

The complaint

Mr M complains that Halifax Share Dealing Limited (“HSDL”) caused a delay in the transfer of his shares and that it gave him wrong information. He’s explained the amount of stress this caused him. And he feels HSDL discriminated against him.

What happened

Mr M has an execution only share dealing account with HSDL. He held shares in a company, which I’ll refer to as “U”, which acquired shares and warrants in another company, which I’ll refer to as “A”. The shares and warrants were distributed to U’s shareholders in or around May 2021.

HSDL does not transact on the exchange where A shares trade, so Mr M wanted to transfer his A shares to his account with a third party. And HSDL told him this would be possible.

Mr M also received warrants to buy A shares, but there were restrictions in place which prevented him from transferring these, which he understood.

In brief summary, HSDL first received an information request about the transfer from the third-party broker on 26 May 2021. The transfer wasn’t completed until 7 January 2022. Mr M says HSDL caused the delay and that it kept giving him wrong information.

HSDL said it didn’t receive a transfer request from the third-party broker until 22 July 2021. It said it had to dematerialise the shares, as they were held in certificated form, and this process wasn’t completed until the end of October. But that in the meantime it had wrongly rejected the transfer request because of a misunderstanding. The transfer was initiated in December, but a further delay occurred because the stock wasn’t decoded. HSDL accepted this had been a frustrating experience for Mr M. It also accepted it had wrongly treated one of his complaints as being cancelled. It offered to pay Mr M £750 compensation for the distress and inconvenience he’d been caused.

Mr M didn’t agree and HSDL reviewed his complaint. It reduced its offer to £250 because it said it hadn’t breached its terms and conditions. It said clause 12.11 meant it wasn’t liable for any lost opportunity Mr M had to trade.

Our investigator didn’t think £250 was enough. He recommended HSDL pay Mr M £500 for the distress and inconvenience caused. He didn’t think there was evidence to conclude whether or not Mr M would have received a higher price if he’d been able to sell his A shares earlier than he did. But he thought HSDL should pay Mr M £150 to compensate him for the loss of opportunity. So, £650 in total.

Mr M didn’t agree, so the complaint was passed to me.

My provisional decision

I thought HSDL’s original offer of £750 was fair and reasonable and I explained why. I said:

I find HSDL did a number of things wrong here. I'm not going to detail everything but, in summary:

- HSDL told Mr M he couldn't transfer his shares because no transfer was allowed for 12 months after issue. But this applied to the warrants, not the ordinary shares. This position was repeated by HSDL on several occasions, including in response to the complaint he made in September. Each time he was told this, Mr M told HSDL he did not want to transfer the warrants and he provided evidence to show he was able to transfer the ordinary shares. HSDL continued to repeat the incorrect information.
- HSDL told Mr M on 9 July that he could transfer his shares to another broker. But, on more than one occasion after this – and as late as 28 September – it wrongly told him he couldn't transfer the shares because of an on-going corporate action.
- HSDL knew on 17 May 2021 that it was going to receive certificates for A shares. And it received those certificates on 10 June. But it knew the certificates needed to be dematerialized before they could be transferred. It knew as early as 26 May that Mr M wanted to transfer his shares to a third-party broker. But it wasn't until 19 October that it started the process to dematerialise the shares.
- The shares were deposited in CREST on 30 November. HSDL didn't initiate the transfer until 7 December. But it didn't decode the stock so there was a further delay.
- When Mr M complained in September 2021, HSDL said it had already investigated and provided a response in July. It didn't investigate things further and told him his complaint had been cancelled. HSDL should have re-opened the complaint because it had previously given him the wrong information. And it was obvious the transfer had still not taken place.
- It gave the third-party broker wrong information on several occasions. For example, it provided the wrong SEDOL code, it said it only held cash for Mr M, it said it couldn't transfer because of the corporate action. And it wrongly cancelled the transfer more than once.

HSDL's position on this complaint fails to take into account the number of mistakes it made and the amount of stress those mistakes caused Mr M. It's provided us with a detailed timeline which includes all of Mr M's contact, including several long and fruitless online chats where Mr M has had to repeat information several times.

I also find HSDL is trying to place reliance on a clause which can't reasonably be used to cover the mistakes it made. Clause 12.11 is to prevent HSDL being responsible for any losses made due to market movements when a share can't be immediately sold through HSDL following a corporate action where that share is not eligible for HSDL's service. Whilst that was the case here, I don't think the clause can reasonably extend to cover a delay in the shares being transferred when that delay was largely caused by HSDL's errors.

I also agree with Mr M that HSDL hasn't considered other clauses in its terms which are more relevant here. For example, clause 12.8 says that the shares resulting from a corporate action will be allocated "promptly".

HSDL says the first transfer request wasn't received until 22 July 2021. But that was because the third-party broker had asked for information – on 26 May, 16 July, and 20 July – to enable it to make the transfer request, and HSDL gave it the wrong information in response to the first two requests. If HSDL had provided the correct information, a transfer request would've been possible shortly after 26 May.

Mr M says he wants compensation because he wasn't able to sell his A shares until they'd been transferred. I've thought about this carefully.

It's difficult for me to conclude with any certainty when the shares could have been transferred if HSDL hadn't made mistakes and caused delays. There were some complications with these shares which will have made the whole process longer. But I think HSDL should reasonably have been able to complete the transfer by around the end of August. Looking at the share price around this time – and until Mr M actually sold the shares – it's possible he might have achieved a higher price if he'd been able to sell on 27 July through to 17 August, and on 20 September through to 18 October. But the price was also higher on the day the shares were successfully transferred and for the following four working days. So there was an opportunity for Mr M to sell at a higher price if he'd chosen to do so. As I can't say with certainty that he would have sold if the shares had been transferred earlier, or what price he would have achieved, and as there was an opportunity for Mr M to sell the shares at a higher price once they were transferred, I don't think it's fair to order HSDL to compensate him for a loss he may or may not have made.

Mr M also told us that he wanted to sell the shares because, in his particular personal circumstances at the time, he needed the money. I'm not disagreeing that he may have sold the shares at an earlier date if he'd been able to. But I'm not persuaded that he didn't have other investments he could have sold, had he been desperate for some funds. And I've not seen evidence to show that he did this.

It's clear to me from reviewing the online chats and the phone calls how frustrating this has been for Mr M and how much of his time it's taken up. And it's not surprising he's lost all faith in HSDL and its staff. He says HSDL acted fraudulently and negligently and that it wilfully deceived him. I sympathise with how this has made him feel, and I agree HSDL made mistakes. It didn't have experience of dealing with this particular type of share – which was why it was ineligible for its service. And, whilst it should have taken more care to get things right, I don't think it purposely got things wrong.

Our role is not to fine or punish a business for its mistakes. That's the role of the regulator, the Financial Conduct Authority. If Mr M has concerns about the way HSDL is operating, he is free to contact the FCA.

Mr M told us he felt HSDL had discriminated against him on the grounds of race. I've taken the Equality Act 2010 into account in arriving at my decision, as it's relevant legislation. But I can't decide whether or not HSDL has breached the Act; that's a matter for the courts to decide. But I can consider if Mr M was treated fairly. Our service asked Mr M why he felt he had been discriminated against and Mr M said, in summary, that HSDL said it didn't understand him, implying he had miscommunicated. He thinks HSDL chose not to listen because of racism, prejudice or incompetence. He thinks some staff may hold negative views towards people who have "non-English" names.

I acknowledge and empathise how HSDL's repeated errors and lack of understanding has made Mr M feel. And, while I can't see any evidence to suggest

HSDL did this intentionally, I don't think it has done enough to understand the impact it has had on Mr M and why he feels this way; and why, as a result, he has lost faith in HSDL. I have taken this into account when assessing how to put things right for Mr M.

HSDL agreed with my provisional decision. Mr M didn't agree and set out in some detail why. In summary, he said:

- He didn't sell A shares immediately when he received them in January 2022 because it was a depreciating market; he was hoping the shares would reach previous highs of 1.30p; and there were unlikely to be any buyers for the amount of shares he had to sell.
- He couldn't sell other investments instead of A shares because his account was "*in the red*". He needed to obtain the cash from the sale of A shares. And he didn't see any benefit in holding A shares for the long term, whereas he thought his other shareholdings had better prospects and he wanted to keep them.
- He would have sold A shares if he'd received them earlier – he told HSDL that "*I need to sell asap*".
- HSDL is not inexperienced, it was negligent.
- He shouldn't have to contact the FCA. This service should take into account FCA regulations when making its decision.
- HSDL wrongly kept the shares in certificated format. And it sent the wrong documents to the registrar, due to its misunderstanding, which delayed the dematerialisation.
- HSDL owed him a duty of care, but it restricted his ability to trade.
- HSDL admitted in its records that "*we are practically withholding the customer's access to his holding*" and that "*a significant offer should be made*". It has admitted liability, he has been disadvantaged by HSDL's action, and he should be compensated. He could have sold when the price was 1.30p. His loss should be calculated using that price, plus interest at 8%.
- HSDL deliberately left out a chat log when it provided its file to this service, in a clear attempt to deceive.
- HSDL thinks he cannot read, which is discriminatory.

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.

As I set out in my provisional decision, I'm aware that I've summarised this complaint in far less detail than the parties and in my own words. There is a considerable amount of information here but I'm not going to respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

In response to my provisional decision, Mr M said he wants compensation for not being able to sell the shares. And he has raised further comments in which he suggests HSDL behaved negligently, deceitfully, and discriminatorily.

I've already concluded that HSDL made a number of mistakes that led to the delay in the transfer of A shares. I've thought carefully about what Mr M said in response to my provisional decision. And I've looked again at HSDL's records and, in particular, the online chats. Having done so, my conclusion remains the same. HSDL didn't have experience of this type of share and it made mistakes. It should have taken more care to get things right. And it should have listened to Mr M to avoid him having to continually explain the same thing. It provided a poor service to Mr M and it didn't recognise how its errors and lack of understanding impacted on him. I appreciate why Mr M has no faith in HSDL and why this has led him to make some of the comments he has. But I do not find HSDL deliberately made mistakes or set out to make things difficult for Mr M.

I explained in my provisional decision why I didn't think HSDL needed to compensate Mr M for not being able to sell his A shares. I've carefully reconsidered this, taking into account his comments in response to my provisional decision.

I'm satisfied there's evidence to show that Mr M wanted to sell his shares. On 9 September 2021 he told HSDL, "*I need access to those shares because I want to sell them at the highest price*". And on 12 November 2021 he said, "*It was my intention to sell when the shares were distributed in May and buy back towards Q4 to coincide with the completion of the facility by A*". A few days later he said, "*I can't fully utilise my funds for the bull run towards the end of Q4*". And then, at the beginning of December, he said that he was in urgent need of access to the shares because his portfolio was "*in the red*".

But, having concluded Mr M wanted to sell his shares, it doesn't automatically follow that the inability to sell his shares led to a financial loss. Mr M says that, if HSDL hadn't delayed the transfer, he could have sold his shares for 1.30p. I disagree. That price was only reached on two days in May 2021 before HSDL says it received the shares and before the third-party broker had requested a transfer.

As set out in my provisional decision, I think it's reasonable that the transfer should have been completed by the end of August 2021. So I've looked at the share price from 1 September 2021 onwards. But I can't say with any certainty when Mr M would have sold his shares and what price he would have achieved. He's told us he was hoping to maximise his profit and had a price of around 1.30p in his mind. As the price during this period only reached a high of 0.927p, I think it's more likely than not that he would have decided not to sell at this price. So I can't conclude he's made a financial loss for which he should be compensated.

I had concluded that Mr M didn't do enough to mitigate any loss – because, I said, he could have sold A shares in the few days after the shares were transferred to him and obtained a higher price. But, as he's highlighted, he had a large holding of shares and trading volumes reported around that time were mainly zero. So I now agree that he would have found it difficult, and perhaps impossible, to sell his holding of A shares earlier than he did. But that doesn't make a difference to my overall conclusion.

Finally, Mr M said he thought our service took FCA regulations into account. And that is correct. In arriving at my decision, I've taken into account relevant legislation and regulation, including FCA rules and guidance. But my role is to consider the individual circumstances of this complaint; and this service's role is not to fine or punish a business for anything it's done wrong. When I said in my provisional decision that Mr M is free to take his concerns to the

FCA, I mean that he is able to contact the FCA if he has wider concerns about the way HSDL operates.

My final decision

My final decision is that Halifax Share Dealing Limited should pay Mr M £750.

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

Elizabeth Dawes
Ombudsman