

## **The complaint**

Mr R and Mrs R complain that Brown Shipley & Co Limited delayed the transfer of funds from Mrs R's General Investment Account (GIA) to Mr R's individual Savings Account (ISA) and this caused Mr R a financial loss resulting in the loss of some of his 2019/20 ISA allowance.

## **What happened**

Mr R and Mrs R had separate GIAs with a company I will call Company A. Brown Shipley recommended Mr R maximise his ISA allowance for 2019/20, but Mr R didn't have sufficient funds in his GIA to fund an ISA. Brown Shipley recommended a transfer of £20,000 from Mrs R's GIA to Mr R's GIA so that Mr R could move this to an ISA in his name. Brown Shipley received a signed transfer form to switch 38,356 of units from Mrs R's GIA to Mr R's GIA. The transfer completed on 18 March. Brown Shipley then sold the units held in Mr R's GIA to cash and re-purchased units in the same fund within Mr R's ISA on 26 March, which was the settlement date of the sale.

Mr R and Mrs R complained to Brown Shipley that the switch of the funds from Mrs R's GIA account to Mr R's GIA account took too long, and that selling the units in Mr R's GIA to cash and re-investing several days later resulted in his 2019/20 ISA being underfunded and less units being re-purchased. Brown Shipley said it had followed the processes Company A provided but accepted that it had failed to ensure Mr R had used his full 2019/20 ISA allowance. Brown Shipley offered Mr R £250 to cover the cost of any tax that may fall due on the amount it was unable to wrap within his ISA.

Mr R and Mrs R brought their complaint to the Financial Ombudsman Service and one of our Investigators looked into things. The Investigator thought that Brown Shipley had acted reasonably when dealing with the matter of the transfers, and that although it had missed the opportunity to assist Mr R in fully utilising his 2019/20 ISA allowance, the offer of £250 made by Brown Shipley in these circumstances of this case was a fair and reasonable one.

Mr R and Mrs R didn't agree with the Investigator and asked that an Ombudsman decides the complaint. As I reached a significantly different outcome to the Investigator, I issued a provisional decision for both parties to consider. My provisional decision said I intended to say that it was unreasonable for Brown Shipley to sell the units in Mr R's GIA to cash and then to re-purchase units in the same fund several days later when Company A was able to re-register them into Mr R's ISA in two working days.

To put things right, I thought Brown Shipley should work out how many units could have been purchased in Mr R's ISA with £17,524.86 if the re-registration of units had completed within two working days. If Mr R could have purchased fewer than 34,910.09 units on this date, no further redress is due. If Mr R could have purchased more units than 34,910.09 on this date, Brown Shipley & Co Limited should pay Mr R the current value (on the date of settlement) of those units.

Any future current and future tax position of this amount had, in my opinion, already been reasonably addressed in the calculation Brown Shipley & Co Limited used when it

considered its failure to ensure Mr R utilised his ISA allowance in the tax year 2019/20. So, my provisional decision was that Brown Shipley & Co Limited don't need to do anything else in this regard.

Mr R and Mrs R provided some further comments for me to consider, and I will address these in my final decision. Brown Shipley said it had no further comments for me to consider.

### **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.

#### *Transfer from Mrs R's GIA to Mr R's GIA*

Brown Shipley's letter of 4 March said a GIA to ISA transfer with Company A usually takes a couple of working days - and that as the value of the investment would be subject to market changes there would be a potential for some capital loss. Mr R and Mrs R signed the asset transfer form on 10 March and Brown Shipley received it on 12 March. It was sent by recorded delivery to Company A the same day. The signed instruction form didn't include an amount to be transferred, instead it confirmed Mr R and Mrs R's instruction was to transfer 38,356 units plus £400 cash to Mr R's GIA. It seems likely to me that the intention was that the number of units would be enough to maximise Mr R's ISA allowance, but the unit price had fallen. Although only £17,524.86 was credited to Mr R's GIA when the re-registration of the units took place, I'm satisfied Brown Shipley's letter of 4 March made Mr R and Mrs R aware that the value of the transfer could be affected by market movements.

Mr R and Mrs R had asked Brown Shipley if the transfer form could be scanned and sent to them, but Brown Shipley said it needed an instruction from them as the transfer was from one GIA to another GIA. I've looked at the asset transfer forms provided by Mr R and Mrs R and Brown Shipley. The one Brown Shipley used appears to have been a current form and said Brown Shipley required an instruction from Mr R and Mrs R and that Brown Shipley also needed to sign the declaration. If Brown Shipley hadn't been able to provide an authority, had Company A asked for it, this may have caused a delay. Therefore, I don't think it was unreasonable that Brown Shipley told Mr R and Mrs R it needed a signed transfer form before it could send it to Company A. Mr R and Mrs R believe that Brown Shipley could have emailed the asset transfer form to Company A, but I think it was fair and reasonable for Brown Shipley to use its discretion to send it by guaranteed next day delivery post, as it says it had previously experienced some delays with Company A dealing with emails around this time of the year.

Mr R and Mrs R say that the 4 March letter Brown Shipley sent them said a GIA to ISA transfer with Company A would usually take a couple of working days to complete. However, what is clear here is that this was a two-stage process and the transfer from Mrs R's GIA to Mr R's GIA needed to be completed first - it wasn't a transfer of a GIA to an ISA. Company A has confirmed to our Investigator that a transfer from one GIA to another GIA takes between 5-7 working days, and also that it wasn't possible to transfer funds from a GIA in Mrs R's name directly to an ISA in the name of Mr R.

The letter of 4 March could have provided a more detailed explanation of the time it could take to complete the transaction, but I consider it's unreasonable for me to conclude Brown Shipley said the whole process would only take two days to complete. So, I've decided that Brown Shipley dealt with this part of the transaction reasonably and that it was the reduction in the unit price at this time that meant only £17,524.86 was realised when the switch from Mrs R's GIA to Mr R's GIA completed.

### *Selling Mr R's GIA units and re-purchasing them within his ISA*

There's no dispute that Company A re-registered the units from Mrs R's GIA to Mr R's GIA and that Brown Shipley then sold the units to cash. However, Mr R and Mrs R complaint is that units within Mr R's GIA should have been re-registered into his ISA using what is often referred to as a 'Bed and ISA' transaction. Mr R and Mrs R have provided evidence that a similar re-registration of units from Mrs R's GIA to her ISA with Company A was made in two days the following tax-year. This is further supported by Brown Shipley's letter of 4 March that also suggested a GIA to ISA re-registration should take a couple of working days.

I asked Brown Shipley if it attempted to clarify the position at the time with Company A, but it hasn't been able to provide anything to show that it did. So, I've considered whether it was fair and reasonable for Brown Shipley to sell units in Mr R's GIA and then re-purchase them at the settlement date. This is the crux of the complaint as Mr R received less units in his ISA than he had in his GIA prior to the re-registration.

Brown Shipley says that it wasn't able to complete the switch of all the units into Mr R's ISA on-line because Company A's on-line form didn't allow them to switch all of the units - it only allowed it to put a cash value in, and this meant it had to sell the fund to cash first. That may be the case, but I've not seen anything to suggest Mr R was made aware of this at the time.

Company A says it can take up to 2 working days for a re-registration of a GIA to an ISA if it's just to move money, including if it's staying in the same funds, but if funds are being sold or purchased then it takes longer. This seems to reflect what happened the following tax-year when Mrs R re-registered units within a specific fund held in her GIA to her ISA. This resulted in fewer units being invested in the same fund but was completed in two working days without the units having to be sold to cash first. Company A says Brown Shipley first instructed a sale of the units in Mr R's GIA to cash and then, when the sale settled, it received a further instruction from Brown Shipley to re-purchase units in the same fund within Mr R's ISA. I'm persuaded this is what happened here.

I've decided that the selling of the units in Mr R's GIA to cash, and then back into the same fund, was the material cause of Mr R having less units within the ISA than he thought he should have. Brown Shipley hasn't provided any evidence that persuades me it made any reasonable enquiries of Company A regarding this re-registration. Regardless of the comments from Brown Shipley that it was unable to enter the transfer of units on-line, I've decided that it's more likely than not the units could have been switched from the GIA to the ISA more quickly without the need to sell to cash if Brown Shipley had acted reasonably and asked Company A to do this. Selling units to cash exposed Mr R to volatile market conditions for longer than necessary. I would have expected Brown Shipley to consider this, and I'm satisfied the action taken by Brown Shipley delayed the re-registration of the GIA units into Mr R's ISA and caused Mr R to receive fewer units into his ISA.

I note that Mr R has since transferred his GIA to another provider.

### *Shortfall in contribution to Mr R's 2019/20 ISA*

Brown Shipley accepts that it failed to tell Mr R that his 2019/20 ISA allowance hadn't been fully utilised, so I considered whether the remedy offered by Brown Shipley was reasonable.

I would expect Brown Shipley to consider Mr R's current and likely future tax position, his existing assets, along with the size of the deficit, his age and likely duration the ISA would be held. I would also expect Brown Shipley to take into account any growth and income from the ISA and project it forward to establish whether Mr R is ever likely to have to pay tax on those monies. Brown Shipley has calculated it's unlikely there will be a financial detriment to

Mr R of failing to place the £2,475 shortfall into the ISA if he remains a basic rate taxpayer. However, as Mr R is expecting increased earnings from his self-employment Brown Shipley offered Mr R a payment of £250 to cover the cost of any tax that may fall due on the slice of monies that it was unable to wrap within his 2019/20 ISA. Taking into account the circumstances of this case, I've decided this is a fair and reasonable remedy offer.

Mr R and Mrs R have referred me to the delay in Brown Shipley responding to their complaint. Unfortunately, complaint handling isn't a regulated activity. So, whilst I acknowledge this may have been frustrating, I can't make a decision or comment on this aspect of the complaint. I would also like to clarify that it's not the role of the Financial Ombudsman Service to penalise a business if it gets things wrong – that's normally a matter for its regulator, which in this case is the Financial Conduct Authority. I'm satisfied that my final decision puts Mr R and Mrs R back into the position they would likely have been in if Brown Shipley had re-registered Mr R's GIA into an ISA within two working days.

### **Putting things right**

To put things right, I've decided that:

- Brown Shipley should work out how many units Mr R could have purchased in his ISA with £17,524.86 if the re-registration of units had completed within two working days. If Mr R could have purchased fewer than 34,910.09 units, no further redress is due. However, If Mr R could have purchased more units than 34,910.09, then Brown Shipley should pay Mr R the current value of the difference in units. I should make it clear that the settlement date I referred to in my provisional decision is the date on which Brown Shipley pay this remedy to Mr R, if a remedy is required.
- Brown Shipley's offer to pay Mr R the sum of £250 to reflect the shortfall it caused in his 2019/20 ISA is a fair and reasonable one in all of the circumstances, and Brown Shipley should pay this amount to Mr R.

### **My final decision**

I've decided to uphold part of Mr R's and Mrs R's complaint and in order to put matters right Brown Shipley & Co Limited should pay Mr R the remedy I've detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R and Mrs R to accept or reject my decision before 24 April 2023.

Paul Lawton  
**Ombudsman**