

## The complaint

Mr R has complained about the delays he experienced in trying to arrange for his ISA account to be transferred away from ITI Capital Limited ('ITI') after his account was migrated over from a previous firm and Mr R was unable to trade as he would have liked.

## What happened

In July 2020 Mr R's ISA account, which he held with a previous firm that had gone into administration, was transferred over to ITI. After some initial problems accessing his account Mr R didn't want to hold his ISA with ITI.

Mr R told us he requested his ISA be transferred to another product provider – who I shall refer to as 'Company A' in this decision – on 13 August 2020 and which was received by ITI on 1 September 2020. During the transfer process Mr R was in touch with ITI but didn't receive satisfactory responses and wasn't able to trade on his account. He complained to ITI.

In ITI's response to Mr R's complaint on 22 January 2021 it said;

- The timeframes within which communications were given were subject to unreasonable delay.
- The delay in processing his transfer request was unacceptable and been subject to delay.
- Part of his portfolio had been transferred but there was a problem and it asked for Mr R to check the documentation he had received from the administrator of the previous firm for the transfer to recommence.
- It offered £150 ex gratia payment for the inconvenience and/or distress caused.

Mr R wasn't happy with the outcome so brought his complaint to the Financial Ombudsman. In the meantime, ITI told us that it would increase its offer to Mr R to £350.

Our investigator who considered the complaint thought it should be upheld. She said;

- Mr R should be compensated for the inconvenience and the delay in transferring his ISA.
- She thought overall, the increased offer of £350 was fair and reasonable for the poor customer service and communication.
- She was satisfied that Mr R had shown his intentions to trade if he had had access to his account and ITI should put things right.
- She outlined how ITI should compensate Mr R for the loss of opportunity to trade in three trades in particular.

In response to the investigator ITI made the following points;

- It referred to emails from August 2020 which confirmed trades could be conducted by phone and that its dealing desk made outbound calls should a call be missed.

- It was not the case the Mr R suffered a lost investment opportunity.
- It later sought clarity on the trades being referred to by the investigator but didn't provide any further response.

And Mr R said;

- He'd demonstrated that he wished to trade and;
- questioned whether it was for ITI to prove why he would not trade rather than for him to prove why he would not.

As the complaint couldn't be resolved, it was passed to me for a decision. I issued my provisional decision as I was thinking of reaching a different conclusion to the investigator and I wanted to give everyone the chance to reply before issuing any final decision. Here is what I said;

"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, my provisional decision is that I think Mr R should receive a payment for the inconvenience and distress that he suffered but I don't think there is sufficient evidence for me to make an award for trading losses. I'll explain why.

#### Mr R's inability to trade

Mr R told us he wanted to carry out trades on his ISA account during the time of the transfer. He asked ITI if this was possible but didn't receive a satisfactory answer so didn't trade. Mr R has said he suffered a financial loss because of this.

Mr R uses other platform providers as well as ITI and he told us he had carried out similar transactions with those providers which he said he would have carried out on his ITI account if he had been able to. And he has given us evidence in the form of contract notes of the trades he did carry out with two other platforms he used during the time of his ISA transfer.

He has told us that depending on his current thinking/news/price fluctuations and cash available on the respective accounts, he tended to carry out similar trades over the various platforms. And Mr R has given us evidence of trades subsequent to the ISA transfer which were carried out over the other platforms which suggest this pattern of behaviour has been continued.

In the investigator's opinion she was satisfied that there was sufficient evidence of Mr R's intention to trade on his ITI account that were similar to those carried out on the other platforms. And Mr R provided us with a spreadsheet of what he says he would have done with his ITI shareholdings if he had been able to sell them and reinvest the proceeds, evidencing the financial loss he has suffered of around £68,000.

In cases such as these I have to carefully consider whether a financial loss has been suffered. To conclude that it has, I need to be persuaded that Mr R would have made specific trades but for ITI's error. So, I've reviewed the correspondence Mr R had with ITI to see whether that applies in Mr R's case.

I've reviewed the relevant correspondence in date order;

- I note that for his AIM shareholdings Mr R was told on 10 August 2020 that these would not appear on ITI's platform and could only be traded by phone. This was reiterated on 26 August.
- In one of the later conversations ITI said it was able to see that Mr R had logged into his account on 10 August and could have traded online but chose not to.
- There is an email conversation that originated from Mr R on 19 August 2020. He questioned his ability to access both of his accounts (this complaint is only dealing with his ISA account) with the same login information he has been given. He was responded to on the same date and which included the comment 'if you want to trade please call [the phonenumber].'
- On 24 August 2020 a message was sent to all customers saying '... in the meantime if you would like to trade shares you can do so via telephone on [the phone number] and selecting the option for the Dealing Team'.

Mr R chased in October/November about the transfer and questioned his ability to trade during this time and I see that –

- on 22 October 2020 Mr R asked, 'whilst the transfer is still in progress am I still able to trade with ITI?' Mr R chased for a response and asked the same question on 4 November 2020. He chased again on 12 November and said he had been unable to trade on his portfolio for a long time.
- He received a response on 1 December saying 'as soon as you onboarded with ITI as a client you have always had the opportunity to trade directly through the dealing desk over the telephone on the following number [the telephone number].'
- Mr R responded that at busy periods such as first thing in the morning it was very difficult to speak with a trader as there was so few of them. To which ITI responded '...if you were not aware that we offered a trading service over the telephone why were you calling us to talk to a trader?' And Mr R said that he was 'aware that there is telephone service but my question regarding dealing is not the same, it was as my ISA is in the process of being transferred am I still able to trade?'
- In an email conversation Mr R had with ITI in May 2021 he said he didn't receive a response to his question about being able to trade during the transfer of his ISA and the people he had contacted at ITI didn't know the answer either. ITI referred to the emails he had received on 19 August 2020 and that its trading section on its website never referred to any time when a customer could not trade or insist that during certain circumstances trading status is affected – therefore Mr R wasn't ever not able to trade and had no reason to think so.

So, I think ITI was answering a different question to the one that Mr R was asking. And from ITI's perspective it had no reason to think that Mr R couldn't trade if he wanted to and didn't understand why he had such an opinion. It had told him as early as 10 August 2020 that if he wanted to trade, he could do it by phone.

I note that in correspondence with us Mr R said 'I was informed I would have to call the Dealing Desk to trade, when I enquired how many Dealers they had available on the phone, I was told there only a few. This is an issue when dealing at busy time e.g. 8am as the Dealers are unavailable or there is a limited time to make a trade.'

While there were the delays that Mr R experienced, I can't see any reason why he would have thought there might have been a problem with him carrying out a trade. However, I do recognise that transferring an ISA account from one platform to another isn't an everyday procedure for such an active trader as Mr R and he wanted comfort from ITI that he could trade as usual. Ideally ITI would have responded directly to his question more quickly and I would agree that Mr R experienced poor customer service because of this.

However, this doesn't necessarily lead me to conclusion that Mr R has suffered a financial loss. We know from what Mr R has said that he was able to speak with the dealing team so there was the opportunity for him to trade if he had wanted to. But there is no evidence of him attempting to place an order.

I appreciate Mr R has told us that his trades were time sensitive and dependent upon news and price fluctuations etc plus cash availability on his respective platform accounts. So, I can sympathise with Mr R that he couldn't contact ITI to trade as and when he liked in order to pinpoint a price or take advantage of the quick changes in a share price. It must have been very frustrating for him and ITI has acknowledged that it was busy during this time. But while I appreciate Mr R was not able to trade as and when he would have liked, I think this is more of a reflection of the vagaries and ups and downs of trading in the stock markets, rather than an outright failing by ITI.

Mr R has told us he wanted to trade and couldn't but it's clear from the above that he had been given the dealing desk's phone number early on and has told us he had been able to make contact. While it would have been more ideal if ITI had responded to his query sooner, I haven't seen anything to make me think that he was told by ITI that he couldn't trade. And if Mr R was that determined and he wasn't getting the answer he wanted, I think there was the availability through the dealing desk for him to place a trade, if he had wanted to.

#### The service provided by ITI

HMRC guidelines for the transfer of a stocks and shares ISA are that they should be completed within 30 days. And clearly these guidelines were exceeded in this case.

And it is very clear from Mr R's submissions, and the documents he has provided – he has referred to many emails and phone calls – that Mr R's experience with ITI has been a poor one. Mr R 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 January 2021. And during the transfer process Mr R didn't think he was in a position to trade.

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 the matter right

That being said, it's clear Mr R has had a very difficult time during the process and I'm sure feels stressed and inconvenienced by the whole affair. The investigator

acknowledged this, by agreeing the increase in the offer by ITI to £350 was fair and reasonable in this case.

As I've said above, I've carefully considered Mr R'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 R not being able to take the action he wanted to with his accounts. ITI initially offered £150 and increased it to £350. But bearing in mind the trouble Mr R has been caused and ITI not being quicker in answering his question about his ability to trade during a transfer, I think an award of £500 would be a fairer reflection of the distress and inconvenience caused to Mr R."

Mr R didn't agree with my provisional decision. In response he said;

- He didn't think my conclusion was justified as during the period he was emailing and calling the Dealing Team, but it couldn't tell him if he could trade either, they referred all of his queries to other teams.
- His original reason for transferring his shareholdings was the stocks were not available to trade on ITI's online platform and lack of staff in the Dealing Team. The onboarding process and trying to trade had been a nightmare.
- He believed his question about whether he could trade during the ISA transfer was a straightforward question and simple to answer. No-one at ITI could answer that question yet he was expected to know it. Not once did an ITI representative understand what he was asking for.
- In my provisional decision I had said that Mr R had not demonstrated that he wanted to trade but he could think of no other reason to contact ITI regularly over an extended period asking them a question directly about trading if I did not wish to do so.
- He didn't attempt to trade because the question about whether he could trade in the first place during a transfer was a precursor to making a trade. It was never suggested to him that he should try and make a trade as the people he was in contact with didn't know either.
- The service he has received from ITI is and was terrible and particularly compared to other brokers where he could use an online platform and if he did need to call customer services/dealing line they are responsive and understand their own processes.
- He was justified in asking ITI a question on whether he could trade or not during a transfer which he had searched for on its site and made numerous calls and emails.

ITI didn't reply.

### **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.

While I recognise Mr R's strength of feeling about his complaint and his inability to trade in particular, the comments he has made in response to my provisional decision haven't caused me to change my mind as to the outcome. However, I want to assure Mr R that I have very carefully reconsidered the whole complaint file and the points he has made.

Mr R has said he wasn't sure if he could trade on his ISA account during a transfer process. But I've nothing to suggest that his inability to trade came about as a result of any comment or information given by ITI.

It was Mr R's own question about whether he could trade. And while I agree that no doubt he was extremely frustrated by the lack of any positive responses when he did make contact with ITI, I can't see that it was ITI that caused Mr R to come to the conclusion that there was a possibility he might not be able to trade.

Mr R has said that attempting to trade when it had not been clarified whether he could or not didn't make sense. It was ITI themselves who said they weren't sure whether he could trade, and he was told that his query had been passed to the transfer team. It was never suggested to him that he should try and make a trade as the people he was in contact with didn't know either. He concluded that 'no doubt they would have advised me against it as they themselves did not know whether it was possible'. And he said by him asking a follow up question like 'can I trade in company XYZ would have resulted in the same response as they didn't know'.

But I think these comments in particular are sufficient for me to conclude that Mr R didn't attempt to place any trades. And I'm satisfied that was his own decision. It was Mr R who reached the conclusion that the dealing team would have advised him against placing a deal as it didn't know the answer to his question. But I've seen nothing to suggest that he was told this by ITI in response to him trying to place a trade.

ITI had already told him could trade on his account by phone. I reiterate my comments made in my provisional decision about the early contact Mr R had in August 2020 with ITI and that it was made clear he could trade over the phone for any of his shareholdings –

- He was told on 10 August 2020 that his AIM shares would not appear on ITI's platform and could only be traded by phone. This was reiterated on 26 August.
- Mr R had logged into his account on 10 August and could have traded online but chose not to.
- There is an email conversation that originated from Mr R on 19 August 2020 about his ability to access his accounts. He was responded to on the same date and which included the comment 'if you want to trade please call [the phonenumber].'
- On 24 August 2020 a message was sent to all customers saying '... in the meantime if you would like to trade shares you can do so via telephone on [the phone number] and selecting the option for the Dealing Team'.

And further to the above comments I made in my provisional decision I also note Mr R was emailed on 26 August which said 'as I already explained on Aug 10<sup>th</sup> your small segment AIM stocks are not supported on the phoenix platform, therefore you will not see them on the platform even if it was working. You can only trade these via telephone.'

So overall, with reference to Mr R's ability to trade, on balance I am satisfied that Mr R was made aware he could do so by phone and early on in his relationship with ITI. And I am also satisfied that it was Mr R's own conclusion that it wasn't worth trying to place a trade as he would have been advised against it. There is nothing to show that this was the case

– or that he was told by ITI that this was the case – and that it put up any barriers to him doing so – with the exception that ITI has told us it was very busy during this time and we know Mr R couldn't always access the dealing team as and when he wanted.

I'm satisfied Mr R could have continued to trade up to the point his transfer completed, albeit not online but over the phone if necessary, which I think was a reasonable alternative. Based on the evidence I've seen, I can't reasonably say that but for ITI's error or actions, that Mr R missed an opportunity to trade because he wasn't able to trade during the transfer process. I haven't been provided with any evidence to show that Mr R tried and failed to make an actual trade so I don't think ITI should have to compensate him for any lost investment or trading opportunity.

### **Putting things right**

However, I'm still of the opinion that the service and response times Mr R received weren't satisfactory and as a result Mr R has been caused trouble and upset. So ITI should pay him £500 for the distress and inconvenience he has been caused.

I appreciate that no doubt Mr R will be disappointed that I haven't upheld his complaint any further than I have done, but again, I hope I have been able to explain the reasons for my decision.

### **My final decision**

For the reasons given, I partially uphold Mr R's complaint and ITI Capital Limited should put the matter right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 29 December 2022.

Catherine Langley  
**Ombudsman**