

The complaint

Mrs U complains failings by Interactive Investor Services Limited (“Interactive”) allowed relatives to open and operate an account in her name without her permission and to reap the rewards of and withdraw funds from that account.

Mrs U is assisted by a representative. For simplicity I refer here to Mrs U when referring to things said or done by her or by her representative on her behalf.

The account was with a provider whose responsibilities were taken on by Interactive some years later. For simplicity, I’ve referred to Interactive throughout when referring to Interactive or its predecessor.

What happened

An investment account was opened in Mrs U’s name and received payments that year and in a few other years. The email addresses and bank details linked to the account carried her relatives’ names not hers. Due to the time that has passed, Interactive can’t identify where the payments that funded the account came from. Mrs U says they didn’t come from her.

Interactive says some years later a phone call seeking access to the account was made by a relative of Mrs U. Interactive denied access and raised a suspected fraud report. It looked into this at the time and found the attempt had been by a relative who had set up the account in the first place, so it concluded there was “*no malice intended*”. A letter sent to Mrs U at the address Interactive had on file, enclosed a form for her to sign to enable the relative to have access and deal with account matters. Interactive says the form was signed and returned and the relative’s details added for the account. I gather from Mrs U the address on file for the account was one at which the relative lived and where Mrs U used to but no longer lived.

Some years later, Mrs U contacted Interactive to change contact and security details on the account. She told Interactive relatives had been operating the account and she had only recently found out about the account. She later closed it and moved the funds elsewhere.

Mrs U says Interactive failed to act properly by allowing the account to be set up and run by relatives. She hasn’t said she lost out as a result of the implications for her own tax-free savings allowances. She has said her complaint is mainly about Interactive not having adequate measures to stop identify fraud. But in the course of her complaint, she has also told us her losses include income and lump sum payments withdrawn from the account and paid out using the linked bank details that didn’t belong to her – and inheritance tax if she were to pass away within seven years of these transfers.

Those withdrawals included in particular one made in the period just before Mrs U changed the account security settings, which reduced the value of the account by many thousands of pounds. The value remaining which she transferred elsewhere was substantially greater and well in excess of a hundred thousand pounds.

Interactive’s view is it carried out checks – at the start and subsequently – so it did its part, but the information needed to pass the checks was always provided. It says personal details

of Mrs U were provided at the start to open the account and these were sufficient to pass the checks at the time without further documents being requested. It says Mrs U's relatives had access to these details or documents by virtue of being her relatives. But it also takes the view that Mrs U consented to the arrangement, so the account was in fact operated correctly – otherwise, Interactive says, it would follow that the account and money in it wasn't Mrs U's. It says Mrs U hasn't said the money wasn't hers. Rather she treated it as hers, took control of it and transferred it away.

Interactive says that when the account was opened, the bank details linked to the account – to receive income payments and so on – didn't have to carry the name of the account holder and so could be in the name of another family member. It did later require linked bank details to carry the name of the account holder but decided not to impose this on existing accounts. From what Interactive told Mrs U, the linked bank details would've had to be changed if the customer address on them hadn't matched the customer address for the Interactive account (but they did match).

Our investigator didn't think Mrs U's complaint should be upheld. He didn't think the fact Interactive didn't identify that Mrs U wasn't the person opening or operating the account, meant Interactive didn't carry out appropriate checks and follow proper procedures. Rather he thought Mrs U's relatives had the personal details needed to pass those checks. Also he thought Mrs U hadn't lost out financially and had in fact benefited from her relatives having opened and operated the account, because she had claimed the resulting funds. If tax were paid on the account funds, our investigator thought it would reduce them but still leave Mrs U having gained a substantial sum.

In reply, Mrs U has said it was wrong to say she had gained the account funds because her relatives were taking legal action against her, including for interest and she had lost due to paying solicitor fees. She has reiterated that the recent lump sum withdrawal from the account of several thousand pounds was a loss as was the potential inheritance tax on that. She also asked what would happen if ownership of the account money didn't continue to rest with her as part of her estate.

Mrs U also said the fact her relatives had the information required to open the account didn't mean Interactive couldn't have prevented this. She said credit reference checks or checks on the electoral roll would have shown she was not resident at the relatives' address and so the check would have been failed. She says there is clearly a lot more Interactive could have done and the onus was on it to prevent the transfers to the bank account of another, which she says were illegal transfers, and to reverse those transactions now.

In support of this Mrs U has added that she understood her relatives held accounts of the same kind of their own with Interactive and had opened another for a different close relative and, as far as she knows, all had the same address despite her other close relative not living there either. She says, as far as she knows, all these accounts are linked to the same bank details and have had funds paid using those details. She says this shows Interactive didn't do all it could to prevent fraud. She also says it was illegal due to 2017 legislation to make payments from her account to a bank account that wasn't in her name. She says Interactive was plainly at fault for not having sufficiently stringent checks.

Mrs U has also said Interactive was at fault for not acting on the phone call from the relative, which triggered a fraud alert, and instead allowed fraud and failed to 'know its customer' when it accepted the letter of authority, which she says she did not sign. She says no checks can have been carried out to confirm the address to which the authority form was sent. She has also said Interactive should have carried out checks and picked up on the situation when the account transferred to Interactive in 2017 or 2018.

Mrs U has also said Interactive issued overseas tax paperwork that her relatives completed fraudulently and so Interactive failed to comply with those overseas requirements too. She has said her legal name hadn't been checked as part of this, no ID had been checked and her address hadn't been verified. She has said this is further proof Interactive's process is nowhere near the required level.

As Mrs U didn't accept our investigator's outcome, the matter couldn't be resolved informally so it has been passed to me to 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 arrived at the same conclusion as our investigator and for broadly the same reasons. I'll explain briefly.

While I have considered all the points that have been raised, I would mention our service is an informal alternative to the courts and my role is to decide what is fair and reasonable in all the circumstances of the complaint rather than to decide or make a ruling on every point in dispute. So I have concentrated on those I consider most pertinent and that I need to decide in order to determine what is fair and reasonable in all the circumstances here. In particular I've focussed on whether the matters complained of have caused Mrs U a loss.

I would emphasise that Mrs U's complaint is against Interactive so what I've considered is whether Interactive (or the predecessor for which it takes responsibility) has done anything wrong that caused Mrs U loss. I'm not deciding the merits of the dispute between Mrs U and her relatives. I haven't taken a view on whether the funds Mrs U's relatives paid into the account were a gift to Mrs U from them or money held by her for them or something else entirely – because in my view it doesn't make a difference to her complaint about Interactive.

I'd add that the awards that I can make are designed to provide a remedy for certain sorts of detriment or loss suffered by the complainant where this is caused by fault of the firm complained about. But I am not able to prescribe how that firm ought to carry on its business in general or make an order as to how its practices might generally be updated or improved.

Interactive says the account must have been opened with Mrs U's consent, whether or not it was operated by her relatives. If that were so, I agree Mrs U's complaint must fail. But I've considered her complaint here on the basis that what she has said about not being aware of the account and how it was being operated, is in fact the case.

On that basis, and even if Interactive was at fault for allowing the account to be opened and operated in the way that it was, I'm not persuaded Mrs U has lost out financially as a result of the fault. The existence of the account has led to Mrs U withdrawing a substantial sum that, from what she says, she wouldn't otherwise have had. I share our investigator's view that any tax of the kind Mrs U has said may arise due to other withdrawals made from the account, will be less - substantially less - than the value she withdrew.

In saying this I don't overlook that the withdrawals Mrs U says may create a tax liability for her estate are withdrawals she says were made by relatives for their own benefit. So on that basis those transactions caused immediate loss to Mrs U as well as potential future loss to her estate. So in isolation from the other account transactions - and in particular from those that involved money being paid into the account – those transactions did cause Mrs U loss.

But I'm not persuaded it is right to look at transactions in isolation in that way. Rather I think

the transactions on the account need to be considered as a whole. I'm not persuaded it would be fair and reasonable instead to make an award that accepts the validity of account transactions insofar as they increased the value Mrs U withdrew but rejects them insofar as they reduced that value. On that basis, looking at the transactions as a whole, the opening and operating of the account as allowed by Interactive didn't cause Mrs U loss in my view.

In reaching this view I don't overlook what Mrs U has said about the possibility she might not be able to keep the account proceeds and might incur interest on them on top of legal costs she has already paid. These costs and potential liabilities arise due to a dispute Mrs U says her relatives have with her after she claimed and withdrew the account proceeds. Insofar as this arises from something Interactive has done, it arises from Interactive allowing Mrs U to claim and withdraw the account proceeds. It doesn't arise from Interactive allowing the account to be opened or operated by Mrs U's relatives or allowing the withdrawals Mrs U says shouldn't have been allowed from it. So these costs and potential liabilities weren't caused by the acts of Interactive, whether wrongful or not, of which Mrs U has complained. Mrs U isn't complaining about Interactive allowing her to claim and withdraw the account proceeds, which is something she initiated and not something Interactive obliged or could oblige her to do. Also Interactive is plainly not responsible for Mrs U's relatives' decision to pursue her for proceeds from the account after she had claimed and withdrew them.

To award redress for financial loss, I need to be satisfied the loss was caused by something Interactive did wrong. As I'm not persuaded that what Interactive has done is the cause of these costs and potential liabilities, it follows that I'm not persuaded that it would be fair and reasonable to order Interactive to compensate Mrs U for those.

Given my view that Interactive's actions, whether faulty or not, didn't cause Mrs U a loss or weren't the cause of losses she says she has incurred or may incur, my discussion of the particulars of those actions, which follows below, is brief. But I would emphasise that I've considered the detail of all the points Mrs U has made.

In terms of whether Interactive was wrong to open the account – I'm not persuaded that it was. Given the time that has passed, there aren't records recording exactly the checks that, before the account started, were carried out for Mrs U's account in particular. But I'm not persuaded that the fact the account was opened, even if it was without Mrs U's participation like she says, shows that those checks must have been inadequate. Rather I take the view, like our investigator, that it is just as plausible that Mrs U's relatives instead knew or had access to personal details of the kind needed to open the account in Mrs U's name - without this requiring any fault on Interactive's part. I take the same view as regards the operating of the account after that.

Mrs U is convinced the account address can't have been checked properly, because if it had she is convinced that Interactive would've found that the address was not her address. But it isn't disputed that Mrs U had lived at the address in question - and although I understand from Mrs U that she didn't live there in the period during which the account was opened or operated, I'm not persuaded that this means address checks can't have been carried out or carried out properly. In my view it is just as plausible that such checks were carried out and found records in Mrs U's name - by which I mean the name her account was in, which wasn't the same as her present name.

I note what Mrs U says about the fact Interactive took over the account in 2017 or 2018 and how this ought to have prompted fresh checks which can't have been passed if conducted properly. But I don't agree that this follows. I say this for the reasons I've already discussed above, but I would add that by that stage the account was an established account and not a new application from a new and as yet unknown customer.

I note Interactive had before that refused access to a relative of Mrs U and as a result was prompted to obtain written confirmation, apparently from Mrs U as the account holder, that such access was something done with her authority. Whether the account was opened by Mrs U, as Interactive believes, or by Mrs U's relatives, as she maintains, it seems to me the result would be that the signature on the authority letter will have matched with that on the original account application - so I don't see that Interactive was at fault for not identifying a problem during or due to that interaction.

The recent withdrawal Mrs U refers to was to the bank account that had been linked to the account for many years. So, on the face of it, Interactive responded to a request from the account holder to make a payment to the bank account nominated by the account holder which was also the bank account that had been nominated and linked to the account without this link ever being questioned by the account holder over the many years that the account had carried those details. It is conceivable it was also where some payments to the account had come from, although that detail isn't available. So putting that last point aside, but with all that I said before in mind, I don't see that Interactive was wrong at the time to not look into the potentially legitimate and private or family arrangements that lay behind why the chosen bank account was not in Mrs U's own name.

Interactive has said the extent to which third parties can check names on bank accounts when making payments, has improved and increased over time - and the fact the surname on its account matched that on the bank details might at some points in the past have obscured the fact that the bank details linked to Mrs U's account did not carry her name. Whether that is right or not, it doesn't change the view I've already expressed above.

Likewise I note Mrs U's point that the bank details in question were, she believes, linked to other accounts held at Interactive by other family members. I don't know if that is true or not, but assuming that it is it doesn't change the view I've expressed above. I don't think it shows Interactive was at fault in the checks it carried out or should have cross referenced the bank details against other accounts it held or made more enquiries before making a payment using those details, given that they were details nominated, as Interactive believed, by Mrs U as the account holder. Also I don't believe that in acting this way Interactive acted illegally as has been suggested by Mrs U in the course of her submissions.

In light of what I've said above, and for the reasons I've given, it follows that I don't uphold Mrs U's complaint. I appreciate my decision is likely to disappoint her. I'm grateful to her and to her representative for the courteous, prompt and detailed responses and representations they have offered us throughout our consideration of these matters, which has assisted us.

My final decision

For the reasons I've given and in light of all I've said above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs U to accept or reject my decision before 23 February 2024.

Richard Sheridan
Ombudsman