

## The complaint

Mr A has complained about the delays he has experienced in trying to arrange for his two accounts to be transferred away from ITI Capital ('ITI') after his accounts were migrated over from a previous firm. ITI hasn't responded to any of his correspondence or phone calls, nor provided any reason for the account not being transferred despite Mr A's numerous attempts to contact it.

## What happened

In July 2020 Mr A's share accounts (a trading account and an ISA), which he held with a previous firm that had gone into administration, were transferred over to ITI. Mr A didn't want to hold his accounts with ITI. He wanted to transfer his holdings to another platform and transfer cash to his bank account.

After some initial problems because of one of his accounts not being set up and the other not having log in details, Mr A sent his instructions for the transfer to ITI on 4 August. The business he had asked for his accounts to be transferred to has said ITI failed to pick up requests for the transfer on 7 and 21 August.

Mr A told us he is a day trader who relied on the income from his investments and the hold ups at ITI had impacted his ability to provide for him and his family.

Mr A complained to ITI on 13 August to which ITI responded on 7 October. It said;

- The delay in onboarding and providing access to the trading platform was unacceptable and communication with Mr A was subject to unreasonable delay.
- The transfer requests had been successfully logged and were awaiting processing. As a result of taking on the number of clients from the predecessor business there was a significant backlog causing delays.
- Mr A could trade over the phone if he wished.
- It offered its apologies and £60 for the inconvenience and distress caused.

Mr A wasn't happy with the response so brought his complaint to the Financial Ombudsman. To put the matter right Mr A wanted financial compensation which he said amounted to £4,136 because of the fall in share prices during the transfer process. He wanted the transfers completed as well as compensation for ITI's failure in its fiduciary duty, lack of customer support and IT systems failures.

After Mr A brought his complaint to the Financial Ombudsman, he said that further to him threatening ITI with legal action via a letter of intent to commence legal proceedings on 7 September 2020 it completed the transfers of cash on 15 September and shares on 16 October 2020 which he sold on 29 October. He said he incurred a significant loss in the value of his shares as well as additional legal costs of £600 plus the stress it caused him.

The investigator who considered Mr A's complaint said the following:

- The investigator thought ITI's offer for the poor service Mr A had received should be increased to £250.
- Mr A's contact with the administrator of the predecessor firm in July 2020 suggested it was always Mr A's intention to transfer away from ITI. Mr A had emailed and phoned ITI about access to his account and ITI was aware of his plan to transfer to another provider.
- The investigator noted that Mr A continued emailing ITI throughout September and October, the transfer requests from the recipient broker were not responded to and completion dates were missed. The recipient broker also did more to escalate the transfer because of mis-match in ID details.
- Mr A had sold his shares in October. He said he had wanted to trade on 5 August and 15/16 September when the share price had bounced but was unable to contact ITI's trading desk. Mr A wanted to be compensated for the loss in value of his shares.
- The investigator was satisfied there was no doubt ITI failed to meet both industry and its own deadline standards when processing and completing the transfer.
- She thought Mr A should be awarded interest at a rate of 8% on the date the cash transfers should have been completed which was five days after the request on 4 August – 11 August 2020 – to the date the money was actually received – which she believed to be 15 September 2020.
- She didn't think Mr A should be compensated for the loss Mr A has said he suffered because of the fall in the value of his shares. She couldn't see any emails confirming a sale order or an indication of a desire to sell. There wasn't sufficient evidence to support that ITI was given a sale order, and it was ignored. It wouldn't be fair to expect ITI to know Mr A wanted to sell his shares rather than transfer them as he had requested.

Mr A didn't agree with the investigator. In his response, briefly, he said;

- Mr A would only have been able to trade by phone or via a secure broker account. It was clear he was trying to sell his shares as evidenced by – and not limited to – his call logs, him asking ITI in an email for a direct number to the dealing desk and asking for a broker to call him back.
- Other consumers were having the same issues with ITI. Mr A provided external correspondence and media reports.
- ITI's operations were a shambles and services non-existent.
- It was only because Mr A took legal action that prevented further losses to his holdings. It was a time sensitive issue.

The investigator wrote again to Mr A;

- She reiterated her opinion about legal fees and overall, her view remained the same.
- Her role was to consider Mr A's complaint and wouldn't consider other consumer's experiences.
- The investigator didn't doubt that Mr A would have sold his shares if he had been given the opportunity, but she couldn't see that ITI had been given a specific sale instruction and then didn't carry it out. She couldn't consider this with the benefit of hindsight.

As the complaint remains unresolved, it has been passed to me for a decision. Mr A provided some further comments, briefly;

- Mr A had provided evidence of clear-cut instruction to sell his shares – he had provided a copy of his phone logs.
- If ITI had given him an avenue by which he could have given the sale instructions he would have done so.
- He had concerns about a ‘manufactured’ terms of service document provided by ITI.
- ITI’s failure to carry out instruction was calculated to stop clients from leaving. He referred to action taken by the regulator.

As the complaint remains unresolved, it has been passed to me for a decision.

### **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.

After doing so, I broadly agree with the conclusion reached by the investigator and I’m going to uphold the complaint. I don’t think ITI has behaved reasonably however I think the suggested payment of interest for the time Mr A was out of pocket and the £250 compensation recommended is broadly fair and reasonable.

I very much recognise Mr A’s strength of feeling about his complaint. It’s very clear he is, and has been, extremely frustrated by the process. I’ve considered the submissions he has made very carefully. And I hope he won’t think I am being discourteous by not addressing all of the points he has made in any great detail. I’ve kept my focus in this decision on the core matters to the complaint.

In deciding what’s fair and reasonable, I must consider the relevant law, regulation and best industry practice. But it’s for me to decide, based on the available information I’ve been given, what’s more likely than not to have happened.

#### Mr A’s inability to trade

Mr A held one shareholding each in his trading account and ISA account. It was the same company invested in both accounts.

Mr A said his calls to ITI went unanswered. He said that after holding for ten to 15 minutes they were disconnected automatically. He has told us he wanted to place a trade in his shares on 5 and 6 August 2020, and 15 and 16 September 2020. And I also note from an email he sent to ITI on 14 August that he referred to 28 July as well.

In his email to ITI he said *‘I rang your dealing service...numerous times on Jul 28, Aug 5 and 6 to try and place limit orders...I would appreciate if a direct number to dealing traders could be provided so securities could be sold at prices sought....’*

Mr A has sent us call logs for his phone and I can see he tried to call ITI three times on 28 July, three times each on 5 and 6 August, and 15 and 16 September. But in his email to ITI he refers to wanting to place a limit order rather than just sell the shares, however, he didn’t say what that limit price would be so there’s no evidence he wanted to place a firm sell order albeit at a specified limit price.

I’ve also looked at the daily share price highs and lows from June to October 2020, the latter being when Mr A sold his shares. On the dates that Mr A has said he wanted to place a limit order the prices were;

	High £	Low £
28 July	187.30	181.30
5 August	196.20	183.90
6 August	191.34	180.34
15 September	188.34	182.90
16 September	188.24	184.42

The highest share price for the June to October was on 5 August. The fact that Mr A wanted to place a limit order – rather than to sell at best – suggests to me that he wasn't satisfied with that share price. He was looking for something higher.

But that was the share price high for that period, so even though Mr A hasn't said what his limit order price would have been I can only assume it would have been higher than 196.20p. And that limit price wouldn't have been reached in any event.

I do recognise how frustrated Mr A must have been in not being able to place his limit order when he wanted to. But without firm evidence of the price he wanted to obtain – and which I can only assume was higher than the prices I've quoted above – it wouldn't be fair and reasonable for me to consider this part of Mr A's complaint and the shares prices he could potentially have obtained with the benefit of hindsight. And without firm evidence of the price that Mr A sought, and it being achievable, I can't agree that ITI is responsible for the loss Mr A has said he suffered.

#### Reimbursement of Mr A's legal costs

On 7 September 2020 Mr A's solicitor issued a letter of intent to commence legal proceedings to ITI. Mr A has said that this produced the intended effect as ITI initiated settlement with his recipient broker.

During our investigator's phone call with Mr A about this point she explained that Mr A could have brought his complaint to the Financial Ombudsman for free and it wouldn't incur legal costs. She also said it was Mr A's decision to incur those costs when he contacted his solicitor.

I think its clear Mr A was so frustrated with the delays that he felt it was the appropriate course of action and now wants the costs repaid to him. Mr A has told us he is a day trader and emphasised that the transfer was time sensitive. While I may understand why Mr A felt that was all he could do, the delays experienced by Mr A needed to be put right in any event. And despite the letter being issued the transfer didn't complete until five weeks later because of other administrative issues which weren't overcome any quicker because of the letter. So, I think the legal costs incurred were incidental to that process.

And like the investigator, I'm of the view that Mr A was aware of the costs he would be incurring in advance of pursuing legal action. It was his own decision to do so and without the knowledge that he would be able to reclaim those costs. So, it seems to be a risk he was willing to take by paying for those costs up front.

Mr A has said it was only as a result of him taking legal action that the transfer completed when it did. But I haven't seen anything to suggest the legal action was the *only* reason the transfer completed, and, in any event, it was a cost Mr A chose to incur rather than something that was necessary. So, I won't be making an award for reimbursement of those legal costs.

### The service provided by ITI

It is very clear from Mr A's submissions, and the documents he has provided – he has referred to many emails and phone calls – that Mr A's experience with ITI has been a poor one. Mr A suffered significant delays throughout – from his initial request to transfer the account in August 2020 through to trying to get the actual transfer completed in October.

And during the transfer process Mr A considered selling his shares but was unable to get through to the dealing desk despite many attempts to call.

I don't know the size of the client base that ITI took over from the previous provider that went into administration. But and as already acknowledged by ITI, I think it's likely that the new additional accounts and investments will inevitably have had an impact on ITI's capacity and ability to deal with new customers and increased requests. And it seems evident there were some IT issues.

### **Putting things right**

That being said, it's clear Mr A has had a very difficult time during the whole process and I'm sure feels stressed and exhausted by the whole affair. The investigator acknowledged this, by increasing the offer made by ITI from £60 that had previously been made to £250.

As I've said above, I've carefully considered Mr A's points and I am aware he feels strongly about his complaint. But I have also borne in mind our long-standing approach to awards for distress caused. Clearly, it must have been very frustrating for Mr A not being able to take the action he wanted to with his accounts. ITI initially offered £60 but taking all of the above into account, I think the £250 as recommended by the investigator is a fairer reflection of the distress and inconvenience caused to Mr A.

The investigator also recommended that ITI should pay 8% interest for the time Mr A was out of pocket – so interest at a rate of 8% on the date the cash transfers should have been completed which was five days after the request on 4 August – 11 August 2020 – to the date the money was actually received. And I think this is a fair award for the time Mr A didn't have access to his money.

The investigator thought cash was received on 15 September as referred to by Mr A in response to some questions he was asked. But I note his bank statement he sent to us states receipt of cash was 16 October 2020 as did his letter of complaint. So, I think this is more likely the date of receipt but if there is any doubt, this needs to be agreed between Mr A and ITI before payment of the interest award is made.

No doubt Mr A won't be happy that I haven't fully upheld his complaint, but I hope I have been able to explain to him how and why I have reached the decision that I have done.

### **My final decision**

I uphold Mr A's complaint about the service he received from ITI Capital Limited. ITI Capital Limited should pay Mr A for the trouble and upset he has been caused and interest on the delayed cash payment as I've detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 22 September 2022.

Catherine Langley  
**Ombudsman**

