DRN-3704830

The complaint

Mr T complains Interactive Investor Services Limited ("Interactive") took too long to make shares available on his account. He says this meant he was unable to sell them when he wanted and so he made a large loss instead of a large gain. He says there were significant limitations to Interactive's service that Interactive failed to point out to him.

What happened

I wrote to the parties outlining my understanding of the relevant circumstances. In brief:

- Mr T placed three orders to use sterling to buy dollar-denominated shares of a company. The large size of his first order meant it took a lot of purchases - or 'fills' - to complete. Still, these fills were likely completed within a matter of minutes, at which point the particulars that would determine what Mr T owed in sterling for the order - such as the dollar cost and the time of each fill - were all known. By that point the risks of the purchases rested with Mr T and he was obliged to cover the cost.

- There was a period – which Interactive calls a *"contracting period"* - during which Mr T was unable to manage his risk by selling the shares. During this period, details of the trades were reported back to Interactive by its dealer. To work out and tell Mr T what he would have to pay, Interactive then converted the known dollar cost of the shares into a sterling cost. A separate conversion was done for each fill, as the underlying exchange rate for a fill varies according to its timing. Fees may also vary with the size of a fill. Above a certain number of fills, the process becomes manual rather than digital and so takes longer – and this was the case for Mr T's large order.

- Interactive has said it is not realistic for its terms of service to address all scenarios relating to the execution and contracting of orders. Its terms don't address exactly how or why shares in Mr T's order were for a time not available for him to sell. Some shares were released at 14.57pm, about 19 minutes after his large order, and Mr T sold these for a higher dollar price than he had paid for them. These shares outnumbered those in his two small orders combined, so some or all were part of his large order. So, it appears parts of an order could be made available before the rest of an order.

- Interactive had said: *"Where an executed trade has not yet contracted, we… exercise a degree of caution before we can allow a customer to sell the stock and have… controls to ensure that we avoid the duplication of a sale and/or a customer selling stock they don't actually own"*. It had also said its phone service lets customers check orders. In the phone calls Mr T made asking to sell shares, there was no suggestion he didn't own the shares. Rather it appeared that Interactive was working through his order.

- The size of Mr T's large order meant his orders cost more than his spare account funds. This isn't supposed to happen, but it can and does happen and Mr T knew this as he had benefited from it in the past. It happened this time due to Interactive's system allowing it when it shouldn't have and Mr T not checking his order like he should have. Mr T has said his large order was large due to him typing in a far larger order than he intended.

- Mr T has given various figures for the profits he has lost or the losses he suffered instead. For example he estimated a gain of more than $130,000 based on selling the shares at the price available when the first shares were released and a loss of more than $100,000 from the sale of his shares when he actually sold them.

Interactive told us the controls Mr T encountered were imposed due to a combination of factors such that this couldn't be predicted in advance. It said the situation was usually rare, affecting less than 0.01% of transactions, although it became more common during a short period linked to US meme-stock trading. It said Mr T's case was unusual in terms of volume.

Based on what I had seen, my initial findings were - in brief:

- I assumed Mr T's large order was an error like he said, but I wasn't sure it would make any difference if it wasn't. Mr T's liability for the order wasn't in dispute.

- Interactive had said the case turns on whether it ought to have acted differently when Mr T queried the status of his order. I thought it probably should have acted differently.

- Interactive's process wasn't entirely clear, but what was presented didn't suggest a risk of Mr T selling shares he didn't own or had already sold. It was known that the purchases had been done. What wasn't known was the sterling value Interactive would charge Mr T for those. It looks like Interactive took a long time to work this out, Mr T was losing out in the meantime and Interactive wouldn't let him do anything to stop this. There didn't seem to have been any risk to Interactive that made it reasonable to not permit Mr T to trade the shares Interactive knew it had bought for him.

- Mr T was aware delays could happen, given what Interactive had said about his prior experience of this, so more information about how things worked wouldn't have changed his approach. If his large order was an error, then plainly more information wouldn't have affected that. But knowing there might be delays doesn't mean Mr T couldn't have a valid complaint if losses were the result not only of delays but of Interactive unreasonably refusing to take reasonable steps to allow him to try to mitigate the losses. On balance this appears to be what happened here.

- Mr T in the past had benefited from the delays enabling him to invest more than he should've been able to. But plainly this wouldn't entitle Interactive to disadvantage Mr T by not acting fairly and reasonably towards him in the current situation.

- When Mr T made it clear he wanted to urgently sell the shares, Interactive should've allowed him to sell. This could reasonably have involved Interactive making some checks before allowing this - so it wouldn't necessarily be right to base the outcome on prices Mr T had reported as available while he was on the phone to Interactive. It is hard to say precisely what Mr T might have realised for his shares had Interactive allowed him to sell them like I think it should've done.

- From the contract notes provided, I calculated the difference between the dollar cost of the shares and the dollar proceeds of the sales – Mr T's actual dollar loss – as $97,205. Mr T accepts his own decision to hold on to some shares – in the hope of reducing his loss - increased his loss, and he doesn't seek restitution for that part of his loss.

- With all this in mind, my view was that Interactive should compensate Mr T by paying $32191. This figure is Mr T's actual dollar loss but reduced by $65014 which from what I'd seen was the difference between the price Mr T could've realised when the balance of his shares were in fact released to him and the price he actually sold those shares for. This redress would be instead of the $8372 fee refund Interactive had offered so far. The redress would be paid into Mr T's account in dollars.

- Interactive should also make a payment to Mr T for distress so Interactive should also pay Mr T £350.

Interactive didn't agree with my proposals. It said, in summary:

- The large size of Mr T's order, rather than being an error as Mr T has claimed, may have been designed to trigger Interactive's risk mitigation controls, delay contracting and enable Mr T to buy more shares than his account would otherwise have allowed.

- There seems to be some confusion around Interactive's risk mitigation process. This is done to protect it from the risk of duplicated currency exchanges and the costs associated with correcting large manual trades.

- If this were Mr T's first interaction with these controls or he hadn't benefited significantly from them in the past, his claims would potentially have some validity and it would be reasonable for him to blame Interactive. But Mr T was aware of the process and his continued use of the service showed an understanding of it. Once a customer is aware of a process it's ultimately for them to decide whether, despite the consequences it may bring, they wish to continue trading with those controls in place.

- When Mr T previously encountered a situation like the present one, (including buying far more shares than his available funds would cover) he complained about it until it became beneficial for him to accept the shares. To make hundreds of thousands of dollars from the control one week and be refunded tens of thousands the next for a situation he was fully aware of, doesn't appear fair and would give Mr T a no-lose option.

- If the controls in place were unfair, this should be applied to all Mr T's interactions – the previous events shouldn't be uncoupled from this one.

- Interactive has multiple processes where to ensure its business runs correctly, customer activity is delayed until Interactive can be confident in the action it is taking.

- It seems the outcome is Interactive should have done more to assist Mr T with selling his shares. While Interactive can understand this, simply breaking its control environment to do as the customer wants is not the standard process and would amount to treating Mr T differently to others. Interactive's references to executive sign-off being needed (to allow Mr T to sell the shares sooner) doesn't mean approval would've been given for this or that escalation would have delivered what Mr T wanted - rather it was to indicate the (very senior) level at which this request would've needed to be considered in view of the risk the request posed to Interactive as a business.

- Interactive believes all its actions were completed in line with previous interactions and, while it's regrettable it didn't benefit Mr T in this instance, he was fortunate to benefit from it previously. As such the outcome of the initial review was correct.

What Interactive sent us relating to Mr T's previous interactions included a call he made about a trade that had completed but was still showing as pending. There were also secure messages where Mr T chased the proceeds of a sell trade he had carried out and where he chased a trade that had got 'stuck' due to the number of fills involved and where he received a message from Interactive around 24 hours later saying his order was by then showing as executed.

Mr T also replied to what I'd said. What he said included, in brief summary:

- Events at the time, including the content of his phone calls, show his large order was an error. When he first asked to cancel it, the shares were up rather than down. He was not trying to manipulate the system like Interactive says.

- He was used to receiving an error message and his order not being executed if, in error, he placed an order whose cost exceeded his available funds. One such order had been executed in the past but there had been no delay in accessing the shares. He disputed liability for that trade but had no choice but to accept it and ask Interactive for more time to pay. The shares then recovered unexpectedly, and he was able to sell for a profit (two days before the orders being considered here). The situation had caused anguish and wasn't one he had wished to repeat but he withdrew his complaint as he'd made no loss. But he objects to and rejects Interactive's suggestion that he had brought about a repeat of that situation deliberately in the present case.

- He has complained before about delays to his trades and sometimes has to phone to find out what is happening. But he doesn't deliberately trade on the understanding his shares will get stuck and a phone call might fix it.

- He understands his request may not have conformed with Interactive's standard process, but the very large size of the error meant he hoped his call would be treated differently to a standard call to customer services.

- He can't see where the risk was to Interactive (of allowing him to sell the shares) when the trade is fully executed and Interactive is in possession of the shares. Making sure the right exchange rates and fees were applied is understandable but shouldn't have stood in the way of Interactive selling shares it had for which he was fully liable.

- His loss caused by Interactive's delay is $75,905 not $32,191. The shares released at 14.57pm presumably included all the shares from his two smaller orders with only the balance coming from his large order. The remaining 83938 shares of the large order were the shares Interactive's delay kept him from accessing for a further 40 minutes. The share price when these shares were released was $6.85. At this price his loss on those shares was $75,905 compared to the price he paid for those shares in his large order.

- Shares sold at 14.57pm (on which he made a profit) should be excluded from the calculation. For some of those shares this is because the shares likely comprise the two smaller orders and those orders weren't subject to the controls that led to the delay for which Interactive is at fault and didn't suffer from that delay. For the rest of those shares they should be excluded as even though they were part of the larger order they weren't delayed like the rest of the larger order and so they weren't affected by the delay for which Interactive was at fault.

As the complaint wasn't resolved informally, it is one I must decide.

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, I've decided to uphold Mr T's complaint for largely the same reasons as those I shared previously with the parties. I've summarised these briefly below.

I remain of the view that Interactive ought to have acted differently when Mr T queried the status of his order – and ought to have allowed Mr T to sell his shares. So I still think Interactive should compensate Mr T in the way I proposed.

I say this bearing in mind that when Mr T called Interactive to sell the shares, Interactive knew enough to know the shares had been bought and that Mr T would be liable for the cost of those shares. There was an earlier stage in the process during which Interactive had to be sure Mr T's order had been filled in full, but from what Interactive has told us I understand this was no longer an issue at the time Mr T called.

I've considered all Interactive has said about its process at that stage and its reasons for not allowing Mr T to sell the shares. I understand its main reason was to do with checks to avoid duplicating currency exchanges. It has also referred to the costs of correcting large manual trades but without elaborating on this. I understand Interactive would want to avoid error in currency exchanges relating to Mr T's order. But what Interactive has said doesn't persuade me that not allowing Mr T to sell his shares was necessary to that process, which was slow, or that it was reasonable or fair to deny Mr T's request to sell the shares due to that process.

I say this bearing in mind Mr T's large order resulted in his orders buying more shares than his available funds would cover and, from what Interactive has said, more shares than he ought to have been allowed by Interactive to buy.

Interactive thinks Mr T may well have placed his large order deliberately with the idea that Interactive's risk mitigation measures, including those that then delayed his access to the shares, could allow him to buy more shares than he would otherwise have been able to buy. Interactive says this is a reason for not compensating Mr T for losses relating to that delay. It adds that Mr T had at times experienced similar delays in the past with his orders, so by continuing to use Interactive's service he accepted these. Mr T says the size of his large order was an error on his part.

Whether he placed them deliberately or carelessly it seems to me that the starting point is that Mr T was liable for his orders - which neither party has disputed - and that Interactive, having accepted and placed his orders, was obliged to treat Mr T fairly from that point. I don't agree that whether Mr T's order was an error or not makes a material difference to that or to what would be a fair outcome here. (I note in passing that if it were a deliberate act to obtain more shares than he was supposed to be able to buy, Interactive seems to have done little to prevent this, despite being aware Mr T could use its system and service in that way.)

In reaching this view, I've taken into account all Interactive has said about Mr T's previous interactions with its process, and the knowledge or experience he had of the delays that could arise. In what it has provided I see some similarities with aspects of the orders under consideration in this case. But I don't see that these would have given Mr T knowledge of Interactive's process such that he was bound to expect or anticipate that Interactive would treat his orders and his request to sell the shares in the way that it did. Rather it seems Mr T experienced delays on occasion and Interactive apologised to him for these. For example a reply Mr T received about a sale taking longer than he expected was: *"There are a number of reasons why this can occur, and we do apologise for any inconvenience caused."*

Overall what I have doesn't persuade me that Mr T knew how Interactive would handle the present situation and chose to do what he did, and to risk the losses he now claims for, with that knowledge. So what Interactive has said in this regard doesn't change my view about whether Interactive treated Mr T fairly nor does it persuade me that Mr T shouldn't receive redress if he wasn't treated fairly. Having considered all Interactive has told us, I remain of the view that what I have doesn't explain or evidence a cost, risk or limitation of a kind that made it reasonable, fair or proportionate for Interactive to refuse Mr T's request to sell his shares in this case. If there was a good reason for this, it hasn't been articulated during this complaint - and I reach my conclusion on the basis of the evidence I've been given in this complaint by the parties. I remain of the view that Interactive ought to have given greater weight to Mr T's interests when considering his request to sell his shares.

Interactive says this would've meant treating Mr T differently to others by departing from its standard process. But, from what Interactive has told us, what it was doing wasn't a process set out or detailed within its terms. Also, while outlining the workings and rationale of that process in this complaint in very general terms, Interactive has also said it wasn't a process used commonly and it applied to a very small proportion of transactions. With all this in mind, if varying that process or steps within it in the way I have suggested was necessary to treat Mr T fairly with due regard for his interests in this particular instance, I think it reasonable and fair to conclude that this is what Interactive ought to have done. That is the conclusion I have reached here - I think to treat Mr T fairly Interactive did need to act differently.

I don't doubt that to ensure its business runs correctly Interactive has multiple processes that for good reason delay customer activity. But that doesn't alter my view on the situation here.

Interactive says it is unfair to compensate Mr T for losses arising from the present situation when in the past he gained from a comparable situation. I understand that the past gain was more than the loss he claims for in the present case. But any such gain took place before the acts that caused his loss in the present case. So the acts that caused loss in the present case were not the same acts that caused any earlier gain, even if the act that caused the earlier gain was the same in nature or as faulty. So I don't see grounds to offset Mr T's loss against gains caused by earlier and separate acts. I don't agree that not doing so is unfair.

Also I don't agree that compensating Mr T in the way I suggested gives him a no-lose option, given that he lost tens of thousands more than my proposed award - and this would remain the case even if I accepted Mr T's suggested revisions to the redress.

Before I discuss those, I'd mention that I've taken the view that I cannot determine the price Mr T might have got had Interactive released his shares promptly following his call. This is due to the variations that took place in the share price and the fact that there is a range of points in time within which Interactive might reasonably have released the shares to Mr T such that to select one would be highly artificial. So I suggested that redress be approached in terms of Mr T's actual cash loss, unadjusted for any loss or gain that an earlier release of the shares might have allowed him to make (both were possible), but adjusted to reflect only that part of the loss for which Interactive is responsible. Neither party has objected to this approach in principle.

Mr T's redress suggestions in substance would mean gains on shares sold at 14.57pm are not offset against the losses he made on the rest of the shares later. This increases redress by around $30,000 by excluding the two small orders and by around $17,000 by excluding shares from the large order. The price of $6.85 he has used for the price he could've sold the shares for is slightly higher than the $6.81 used in the figure I shared with the parties, otherwise his figure would've been $3357 higher still. Interactive hasn't commented on or objected to that particulars I used to reach the figure I shared with the parties.

Looking at what Interactive has said, it does appear that Mr T is right to say that the early released shares were attributable in part to his two small orders and only partly to the large order. But I don't think excluding these from the loss assessment is right or fair. I say this because in my view the action Mr T took to sell those shares at the time he sold them, arose from him finding himself in a situation where by accident or design he had bought far more shares than his account could afford and he was looking to cancel, dispute or sell the shares as soon as possible. So it would be wrong to treat those shares and those sales – and the gains arising from them - as separate from losses Mr T suffered on the rest of the shares. I find that Mr T's gains from those sales and the losses he complains of are all linked and flow from the acts about which he has complained and that form the substance of his complaint.

So I remain of the view that it is fair and reasonable to take as the starting point Mr T's loss on all these share purchases as a whole – which takes into account the gains on the earlier sales – and then to deduct from this that part of the loss that was attributable to Mr T's decision to speculate further after the shares had been made available to him. Mr T has from the outset accepted that such a deduction is fair and I agree with him. Interactive hasn't objected to the share price I suggested be used to calculate this net loss. I've noted that this price gives a more favourable result than that implied within what Mr T has recently said.

The sterling value of the loss is greater today than when it arose, due to exchange rate moves since. Neither party has suggested adjustments for this or for the passage of time in any other way. With all that in mind, I'm satisfied my approach below to redressing the financial loss suffered by Mr T is fair and reasonable in all the circumstances.

Also I still think Interactive should pay Mr T redress for the inconvenience and distress that its failings caused him.

In light of all I've said above, I uphold Mr T's complaint and I see no reason to depart from the figures or resulting redress amount I shared with the parties. This is reflected in my award below.

I'm grateful to Interactive and to Mr T for their patience and assistance throughout our consideration of this complaint.

Putting things right

To put things right, Interactive Investor Services Limited should pay Mr T $32191. This is instead of the fee refund, stated as $8372, so if Interactive Investor Services Limited has already paid that refund to Mr T it may deduct the amount it has already paid him when arriving at the redress due.

If Mr T still has an account at Interactive, Interactive Investor Services Limited may pay the redress due into that account. Otherwise Interactive Investor Services Limited should pay the redress due to Mr T in sterling using the exchange rate current when the redress is paid.

Interactive Investor Services Limited should also pay Mr T £350 for the inconvenience and distress its failings caused him.

If Interactive Investor Services Limited does not pay my award within one month of receiving from us Mr T's acceptance of my award, Interactive Investor Services Limited should also pay Mr T simple interest on my award at the rate of 8% per year from the date of my decision until the date Interactive Investor Services Limited pays my award to Mr T.

My final decision

For the reasons I've given and in light of all I've said above, I uphold Mr T's complaint. Interactive Investor Services Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr T to accept or reject my decision before 28 April 2023.

Richard Sheridan
Ombudsman