

## **The complaint**

Mr F has complained about what he considers to have been delays created by Halifax Share Dealing Limited in the sale proceeds of shares he held being counted as “tradable funds” for reinvestment. As such, Mr F considers that he has lost out on a number of shares in which he could have reinvested had the delay not been incurred.

## **What happened**

On 15 January 2021 (a Saturday), Mr F placed an order to sell 14,600 units in his holding of “Rathbone Unit Trust Management Global Opportunities Instl Acc” within his Self Invested Personal Pension (SIPP).

Mr F’s order was then executed at the next valuation point on the following Monday - 18 January 2021. Mr F then logged in to his account on 18 and 19 January 2021 to place further trades in the Liontrust Global Technology Fund with the proceeds, but the funds hadn’t yet been allocated to his account.

The price of those shares then increased up to the date that Mr F was then able to place the new trade on 21 January 2021.

Mr F spoke about this with Halifax on 22 January 2021, which it then treated as a complaint, and to which it responded by letter on 26 January 2021, saying that it had up until the settlement date of 22 January 2021 to credit the sale proceeds to Mr F’s account. It further said that, if it received the funds sooner from the fund manager, it would endeavour to credit them to the SIPP account as soon as practically possible.

It confirmed that the sum of £50,246.54 was credited to Mr F’s account on 20 January 2021, which it noted Mr F then used to reinvest in another holding.

Mr F emailed and spoke to Halifax several times following this in February and March 2021, saying that he didn’t think that his complaint had been properly dealt with, and on 15 March 2021, Halifax said that it would be reopening Mr F’s complaint for further investigation.

Mr F wrote to Halifax on 31 March 2021, reiterating his complaint about the delay in receiving the trade proceeds into his SIPP account. He said that Halifax’s actions had been contrary to the SIPP terms and conditions, which he said set out the following:

*“Receipt of proceeds on the sale of investments*

*9.4 If you instruct us to sell investments the net sale proceeds received by us will be credited to the account for your SIPP on the dealing date stated on the trade confirmation. For your convenience, sales proceeds from sales of investments held in the account for your SIPP will count as tradable funds from the date of your order for the purposes of buying other investments only.”*

Mr F also complained about the way Halifax had dealt with his concerns. Mr F referred the matter to this service on the same date.

Halifax contacted Mr F further on 1 July 2021, saying that funds were traded differently to equities and it was reliant upon third parties when trading in them. As such, timescales varied due to the different times and days on which the fund managers create the price for any given day, and then the distribution of information to all of the market counterparties involved.

It further said that, once it received the price, the “bargain reference number” was created, which in turn then allocated the available funds to the SIPP account prior to the execution of the trade.

Halifax said that it had content about the trading of funds on its “Order Execution Policy” and “Funds Centre”, and that it thought that, as an experienced funds trader, Mr F would have been aware of these processes.

Mr F disagreed, asking that Halifax direct him to where it was set out in the SIPP documentation that funds were traded differently to equities. He said it wasn’t set out either in the Order Execution Policy or in the Funds Centre.

Mr F reiterated that the delay in crediting his account with the sale proceeds was contrary to Clause 9.4 of the SIPP terms and conditions.

On 27 July 2021, Halifax wrote to Mr F saying that it had located further information which it hoped would clarify the matter of how funds were traded. This was set out as follows:

Funds (open ended investment companies & unit trusts)

*"Fund trades can only be executed with the fund's management company"...*

*"Unlike shares, funds only trade once a day."*

*"The price achieved will be confirmed to you within the trade confirmation"*

This, Halifax said, was confirmation that funds and shares are dealt with differently. It added that the trade confirmation would only appear once it had received the price communicated to it to create the “bargain” for the trade. Until that point, it said, Mr F’s fund order would appear in “pending deals”, but Mr F would have received the price for the day of the next “assured valuation point” (AVP) from when he placed the order.

It then set out the timescales and process for trading in funds, as follows:

1. Customer places the fund order online.
2. The next AVP passes.
3. The order is accepted and the fund is traded (for purchases, the money will be taken at this point)
4. Usually two days after the trade is placed Halifax receives the price back from Cofunds - for sales, the net balance of the trade becomes available to invest.

And then, three to four days after the trade is placed, settlement occurs, and at this point the net balance of the sale becomes available to withdraw, although this could vary.

Halifax said that it had passed feedback to the relevant department for this to be made clearer online for its customers. However, it said that, as an “execution only” broker, it would expect its customers would be aware of how open ended investment companies (OEICs) would be traded.

Mr F remained of the view that this was contrary to clause 9.4 of the SIPP terms and conditions.

One of our investigators considered the matter and issued his initial assessment on 7 June 2022, saying in summary that he thought there had been a delay which was contrary to clause 9.4 in the terms and conditions. He said that the order should have been sent to the fund manager on 18 January 2021 to achieve the AVP on the same day. The units should then have been sold and the funds made available for investment on the following day – 19 January 2021.

Halifax disagreed, however, saying in summary the following:

- Fund trading was specialist by nature, with variances which differed from standard share trading. The standard terms referred to relate to the standard trading of shares, with separate literature available for guidance on trading funds.
- This difference was recognised by Mr F himself in his claim, who had said that he had hoped the funds would be made available for reinvestment two days after the date of his order. This expectation clearly differed from the terms within clause 9.4.
- The timescale of a fund trade was largely determined by the time of receipt of confirmation of the obtained price from the underlying fund manager – this could vary and so there was nothing binding in its agreement relating to this.
- For the sale proceeds for funds, the amount wouldn't be known until a "bargain" had been created by the broker after the fund trade had been "executed" with the underlying fund manager.
- The "bargain" was created once the broker received the execution details from the fund manager and these were "keyed" to the customer's account.
- At that point, the customer was provided with a trade confirmation and was able to view the trade details online – which included the cash now available for reinvestment.
- It set out the following guidance which was available to customers online:

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*When will I be able to see my fund trade?*

*Funds are traded differently to shares. Funds are normally priced once each day at a time called the valuation point. The price per unit for the fund will be set by the valuation of the assets. For most funds, if you place your order before 11.15 am, the trade will be priced at 12 noon. Any order placed after 11.15 am would not be priced until the following working day at 12 noon. The completed trade can take a couple of days to show within your account.*

*When you place a buy order for a fund you can only set an amount you wish to invest. The Fund Manager will receive your order at the next valuation point and will invest your money at the new fund price (the future price). Your order will then be allocated to your account within a couple of days.*

- In this instance, Halifax received confirmation of the obtained price from the underlying fund manager and created the bargain by keying it to Mr F's account at 12.20pm on 20 January 2021. This was the earliest opportunity to upload the details of the order to Mr F's account and he then reinvested his funds later that day.

In conclusion, Halifax said that it didn't think there had been any breach of the customer agreement, and that, as an experienced trader, Mr F would be aware of the variances which apply to this kind of trade. The sale proceeds weren't available to trade until 20 January 2021 and so it was unable to honour a price which might have been available earlier than this.

The investigator then issued a further assessment on 8 July 2022, in which he said that Halifax's order execution policy set out the following:

***"Funds (Open-ended Investment Companies and Unit trusts***

*Fund trades can only be executed with the fund's management company so market counterparties don't compete for these orders. Unlike shares, funds trade once a day. When you buy or sell in a fund, we send the order to the funds manager for execution at the next valuation point. Most funds are priced once a day at the 'Assured Valuation Point (AVP), when its assets are valued and the price per unit is set. As an example, for funds with a AVP of 12 noon, orders would ordinarily need to be placed by 11:15 to meet the day's cut off time. Any orders placed after this time would not be placed with the fund manager until the next working day. Each fund can have different AVP's and cut-off time. The price achieved will be confirmed to you within the trade confirmation."*

He further noted that Halifax's online trading support said the following:

***"When will I be able to see my fund trade?***

*Funds are normally priced once each day at a time called the valuation point. The price per unit for the fund will be set by the valuation of the assets. For most funds, if you place your order before 11:15 am, the trade would be priced at 12 noon. Any order placed after 11:15 am would not be priced until the following day. The completed trade can take a couple of days to show within your account.*

*When you place a buy order for a fund you can only set an amount you wish to invest. The fund manager will receive your order at the next valuation point and invest your money at the new fund price (the future price). Your order will then be allocated to your account within a couple of days".*

The investigator said that, as the order wasn't executed by the fund manager until 20 January 2021, he couldn't conclude that there had been a delay caused by Halifax or that it had breached its terms – there were no specific time limits on fund trades, he said.

Mr F disagreed, however, reiterating the timeline for what had happened, and noting the trade confirmation after it had happened at the end of Monday 18 January 2021 said that "this trade was dealt with by the Fund Manager" and that the "proceeds have been credited to your appropriate account" – i.e. that this used the past tense.

Clause 7.2 said that tradeable funds would include "amounts that will be received in respect of any sell order that has been executed". According to the past tense used above in the trade confirmation, this meant that Mr F should then have had the tradeable funds, he said.

Clause 9.4 of the terms and conditions didn't differentiate between the sale of shares and other types of investment, and Halifax has provided no documentation evidencing that it only applied to shares, Mr F further said.

Mr F therefore considered that, as the trade was dealt with on 18 January 2021, the proceeds should have been available for reinvestment early on 19 January 2021.

Specifically addressing Halifax's response to the initial assessment, Mr F said that statements contained online such as the Trading Support section couldn't be considered to be part of the contractual agreement between him and Halifax, especially as their existence in January 2021 hadn't been established.

It also contradicted clause 9.4 and couldn't be considered to override it. Clause 9.4 must therefore apply to all sell trades, Mr F said.

He further said that Halifax hadn't confirmed when the trade was executed, only that it had been keyed into his account on 20 January 2020. But the trade confirmation said that it had been executed on 18 January 2021.

Mr F added that, on 18 July 2022, he'd begun another partial sale of units in the same fund, and according to an attached screenshot, it said that the funds would be available for reinvestment immediately after execution.

The investigator wasn't persuaded to change his view, saying that Halifax Share dealing Limited was mainly focussed on share dealing, as the name suggested, and this was also reflected in its terms and conditions. The terms didn't have specific provisions for dealing with funds.

As to the "execution" set out in the trade confirmation provided by Mr F, this was the point at which the underlying fund manager executed the order, not Halifax.

And regarding the points relating to the policy wording of the documents, he didn't think that Halifax had breached any agreement with Mr F as the terms and conditions were focussed upon share dealing. Although there were no specific terms relating to dealing in funds, the investigator said that he'd considered whether Halifax had actioned the request in a timely manner, and he thought it had.

Mr F disagreed, reiterating his view that Halifax hadn't provided evidence that clause 9.4 didn't apply to the sale of funds as well as shares. Halifax's own order execution policy also indicated that the term "execution" applied to the action of the fund manager, not to subsequent action taken by Halifax. Specifically, Halifax hadn't said that the term related to the time and date of it keying the trade confirmation into a customer's account.

All of Halifax's documentation – including the confirmation stage of the placement of the order, the trade confirmation after the order's execution, and clauses 7.2 and 9.4 of the SIPP terms and conditions - indicated that the sale proceeds would be available for reinvestment at the time of execution (or earlier).

Mr F also didn't think the name – Halifax Share Dealing Limited – was relevant in defining the scope of its business. He said that it dealt with many different types of investments, and the SIPP terms and conditions referred throughout to "investments".

As to the term "execution", Mr F agreed that this didn't refer to the date and time of Halifax keying the trade confirmation into a customer's account, but was described as follows in the order execution policy:

*"Fund trades can only be executed with the fund's management company so market counterparties do not compete for those orders. Unlike shares, funds only trade once a day. When you buy or sell units in a fund, we send the order to the fund manager for execution at the next valuation point."*

It also couldn't reasonably be the case that Halifax could retain the funds after the execution of the trade for an undefined period of time, Mr F said.

Mr F added that the terms and conditions were part of the agreement between him and Halifax, and it hadn't offered any evidence that the terms only related to share dealing.

He also didn't agree that Halifax had acted in a timely manner, saying that there were four points relating to when the proceeds would be available for reinvestment:

1. During the confirmation stage of the placement of the order, which said that funds would be available for reinvestment following the trade's execution – by the fund manager, not Halifax.
2. After the order was executed, on the trade confirmation – a record sent to Mr F from Halifax and which said that "proceeds have been credited to your appropriate account".
3. Documented in clauses 7.2 and 9.4 of the SIPP terms and conditions.

Mr F reiterated his view that the date and time of execution was at the end of Monday 18 January 2021 (he thought at this point at midnight) and as the sale proceeds weren't keyed into his account until 12.20pm on Wednesday 20 January 2021, at least 36 hours had elapsed by that point.

In response, the investigator said that, as agreement couldn't be reached on the matter, it would be referred to an ombudsman for review. He asked both parties for any final comments before that referral.

Mr F replied, saying that he hadn't seen any documentation which would demonstrate that clause 9.4 didn't apply to the sale of funds rather than just shares, or any documentation which would apply to the sale of the funds if this was different, nor any documentation relating to the delay of over 36 hours between the execution of the trade and the updating of his SIPP account.

Mr F said that these unanswered aspects formed the basis of his rejection of the investigator's assessment.

Mr F then provided more information about the timescale for a recent trade which he thought would be useful, as follows:

- He placed the order to buy at 20:47 on Tuesday 02 August 2022.
- The Valuation Point was 12:00 on Wednesday 03 August 2022.
- He received an email confirmation of the trade execution, timestamped 15:47 on Wednesday 03 August 2022.
- He viewed the purchased units in his account online at 17:17 on Wednesday 03 August 2022.
- He viewed the Trade Confirmation web page on-line at 17:24 on Wednesday 03 August 2022.
- He downloaded the Trade Confirmation PDF at 14:28 on Thursday 04 August 2022.

Mr F said that, on both confirmations, the trade was shown as dealt (executed) by the Fund Manager on Wednesday 03 August 00:00. The trade was executed at the first available valuation point and the details were entered onto his account within a few hours at most, Mr F added. He said that he had expected a similar timescale for the sale of his funds in January 2021.

The investigator referred this to Halifax for its comments, to which it replied that the timescales for all funds trades were determined by the underlying fund manager, which was outside of its control. It referred the investigator back to the online wording which said that the completed trade could take a couple of days to show in a customer's account.

He conveyed this to Mr F, but Mr F noted that Halifax hadn't specifically commented on the difference in timing for the two trades. Rather, it had referred to a generic statement on its website, which he couldn't accept as overriding the commitments made in: clause 9.4 of the terms and conditions; during the placement of a funds trade on the online confirmation page; and in the trade confirmation itself.

Mr F also noted Halifax's comment that the timing of all funds trades is outside of its control and that it couldn't be held liable for any delay in the processing on such trades. If that was the case, then the statements made elsewhere by Halifax were misleading, Mr F said, and it didn't seem to be the case that it had taken any steps to rectify such contradictions.

Mr F reiterated that the basis of his complaint was that the fund sale was executed on 18 January 2021, as shown on the trade confirmation, but he now realised that the timestamp of midnight was just a "placeholder" – i.e. it wasn't filled in by the computer system. The time of execution would have been the valuation point, which was 12pm. And if that was the case, then there was a delay of over 48 hours between the execution of the funds sale and the availability of the proceeds in his account, Mr F said, and Halifax hadn't offered an explanation for that delay.

The investigator then requested the confirmation from Halifax which it had received from the underlying fund manager on 20 January 2021.

Halifax responded to say that it used an outsourced provider (Aegon) for fund trading and settlement and it therefore didn't receive any information directly from the fund manager. Aegon aggregated orders from all of its institutional clients and therefore there were no separate trade confirmations pertaining to just Halifax or any of its individual customers.

As agreement couldn't be reached on the matter, it was referred to me for review.

As part of that review, I asked the investigator to enquire further of Halifax as to the actual process for its employees to know that they can key in/allocate the funds to a consumer's account, what the catalyst for this was, e.g. confirmation from Aegon that the sale had been processed, and when it had in fact received this.

I also asked as to when the trade confirmation had been produced and provided to Mr F, along with clarification of its interpretation of section 7.2 of the SIPP terms, which suggested that although the trade may not have been settled by 19 January 2021, Mr F ought to have still been able to trade using the funds which would be available by virtue of the actual trade which had been executed the day before.

In response, Halifax said that, whilst reviewing the case, it had established that there was an IT issue around the time when Mr F's executed trade was due to be added to his account.

It had determined that the funds arising from the trade should have been available within this account to use on 19 January 2021.

It therefore offered to make a full apology to Mr F, to place him in the position he would otherwise have been, had he been able to place his purchase of the further shares on 19 January 2021, and also to make a further payment of £250 in respect of the distress and inconvenience caused to Mr F in respect of the matter.

But it added, for information, that fund trades didn't work in the same way as equities traded and so the funds from the sale in question would never have been available immediately after the order was executed. It said that it would need to wait until the trade confirmation was received from the underlying fund manager before the sale proceeds were available to invest.

The investigator put this offer to Mr F, saying that it seemed to be a reasonable way of resolving the matter.

In response, Mr F queried the terms of Halifax's offer, in particular whether the sum offered was intended to be the full settlement or was intended to be paid in addition to adding the extra shares in his fund into his account.

Mr F also said that, over the 22 months since he had raised the issue, he had spent 30 to 40 hours dealing with the complaint. As such, he said, the suggested offer in respect of distress and inconvenience didn't seem adequate.

As to Halifax's comment relating to the timing of funds being available after a fund trade, Mr F said that he had never asserted that fund trades worked in the same way as equities trades. The suggestion that funds would be available immediately after the sale of a fund holding derived of Halifax's own terms and conditions. If it was instead Halifax's position that it needed to wait until it received the trade confirmation before making the sale proceeds available to a client, then it should be obliged by either this service or another regulatory body to make this clear to clients in its documentation. Otherwise, it was misleading, Mr F said.

### **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.

And having done so, I'm sympathetic to several of the points made by Mr F - both before and after the offer was made by Halifax (which I address further below).

I'd firstly say that I think the available evidence – in particular the trade confirmation - supports the position that the trade was placed, or executed, with the underlying fund manager on Monday 18 January 2021 and that after that, it was then a matter of when the funds were assigned to Mr F's SIPP account.

Halifax didn't seem to dispute this. My understanding of its original (and ongoing) point is that, whilst the trade may be placed with the underlying fund manager, it can take time for it to then receive confirmation of this and then be able to "key in" or allocate the "tradable" sale proceeds to a customer's account.

Mr F has provided evidence of more recent trades when shares that he bought were allocated to his account on the date of the trade itself and that he received the trade confirmation on the same day. And this might reasonably support the wording within the terms relating to the funds being available "immediately".

Mr F has further disputed that there exists a provision within the terms and conditions for his SIPP for there to be a delay of several days in which the funds can be allocated to his account. The SIPP terms and conditions formed, as Mr F has said, the fundamental basis of the contract between him and Halifax.



I've considered those terms as follows:

### 7. Funding and withdrawing amounts from the account for your SIPP

*7.2 Tradable funds are the money held in the account for your SIPP, minus any amounts that will be required to settle any buy order that has been executed but not yet settled, plus amounts that will be received in respect of any sell order that has been executed but not yet settled.*

This indicates that, although the trade may not have been settled until 22 January 2021, Mr F ought to have still been able to trade using the funds which would be available by virtue of the actual trade which had been executed on 18 January 2021.

But as identified by Halifax, the problem here is that, until the confirmation of trade is received from the underlying fund manager, Halifax would be unaware of how much money had been realised from the "sell" trade and so how much tradable funds there should be in the account.

I think this section might arguably provide for a situation in which a company such as Halifax would have received confirmation of the amount which would be received in respect of the "sell" deal, but where the funds couldn't yet be allocated to the account.

But there is then the matter of section 9.

### 9. Settlement

*9.3 Where we carry out a deal for you, so long as you have complied with your obligations, the account for your SIPP balance will reflect the cash proceeds and the investments relating to that deal on the dealing date, although the cash proceeds of a sale order will only become available funds on the settlement date.*

#### *Receipt of proceeds on the sale of investments*

*9.4 If you instruct us to sell investments the net sale proceeds received by us will be credited to the account for your SIPP on the dealing date stated on the trade confirmation. For your convenience, sales proceeds from sales of investments held in the account for your SIPP will count as tradable funds from the date of your order for the purposes of buying other investments only. Sales proceeds will not become available funds until the settlement date.*

There was provision for the actual settlement date to differ from the date on which the trade was placed. The settlement date on the trade confirmation for the disputed transaction in January 2021 was 22 January 2021, but as Halifax said in its initial response to Mr F's complaint, although it had until that date to allocate the sale proceeds to Mr F's account, it would endeavour to do so sooner if confirmation from the underlying fund manager was received before that date.

And this is what happened here. Mr F's account was credited with the sale proceeds on 20 January 2021 – so two days before the settlement date set out on the trade confirmation.

I've noted Mr F's original concern that such periods might be open ended and that this couldn't be deemed to be a reasonable position. But I don't think that's the case – as indicated above, there is a defined settlement date, but if confirmation is received before that from the underlying fund manager, the funds can be allocated sooner.

But the issue here isn't about the settlement date, at which points the funds become

“available” and can actually be withdrawn – rather it’s the point at which there would be “tradable” funds within the SIPP which could be used for reinvestment. And I agree that the above terms seem to indicate that there will be tradable funds from the date of the “sell” order.

As commented by Halifax, I think Mr F was sufficiently well informed about the mechanics of such transactions that he wouldn’t have expected the tradable funds to be available in his account on the “deal date” – Monday 18 January 2021. This is borne out by his own comment that he expected there to be tradable funds by 19 January 2021. And Mr F has clarified in response to Halifax’s offer that he has never maintained that fund traded work in the same way as equities trades. He’s pointed out that it was Halifax’s own terms which suggested this.

And I think Mr F has a point. It may not have been possible for Halifax to provide Mr F with tradable funds on the deal date itself if it was reliant on information relating to the sale proceeds from the third party fund manager. This would mean that Halifax couldn’t adhere to clause 9.4, due to it being dependent upon the information provided by a third party – the fund manager – as to what sale proceeds could be allocated to Mr F’s account. And so in a SIPP where many different types of investment may be held, clause 9.4 could be described – for situations in which trade proceeds wouldn’t immediately be available - as misleading.

Mr F has suggested that either this service – or an alternative regulator body – require Halifax to alter its terms and conditions relating to the sale of funds, or at least make it clearer how the process might differ for different types of trades. As a service, we’re unable to require Halifax to change its processes – we deal with individual complaints. That would be a matter for the Financial Conduct Authority. But I’d in any case invite Halifax to consider the aspect of the clarity of its terms around different types of trades carefully.

### **Putting things right**

Halifax has now confirmed that Mr F’s trade proceeds ought to have been available to him on 19 January 2021. And I think its offer is reasonable – and to clarify, this should put him in the position he would otherwise have been, had his subsequent purchase of the further shareholding not been delayed.

This should mean that Mr F will have the correct number of shares in his account, reflecting those which he could have bought on 19 January 2021, rather than the number he was actually able to buy two days later. In other words, Halifax should reconstruct Mr F’s account, and this should also reflect any additional dividends which Mr F would have received by way of that higher shareholding.

I’ve also thought carefully about what Mr F has said relating to the amount offer for distress and inconvenience. We do expect that the pursuit of a complaint may take some time, and whilst complaint handling isn’t itself a regulated activity, we can consider a general level of customer service a business has provided. And in situations where a business has behaved unreasonably, we might consider significant awards in respect of the distress and inconvenience it may have caused to an individual.

But I don’t think that’s the situation here. I’ve noted what Mr F has said about the time taken to resolve his complaint, and I think it’s fair to say that Halifax could have reached the conclusion it now has in respect of the offer it’s made to Mr F much sooner – and without Mr F needing to refer the matter to this service.

But I need to consider both the individual impact on Mr F and the awards which this service might typically make in similar situations. And having done so, whilst I recognise that this has

been time consuming for Mr F, I think Halifax has been reasonably communicative and responsive in its dealings with Mr F.

As such, and again, taking into account other awards which this service might typically make in similar circumstances, I think the amount of £250 is appropriate here.

### **My final decision**

My final decision is that I uphold the complaint and direct Halifax Share Dealing Limited to put Mr F in the position he would otherwise have been but for its error, and to pay him the sum of £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 2 February 2023.

Philip Miller  
**Ombudsman**