

The complaint

Mr C has complained that since his account was transferred to ITI Capital Limited ('ITI') in July 2020 he hadn't been able to arrange for ITI to transfer his account to a new broker or the equivalent in cash. He has been very worried that he hadn't been able to access his savings for over a year, contact was difficult and ITI wouldn't respond to his queries.

What happened

The administrator of the previous failed company Mr C had an account with wrote to Mr C on 18 May 2020 with a statement of account and to confirm his account would soon be transferred to ITI. The account held seven shareholdings valued at just over £175,000, just under £500 cash plus accumulated dividends.

Mr C requested that his shareholdings be transferred in specie to his overseas broker, but this didn't happen.

Mr C complained to ITI on 30 August 2020. He said that his instruction to transfer £3,336 to his London bank was transferred twice on 7 and 27 August so he asked that no further cash transfers be made. He also asked that ITI respond to the messages that had been sent by his non-UK broker to transfer his stocks. He asked ITI to respond to his overseas broker immediately and transfer the stocks as requested by them.

On 23 October 2020 ITI responded to Mr C's complaint. It said;

- It accepted the client service offered to Mr C in connection with the concerns he had raised fell short of the standards it sought to deliver.
- Technical difficulties had caused the missing or incomplete account balances. It was upholding this element of his complaint and said the issue had now been resolved.
- His withdrawal request had been received on 1 October 2020 and he had confirmed the £193,209.85 had been credited to his account. Initially this was the incorrect amount and took longer than expected. This element of the complaint was also upheld and it apologised for the delays he had experienced.
- It offered £200 for the distress and/or inconvenience caused.

In response Mr C said the in-specie transfer didn't happen despite his and his brokers attempts to do so, so he instructed that his shareholdings be sold and which he repurchased with his new broker. He wants to be reimbursed those dealing charges.

Mr C received £193,209.85 on 12 October 2020 which left £190 on account which he requested be sent to him on 14 October, but nothing happened. This balance later increased because of dividends added, but further to a cash withdrawal on 19 October of £764.12 – a sum Mr C says didn't receive – the cash balance was showing as negative (£355 on 'dashboard' and £18,440 on the 'cash statement'). He wanted the matter sorted out.

In the meantime, ITI offered £350 for the delays in transferring Mr C's holdings and lack of response to his requests for updates. But there was no explanation of the outstanding balance.

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

- ITI should pay Mr C the £350 it had offered.
- Confirm whether Mr C needed to pay the outstanding balance showing on his account of £355 and if so, how that negative balance had come about.
- Refund the charges Mr C incurred in selling his shares with ITI and repurchasing the same shares with his new broker or provide evidence that the shares could have been transferred in specie.

Mr C responded. He said he would be prepared to accept the suggested settlement even though it didn't take account of the £190 that was left on his account before the deficit of £355 was arrived at. So, this reduced ITI's offer. And Mr C wanted to close the account which he was having difficulty with.

Our investigator sought clarity from ITI on the discrepancy of £190 and reiterated her opinion that ITI should pay Mr C the £350 it had offered, confirm whether Mr C needed to pay the outstanding balance of £355 and if so how that came about. It should refund the charges incurred in selling and repurchasing the share unless ITI could evidence that Mr C didn't need to sell the shares and they could have been transferred in specie. ITI should pay any money due to Mr C and arrange for his account to be closed.

ITI didn't reply.

As the complaint remained unresolved, it was passed to me for a decision. I issued a provisional decision explaining that I intended on upholding the complaint but with a change in how it should be put right. I invited the parties to provide me with anything further for my consideration prior to me issuing my final decision. Here is what I said;

"Despite requests, there is very little information or evidence from ITI, so I issue my decision in the absence of that. When the evidence I have for a complaint is incomplete or contradictory, I have to make my decision based on the balance of probabilities – which, in other words, means I base my decision on what I think is most likely to have happened given the available evidence and the wider circumstances.

Mr C's attempts to transfer his investments to his overseas broker

Mr C has given us a statement of his account that was sent to him on 18 May 2020 by the administrator of the previous failed company. At that time seven investments were held valued at £175,316.08 plus cash of £488.30 and accumulated dividends of £2,177.59.

I understand from Mr C that he sold one of the holdings – Vodafone – while it was with the previous business, but the settlement couldn't be secured. However, this was later done by the administrator and proceeds were sent direct to Mr C in September 2020.

This left six securities that Mr C wanted transferred via CREST to his overseas broker. I have seen copies of Mr C's overseas broker's request for 'shares transfer in'

forms dated 11 and 13 August 2020. And I've also seen a copy of Mr C's cash withdrawal and stock transfer request dated 15 September 2020.

ITI has given us call log data that shows Mr C called on 4 September 2020 about the transfer and was told that his overseas broker had just sent an email rather than a transfer form. He called ITI on 25 September and was 'Advised resetting account to closure details required' and again on 9 October where it's noted he chased for the withdrawal – I assume this refers to the withdrawal of the sale proceeds.

But I can't see from those logs that his efforts to transfer his investments was resolved. And I can't know for sure if one or all of the transfer requests/cash withdrawals were sent by Mr C's overseas broker to ITI or if and when they were received by ITI. But the call log of 4 September 2020 I've referred to above suggests that something had been received by ITI albeit it says the incorrect form for the transfer. If that had been the case, I would have expected ITI to have raised this with Mr C's broker. And I can't know if it was either of the forms I've seen dated 11 and 13 August but I think it's reasonable to assume that Mr C's broker had made some sort of contact and a request to transfer the shareholdings.

What is known though is that sometime after that, Mr C sold his shareholdings rather than try and further resolve the transfer out issues with ITI and his overseas broker. Mr C told us he had been in contact with ITI many times, as had his new broker but without success so carried out the sales rather than wait for the share transfer.

Mr C's decision to sell and repurchase his investments

The investigator asked ITI for evidence that Mr C's shareholdings could have been transferred to his new broker in specie rather than him having to sell and repurchase them. We didn't receive anything back for ITI, so I asked Mr C why he felt he had to go ahead with trades rather than wait for ITI to respond.

Mr C said he had been very worried. His original broker had collapsed, and it had taken a year for the administrator and trustee to come up with a solution in ITI, but this only caused him more problems and uncertainty. ITI failed to get its systems in order. He was concerned about the financial viability and stability of ITI.

Mr C says he hadn't been able to close his account immediately because of the unsettled Vodafone trade I have referred to above – he told us he received the proceeds for that sale on 20 September. Once that had completed, he told us his overseas broker attempted to complete the transfer of the holdings three times (I can only assume further to the attempts referred to above) but after its phone calls and emails to ITI went unanswered his broker couldn't do anything more. After further attempts by Mr C contacting ITI no resolution was looking likely, so Mr C sold all of his holdings.

Mr C told us that his selling costs for the six shares was £45 but that he wasn't in a position to repurchase them immediately because it proved extremely difficult for the proceeds to be transferred from ITI. If he had immediately repurchased the shares using his overseas broker, he would have had to have paid a total of over £1,000. He wants the costs of the sales and repurchases repaid to him.

I've thought very carefully about this point. Mr C wasn't told by ITI that it couldn't transfer the shareholdings in specie. It was Mr C's own decision to sell the shares. From the very limited information I have from ITI there's nothing to show that any information or advice given by ITI to Mr C caused him to sell the shares.

But in the very particular circumstances of this complaint, I do have sympathy for the position Mr C found himself in. And ITI hasn't given me any information or reason to make me conclude otherwise. Mr C had already seen one financial business he relied upon collapse. So, even though ITI was only responsible for his account from July 2020, once Mr C couldn't administer his account as he would have liked and found that ITI's records were incorrect, I don't think his concerns about ITI were unreasonable.

Mr C held assets worth nearly £200,000 and I can understand his worry and anxiety about not being able to access those assets once they were transferred to the new business. His own and his broker's attempts to arrange for the transfer of his holdings failed so I think once that was thwarted Mr C felt that he didn't have any other option than take the action he did.

Overall, I don't find Mr C's reasoning for selling his shares unreasonable. I think he has been clear in the amount of worry he was caused, first by the failure of his original broker – which I fully accept wasn't ITI's responsibility – and then the problems he and his overseas broker had with ITI in arranging the transfer in August/September, after which he lost confidence. So, I don't think it's unreasonable that Mr C should be reimbursed the sale costs.

With regards to the repurchase of the shares sold when Mr C's cash was transferred to his new broker, we asked Mr C for evidence of this. Mr C couldn't provide this. He said he didn't keep detailed (historical) records and didn't have any account statements or contract notes showing the repurchases. He said he did buy some of the same shares eventually but had since sold all but one of them.

I accept that Mr C did experience some delays in receiving the bulk of the sale proceeds on 12 October. But I haven't seen anything to show that Mr C's only intention was to reinvest the sale proceeds into those same shareholdings. He hasn't given me anything to suggest that the reinvestment into the same shares and prior to that date was compelling. And while he may have repurchased some of them eventually, I don't find his intention to make those reinvestments was time sensitive to the extent that he should be reimbursed any costs incurred in buying shares when he moved to his new broker.

So, in the particular circumstances of Mr C's complaint I am of the opinion he should be reimbursed the cost of the sales but for the reasons given, I don't think he should be awarded the reinvestment costs.

Cash transfers and cash balance on account

Mr C did experience worry and frustration because of the cash transfers being made incorrectly and also a debit showing on his account, the resulting credit for which wasn't received by him. I don't know the date the cash transfer request(s) were received by ITI but as far as I am able to understand, £3,336 was transferred in August, £11,962.06 in September and £193,209.85 was received on 12 October – a total of six weeks, and during which time the sales took place.

While this may have taken longer than Mr C would have liked I can't see that he had any definite intentions or plans for that money. Mr C has said he wanted to reinvest the funds but as I've said above, he hasn't given me any reason to think he did so immediately or that he financially suffered as a result of those delays.

I do accept it's clear Mr C had significant problems in establishing the correct account balance for his cash. I've outlined above what occurred – the missing £764.12 and debits showing on account as examples – and that Mr C didn't know what the correct position was or how the debit positions had arisen.

To try to resolve this, I asked ITI for a full statement of account, but nothing has been received. And the only audit information I've seen is a statement of Mr C's account as at 21 July 2022. It shows a debit of £355 under the heading of 'Amount owed to the broker' but there's no other description or record of how that debit arrived at. And I don't have any other statements in order to reconcile what happened to Mr C's cash.

If there is any cash left on Mr C's account this should be paid to his new broker and Mr C should be provided with a full statement of his account from the time it was transferred to ITI from the administrator of the previous failed business to the time the transfer out is/was completed. This should give Mr C a full audit trail for his account and Mr C can check whether anything is actually owed by or to ITI.

Overall, I provisionally uphold Mr C's complaint about the poor service he has received – the delays and lack of responses to his requests. I also provisionally agree that he should be repaid the costs incurred in selling his shareholdings but for the reasons given above, not the reinvestment costs. ITI needs to put the matter right."

To put the matter right I said ITI should pay Mr C £350 it had already offered, refund the selling costs and provide Mr C with a full statement of his account so that he could understand how any debits on his account had arisen.

In his response Mr C said that as ITI was closing its UK retail business his account will have already been closed. If any money was owed to him then he would like it paid to him direct rather to his broker and he could supply the banking details. He also wanted to know how the final decision could be enforced. The investigator responded to Mr C's queries.

ITI didn't reply to the provisional decision but in the meantime did provide a statement of Mr C's account which will be forwarded onto Mr C with my decision. That statement includes details of all cash transfers for Mr C to reconcile what happened on his account. I appreciate that now the statement has been received Mr C might have further concerns if there is anything he doesn't understand or agree with. I've commented on this – and any further action ITI may have to take – below.

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 neither party to the complaint has given me anything further to consider, I see no reason to depart from my provisional decision. So, I confirm those findings and I uphold Mr C's complaint and ITI needs to put the matter right.

Putting things right

- ITI should pay Mr C the £350 it has offered for the delays in transferring his holdings and the lack of response to his requests for updates.
- Refund the charges Mr C incurred in selling his shares with ITI.
- ITI has provided a statement of Mr C's account but if Mr C has any remaining

concerns about that, or that the statement raises any further concerns or similar, ITI should respond to any reasonable requests Mr C makes. If there is any remaining cash this should be paid to Mr C direct rather than to his broker.

If ITI Capital Limited doesn't pay Mr C the sums above within one month of receiving from us notification of Mr C's acceptance of my decision, ITI Capital Limited should also pay Mr C simple interest on the sum at the rate of 8% per year from the date of my decision until the date ITI Capital Limited pays my award.

My final decision

For the reasons given above, I uphold Mr C'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 C to accept or reject my decision before 9 February 2023.

Catherine Langley
Ombudsman