

The complaint

Mrs B complained, in her capacity as representative for Mr W (who I will call 'B'), that Vanguard Asset Management, Ltd ('Vanguard') failed to fully acknowledge its responsibility for the impact of delays during the process of arranging a Junior Individual Savings Account (JISA) transfer to a third party. She is unhappy that compensation Vanguard has paid is insufficient redress overall as it doesn't take into account investment loss.

What happened

Mrs B wanted to transfer B's JISA away from Vanguard to a different investment platform. Mrs B was dissatisfied with Vanguard and wanted to move the JISA in order to take advantage of investment opportunities that Vanguard didn't offer.

Vanguard's records show it received the transfer authority from Mrs B's new platform provider (the 'third party') on 18 August 2021. On 23 August 2021, Vanguard emailed its valuation of the account to the third party and it received notification of acceptance from the third party on 1 September 2021. Mrs B chased up what was happening with the transfers on 22 September 2021 and an exchange of messages followed. The transfers of the stocks and shares elements completed on 11 November 2021 and the residual cash element was transferred on 22 November 2021 and reached B's new account two days later.

Vanguard said it should've actioned the acceptance from the new provider on 1 September 2021 and that it understood why Mrs B had been prompted to complain about the length of time the transfer had taken. It admitted it was responsible for delays during the transfer process and upheld Mrs B's complaint. Vanguard apologised and paid £150 into her bank account to reflect its admitted delays in transferring B's JISA. Vanguard didn't however agree that it had prevented Mrs B adding additional funds into the JISA although it had explained that this would disrupt the transfer process. So it wasn't prepared to accept responsibility for any investment loss.

Mrs B was unhappy with this response as she had understood that Vanguard would look at further compensation if she provided supporting evidence to show investment loss as a result of missing out on trading due to Vanguard's delay – which she felt she had done. So she brought her complaint to us and one of our investigators looked into what happened.

Our investigator thought that Vanguard had done enough to put things right. He felt the redress paid was fair. In particular, he didn't think there was evidence that demonstrated what Mrs B's investment decisions would have been before or when the transfers were first initiated. Without sight of any emails from Mrs B to the new platform provider stating her investment intentions or evidence of any pending orders, our investigator didn't feel he could fairly ask Vanguard to do anything more.

Mrs B disagreed with our investigator and asked for an ombudsman review. She put things this way:

'Vanguard acknowledged losses were incurred and that they were at fault and that their errors caused the losses. They said they would rectify... Vanguard reneged on what was agreed. They did not transfer the funds within 30 days, despite endless prompting. It was

inevitable there would be losses...I acted on their advice... any losses incurred because of poor advice is their fault.'

The complaint came to me to decide. I issued a provisional decision.

What I said in my provisional decision

Here are some of the main things I said.

Vanguard has upheld Mrs B's complaint and agreed that it was responsible for delays in dealing with the transfers. So I don't need to say more about how the delay happened or make any findings about what's already been agreed. I'm going to concentrate in my decision on what Vanguard should fairly and reasonably do to put things right in these circumstances.

Although Mrs B was involved in dealing with matters on a day to day basis she was representing B's interests rather than her own – the JISA belonged to B and Vanguard owed a duty of care to B rather than to Mrs B as she was involved in the matter only as B's representative. This means that whilst I don't doubt that Mrs B was put to a lot of extra trouble chasing things up with Vanguard and she was anxious about keeping her children's JISAs topped-up, under the rules governing our service, Mrs B (as representative) isn't entitled to any personal compensation for distress and inconvenience.

Our approach is to think about the impact on B of Vanguard's delays during the transfer process and the extent of any financial loss arising as a result of Vanguard making an error or acting unfairly or unreasonably with respect to the way it handled the transfer of B's JISA.

Vanguard has paid Mrs B £150 in respect of B's JISA transfer delays. It worked out that amount by looking at the delay and said it had arrived at that figure using guidance provided by the Financial Ombudsman and its own internal guidelines to ensure all customers are treated fairly when errors have occurred. I find that the £150 paid by Vanguard to Mrs B is fair and reasonable to reflect the shortcomings in the service it provided in connection with this ISA transfer. But I think Vanguard also needs to pay redress to cover any resulting investment loss attributable to its delays and service failings. I'll explain why I say this.

In order to be able to fairly hold Vanguard responsible for trades not happening until market conditions were less favourable, I need to be satisfied, on a balance of probabilities, that Vanguard was responsible for delays that meant Mrs B was unable to execute planned trades she would have completed but for Vanguard's delays.

I've kept in mind that HMRC guidance states that ISA transfers like these should happen within 30 calendar days from a business receiving a request. Vanguard's records show it received the transfer request on 18 August 2021. So in this case, B's JISA transfer took significantly longer than the time limits set out in ISA transfer rules.

Mrs B said she wanted the transfer to complete as quickly as possible as she was hoping to top-up B's investments out of income and before an investment deadline passed. When it became clear that she couldn't do this through the new provider until the transfer from Vanguard completed, Mrs B had to choose between prioritising the transfer or continuing to invest via Vanguard.

Vanguard explained to Mrs B that if she invested more with it whilst the transfer was being processed, the transfer would be disrupted and the third party would have to resubmit its transfer request. Understandably, Mrs B didn't want to have to start the transfer process

again. This is what would've needed to happen if she had kept investing through Vanguard as new valuations would then have had to be carried out and agreed before any transfer could go ahead.

But I also think it's reasonably clear from looking at B's capital account transaction history that Mrs B was anxious to start investing in four particular funds - I'll call these W,X,Y and Z. These funds were offered by her new platform provider and Vanguard confirmed to us that funds W, X, Y and Z weren't available on the Vanguard platform. I've seen evidence that Mrs B began investing into these funds, as far as she could afford to do so, on 21 October 2021, the day after opening an account for B with the third party and paying an initial subscription to B's account. Over the next week or so, Mrs B invested on B's behalf a total of £3,000 across the four funds.

Mrs B has explained that, but for Vanguard's admitted delay, she would have been able to invest the £3,000 at an earlier date. Vanguard's delay in transferring the JISA prevented the third party being able to accept the £3,000 new investment. Looking at the immediate actions Mrs B took when she was finally able to invest the £3,000, having been delayed by the Vanguard transfer, my view is that she would most likely have purchased these investments in her chosen funds W, X, Y and Z at the first available opportunity when she could've done so.

Mrs B said she was only able to purchase investments in funds W, X, Y and Z once the third party confirmed she was permitted to fund the accounts, and this could only be done once the Vanguard transfer was completed. Ultimately, she says she was only able to complete her planned investments at a higher cost.

I've taken into account that Vanguard says it didn't prevent Mrs B from making further investments and she could have continued paying into B's Vanguard ISA had she been willing to accept this would mean holding up the transfers. But that doesn't change my overall view. Mrs B didn't have the option of investing in funds W, X, Y and Z on Vanguard's platform. I am satisfied that Mrs B's investment priority was to invest in these four particular funds. She told Vanguard on 22 September when she first enquired about what was happening that: *'The delays are stopping me investing in my desired (new platform provider) funds...'* This meant she was totally reliant on Vanguard executing the transfers on a timely basis.

So I don't think Mrs B had any real option other than to press on with the delayed transfers so she could make the investments into funds W, X, Y and Z just as soon as she could – which she has said from the outset was the main reason why she wanted to transfer to the new platform provider.

All this leads me to conclude that if there's been any investment loss, then it's fair and reasonable for Mrs B to expect Vanguard to pay an amount which would put B into the position he would have been in, but for Vanguard's delays.

As I'm satisfied Vanguard has not yet dealt with this complaint fairly I'm planning on upholding this complaint and telling it to take further action to put things right.'

What the parties said in response to my provisional decision

Mr W has confirmed he accepts what I've said in my provisional decision.

Vanguard initially asked for more information and this was sent. We've heard nothing further however and the deadline for responses has now passed. So I think it's reasonable for me to proceed with my review of this complaint.

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, as no further comments have been received in response to my provisional decision that change what I think about this case, I still think it's fair to uphold this complaint for the reasons I explained in my provisional decision.

Putting things right

I've kept in mind the expectation that ISA transfers should generally complete within 30 days and that Vanguard received the transfer requests on 18 August 2021. I am aware that Vanguard expected one particular fund to take longer to transfer and this was still outstanding when all the other funds were able to be transferred on 28 October 2021. But it seems fair to me to say that 30 calendar days from 18 August meant Mrs B was reasonably entitled to expect Vanguard to have completed the transfer requests by 17 September 2021. And had that happened, I find that she would have invested in funds W, X, Y and Z probably by 20 September 2021 at the latest. So I think that's a fair starting point for calculating redress owed to B.

My approach to redress is to try to put B, so far as it's possible to do so, into the position B would be in now if Vanguard had completed the JISA transfer on 17 September 2021. Mrs B would then have invested the £3,000 into funds W, X, Y and Z on 20 September 2021. And if this shows that B suffered financial loss, then Vanguard should compensate him for this.

This redress calculation also needs to take into account that for one of the four funds, a dividend payment was due to be paid on 1 October 2021. Because of the later investment caused by Vanguard's transfer delays, this dividend payment was not received. I consider it reasonable to take into account that dividend in this loss calculation.

Mrs B has asked that Vanguard be required to refund account charges paid over the period when the transfer should have already been completed. These charges have not been quantified, and I consider it likely that charges also apply with the new third party JISA provider. In other words, B's JISA would have had charges applied if the transfer had not been delayed, but they would have been paid to the new JISA provider, rather than Vanguard. For that reason, subject to any further submissions made, I do not currently intend to make any award in relation to account charges incurred.

Vanguard should take the following actions:-

1. Calculate the number of units B would have purchased in funds W, X, Y and Z with the £3,000 that was invested from October 2021, in the same proportion that B actually did invest, assuming that the investments were made on 20 September 2021.
2. The number of units calculated at (1) should then be valued at the date of my

decision.

3. To the figure calculated at (2) should be added the amount of any dividend that B would have received if B had held these units calculated at (1) on 1 October 2021. This total figure, including any dividend, represents the *fair value*.
4. The number of units that were actually purchased in funds W, X, Y and Z by this £3,000 investment should also be valued at the date of my decision. This represents the *actual value*.

If the *actual value* is greater than the *fair value*, no compensation is payable. If the *fair value* is greater than the *actual value*, there is a loss and compensation is payable.

Any compensation due should be paid to B.

Vanguard should provide details of the calculations to Mrs B in a clear, simple format.

If the compensation is not paid within 28 days of Vanguard receiving acceptance of my decision, interest at 8% per annum on the loss identified will be payable from the final decision date to the date of settlement. Income tax may be payable on this interest, if paid. If Vanguard deducts income tax from the interest, it should tell Mrs B how much has been taken off. Vanguard should give B a tax deduction certificate in respect of interest if Mrs B asks for one, so B can reclaim the tax on this interest from HM Revenue & Customs, if appropriate.

My final decision

I uphold Mr W's complaint and direct Vanguard Asset Management, Ltd to take the steps I've set out above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 8 June 2023.

Susan Webb
Ombudsman