitable for him. Having listened to several calls between Mr Z and Shard's agents, including calls made on 19 October 2020, it's clear his level of anxiety and distress when he saw his share prices falling, was extremely high. I appreciate why this was given the amount of money involved. But I also think that Shard were entitled to make an assessment as to whether an advisory service was suitable for Mr Z based on its contact with him. This is a legitimate business decision for it to make.

During the call Mr Z had with the Shard agent on 6 November, it was clearly explained to him (Mr Z) why he wasn't accepted for the advisory service. Whilst Mr Z says he would have

been happy to take the risks involved in investing in IPO's, I don't think Shard was under any obligation to provide an advisory service to him, if it was something it didn't feel comfortable with. And whilst Mr Z now says it was the promise Shard made about having access to UK IPO opportunities, his main focus seemed to be on the fact it was one of only a few UK businesses that offered to transfer shares using the DWAC process.

Nonetheless, even if the promise of IPO's was his main reason for transferring, I think Shard made it reasonably clear to Mr Z that he would only be offered this service if the advisory service which would give him access to the IPO's, was deemed suitable for him. All in all, based on the information it had through its dealings with Mr Z, I think Shard was entitled to take a business decision not to offer him a particular service for the reasons it has said. I also think it communicated this to him in a clear, fair, and not misleading way.

In terms of Mr Z's further points, I don't think he has provided anything substantially different to his previous submissions. But for completeness:

- I appreciate Mr Z doesn't think ten days is a reasonable timeframe and says he was told that it should not have taken longer than 48hours. But even if this were the case, I would still need to make an assessment based on all the facts as to whether Shard had acted unreasonably. And taking into account all the evidence Mr Z has provided in response to my provisional decision, I'm still satisfied Shard acted reasonably by proactively chasing matters with B and also by keeping Mr Z up to date.
- I also appreciate Mr Z says he was self-employed. My provisional decision notes this point. But Shard was still entitled to ask him to provide further information due to his particular circumstances. This was part of its process which was designed to meet with its regulatory and legal duties. So, I don't consider these requirements were unreasonable.
- In terms of Mr Z's point about the account manager, as I've said, I don't think the delays were caused by Shard or its agents (employees).
- Whilst Mr Z says he provided everything requested by Shard when he was asked to, I consider the evidence supports there was a delay to him doing so. The evidence also supports that when he did provide the requested information, the account was opened on the same day of receipt. I appreciate Mr Z thinks Shard wasn't clear about what it wanted but I don't think the evidence supports this claim.
- I take on board what Mr Z has said about his attitude to risk. But as I've said above, Shard has taken a business decision, which it was entitled to take. The lead up to its decision shows there were a number of conversations between Mr Z and Shard. As a result of some of these conversation Shard decided that Mr Z's attitude to risk did not match its requirements for an advised account. I don't think it has acted unreasonably here particularly as it still offered him an execution only account.
- I know Mr Z thinks Shard and its employees could have done more to help him with his application. But I'm satisfied that in all the circumstances, it has acted fairly and reasonably in Mr Z's case.

For all these reasons, whilst I've taken into account all the further evidence and submissions provided by Mr Z, I'm not upholding this complaint.

My final decision

I don't uphold the complaint..

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 27 July 2022.

Yolande Mcleod
Ombudsman