

The complaint

Mrs C has complained about the service received from Aberdeen Asset Managers Limited (trading as Abrdn "Aberdeen"). She says she wanted to sell part of one of her holdings in her ISA held with it. She wanted to keep the proceeds of the sale within the ISA, to be reinvested at some stage. Instead, it was sold, and she was sent the proceeds. She says this is not what she wanted, and Aberdeen is at fault for this.

Mrs C is represented in her complaint by her husband, Mr C although to keep things simple I have referred to Mrs C throughout.

What happened

Mrs C held a stocks and shares ISA with Aberdeen. On 15 October 2021, she went online to try and sell part of one of her holdings. She said the portal had an array of tabs, one of which was "sell" and another was labelled "cash withdrawal". She said the "sell" tab was pressed and she arranged the sale through that option. She said she expected the proceeds of the sale to appear on her account balance, and it was her view that she would reinvest at some stage and in doing so keep the tax benefits that an ISA attracts.

She said a few days later, she received a letter and cheque in the post for the proceeds raised from the sale. She raised a complaint and said this was not what she intended.

Aberdeen said all sales instructed through its portal were automatically paid out in cheque or nominated bank account. Cash withdrawals it says, were for cash balances. It referred to its terms and conditions about how it operated its ISAs at that time.

Mrs C was not happy with Aberdeen's response and referred her complaint to our service. She said it was not made clear within the terms and conditions about selling online. She said selling a holding and withdrawals are two different things. She said she is entitled to expect the proceeds of a sale would remain within an ISA and that she would be able to continue to receive the tax benefits from this.

I issued a provisional decision on this complaint on 8 March 2023. Both parties have received a copy of that provisional decision, but for completeness I include an extract from the decision below. I said:

"Mrs C's complaint is about a withdrawal that took place because of a sale in one of her holdings held within an ISA administered by Aberdeen. Mrs C wanted to sell part of one of her holdings, on the understanding the proceeds would be held as cash on the account. This was so that, at a later date, she could reinvest into a different holding. But this didn't happen as the proceeds were instead paid out as a withdrawal.

It is clear to me when I read through what happened, that Mrs C didn't want to have the money paid out to her as a withdrawal. When she received the cheque, she made a complaint to Aberdeen about it.

I can see why Mrs C would think she could sell part of her holding to reinvest at a later date. It's a common feature in stocks and shares ISAs for them to work that way – for sales proceeds to be held as cash within a tax efficient ISA to use for reinvestment.

There is no requirement for Aberdeen to administer its ISA accounts that way. It is entitled to operate its ISA accounts within the terms that it sets (within HMRC rules). But in doing so, it must treat its customers fairly and provide clear, fair and not misleading information about its terms especially if the terms are not what is usually found in a stocks and shares ISA.

Mrs C says Aberdeen didn't make its terms and conditions clear enough and failed to make clear that sales were classed as withdrawals. Aberdeen on the other hand says that its terms were clear about how it operated its ISAs at that time. Mrs C argues the wording used is not clear enough to her that a sale within her ISA is equivalent to a withdrawal. She says that there is a tab for a sale and a tab for withdrawal and the wording is not clear as to what each one means. She provides a few examples that she says demonstrates this.

Aberdeen responded and explained why it felt its terms were clear. It argues that a withdrawal and sale are one and the same within the terms and that it used the words interchangeably to describe selling an investment. It believes its terms were fully clear that to make a sale or withdrawal was to sell an investment.

I've read the terms closely and section 11 that is titled '*making withdrawals from your plan*'. Having done so I don't think it has been made clear here by Aberdeen that a sale of a holding will automatically result in the proceeds being withdrawn.

I can't see within the original terms and conditions provided to Mrs C, that the clarity needed was given - that any sale will result in a withdrawal. This is relevant to Mrs C's complaint because she has said in a recent submission that she read the terms and conditions when she opened her account, so she would have had some knowledge of them before going on to make the sale online. And after doing so she was still of the understanding that the sale she instructed was going to leave a cash balance on her account. Having read the terms and conditions, I don't think it was unreasonable for Mrs C to have that understanding.

In addition to this, when Mrs C went on the online trading platform, she would've seen displayed a number of tabs these being 'buy and sell', 'debit and top-up', 'cash withdrawals' and 'switch instructions'. Mrs C told our service that she had used the trading platform before and had used it to switch funds. But this was her first time in using the platform to sell a holding. So, she would have been reliant on Aberdeen at this point to make clear what was going to happen when she made a sale instruction.

Aberdeen has recently confirmed to our service that there were no prompts at that time alerting the user that the proceeds would automatically be paid out. It said the portal would simply direct the customer to a page that said the transaction had been processed. So, Mrs C would've made the sale and then would've been directed to a page to say it had gone through, with no warning about the implications of that action. And as I have already concluded Mrs C would not have been clear from the terms about what would happen here either.

In summary, I currently don't think Aberdeen has provided Mrs C with sufficiently clear information about her ISA and this has resulted in her agreeing an instruction on the trading portal that has caused her detriment. If Aberdeen had provided Mrs C with clearer information, I don't think Mrs C would have carried out that instruction.

So, it follows that I currently think Mrs C's complaint should be upheld and Aberdeen need to put things right."

I asked both parties to let me have any comments, or additional evidence, in response to my provisional decision. Mrs C responded on 9 March 2023 and didn't agree or disagree with my findings. She has made several additional points. These being:

- She would like it noted that post her complaint, Aberdeen have now updated section 11 of the terms and conditions. Now there is an "important note" box which warns about sales / withdrawals and the potential loss of tax benefits. And a further box elsewhere which warns against funds being released. She asks why if Aberdeen felt its terms were clear, does it feel it needs to add these warning boxes to its terms?
- Mrs C refers to a finding I made about there not being a prompt from Aberdeen before the transaction took place. She asks if I have inferred this because Aberdeen has since added a prompt screen?
- Mrs C makes a few comments about how compensation would be worked out in relation to her losing tax efficiency of the funds. She asks how the process would work and whether the money would go back into the ISA. She also asks whether, in calculating investment losses, whether this would include any dividends and the reinvestment of these.
- Finally, Mrs C makes comments about distress and inconvenience. She says she is glad this is recognised within my decision but also would like to raise another inconvenience. She says she did not cash the cheque that was sent to her by Aberdeen. She says because she did not do this, that Aberdeen have had use of the money over the period, and she hasn't. She asks if it would be appropriate for compensation to be considered here.

Aberdeen responded on 28 March 2023 and said it was extremely disappointed with my findings. It said it wanted to stress its opposition to the outcome I arrived at, in my provisional decision and requests I reconsider matters. It also has provided several additional points for me to consider. It says:

- The issue experienced by Mrs C is not unique to her, it has had a small number of previous complaints where investors have sold holdings without realizing this would result in realised monies.
- It is fundamentally important to note that on each occasion The Financial Ombudsman Service has rejected previous complaints and ruled that its terms and conditions and online service were sufficiently clear. It adds later in its submission, that several previous reviews by the ombudsman have concluded that it should not be held accountable for the client's misrepresentation of the functionality of the online service, or terms given. It has listed previous complaints that it says show this to be the case.
- It then highlights one of its terms and what is supposed to happen when a withdrawal is made. It goes on to say it is confused as to why I have decreed that there is an ambiguity here and that a client would think anything other than what is stated under this term would happen. It says it is abundantly clear within the terms and conditions as to what will happen and what it would do to process sales proceeds.

- After reviewing my provisional decision, it says it can see no understandable rationale for the reversal of the adjudicator's view. Or the discrepancy between my decision and the other cases, and the consistent approach taken so far that my findings have gone against. It says in its experience it is rare for an ombudsman to overturn an adjudicator's view and unprecedented for an ombudsman to rule against an approach adopted on several occasions already.
- Mrs C says that in making the sale, she should reasonably expect the funds to be on her account. It asks, where in the terms and conditions does it state that this is the case? It says it doesn't because no such provision exists. It says it contests in the strongest terms that after reading the terms, that Mrs C would conclude that funds would stay in her account. And within my provisional decision I have not provided any evidence to support this stance either. It says this has all been borne by an erroneous assumption made by Mrs C and it asks me as the ombudsman to recognise this.
- The emphasis was on Mrs C to contact it to clarify any of the terms that she was unsure of. It says she should have done this rather than assume as to how its service worked.
- There is no regulation that precludes it from offering a product that functions in the way it does. It does not think the model it uses is uncommon or that it warrants a disclaimer to mark it out as such. It says it is not an open platform offering a range of investments. It does not believe there is a requirement for it to mark out the difference to its product and that of an open platform.
- It continues to believe its terms and conditions are clear but contends that if any uncertainty exists in the client's minds, that the onus is on them to address this.
- The balance of fairness has been tipped in favour of the client, and we have not held the client to account for their role in this. It would like me to take a different stance on the complaint.

Mrs C has not agreed or disagreed with my findings and Aberdeen has disagreed with them. So as both parties are not in agreement and have both put forward several points, I will again look into Mrs C's complaint and look to make a final decision.

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.

I will respond to both parties' comments, starting with Mrs C.

Mrs C's response dated 9 March 2023

Mrs C did not say in her response to my provisional decision, whether she agreed with my findings or not. But she has made further comments about Aberdeen including that it has amended its terms and conditions to include what she has called warning boxes. I acknowledge the observation that she has made here.

Mrs C also asks if I have inferred that Aberdeen has since added a prompt screen after a transaction is now carried out. I was not inferring that this was the case in my provisional decision. I asked Aberdeen if there were any prompts at the time Mrs C made the transaction as I wanted to ascertain what she would've seen or not seen online when it happened. I was simply explaining what would have happened at that time and was making no inference about anything else.

Mrs C has made several comments about compensation. I have responded to these comments in the section 'putting things right' below.

Aberdeen's response dated 28 March 2023

Aberdeen said it is extremely disappointed in my findings. I acknowledge the strength of feeling that the representative from Aberdeen has expressed in their response. It has been clear about what its stance is in relation to Mrs C's complaint, how it provides its services in relation to its online service and the terms associated.

Aberdeen said Mrs C's issues experienced are not unique to her. It goes on to say it is fundamentally important to note that previous cases that are similar in nature have not been upheld by The Financial Ombudsman Service, it has referenced these complaints and emphasised how in its opinion it is unprecedented that I would decide to uphold this complaint. I do not agree with Aberdeen, and I will explain why.

When I looked at Mrs C's complaint, I took into consideration the law, regulations, and good industry practice from around the time the issues complained about happened. I also looked at any relevant guidance and considered our approach in general to similar complaints.

I have considered Mrs C's complaint on its individual merits. Each case that Aberdeen referenced and other similar cases to this one, have different circumstances to each other and to Mrs C's case. Mrs C's complaint has a different set of circumstances such as when the transaction happened, what she did at the time and her own personal circumstances in relation to Aberdeen's online platform and the associated terms. So, it is very much the case that I needed to assess Mrs C's complaint on its own merits and in relation to her own set of circumstances.

Aberdeen is not correct in thinking that because it has received outcomes in its favour previously from our service, that it will or should continue to do so going forward for the same reasons, regardless of the individual circumstances of each complaint. It would need to consider the circumstances of each complaint as the circumstances more likely than not will be different on each occasion. As is the case with Mrs C's complaint.

Mrs C said she read the terms and conditions when she opened her account, so she would have had some knowledge of them before going on to make the sale online. And after doing so she was still of the understanding that the sale she instructed was going to leave a cash balance on her account. This is a different set of circumstances to what Aberdeen are referring to in its most recent submission – that it was an erroneous assumption borne by Mrs C. Rather, as I have concluded in my provisional decision, I found the terms on balance were not clear in relation to withdrawals. Mrs C read the terms and by doing this Aberdeen has not provided Mrs C with sufficiently clear information about her ISA and this has resulted in her agreeing an instruction on the trading portal that has caused her detriment. If

Aberdeen had provided Mrs C with clearer information, I don't think Mrs C would have carried out that instruction.

Aberdeen has referred to a term about withdrawals. But I can see that this term is in relation to what happens once a withdrawal has been requested and how long it takes for the withdrawal to reach them. As I concluded in my provisional decision, I can't see within the terms provided at the time, a clear explanation that a sale is a withdrawal. That is the relevant issue in Mrs C's complaint. I note again that Aberdeen has now provided clarity and added warning boxes about this in its current terms and conditions.

Aberdeen said the emphasis is on Mrs C to clarify anything she is unsure of. It says if there is any uncertainty on Mrs C's behalf then it is up to her to address this. But Aberdeen is the party that is subject to this complaint, and I am looking at whether it met its responsibilities that it held with Mrs C as its client, about the issues that she raised in her complaint.

Aberdeen had a duty to provide information that was clear fair and not misleading so that Mrs C could make the right choices or decisions when it came to the investments, she held with it. I have concluded that on balance, the terms it provided at that time Mrs C went to sell one of her holdings, were not clear and specifically I didn't feel on balance, that it had provided clear information to Mrs C that a sale on its online platform was a withdrawal. Mrs C read the terms and went ahead and sold a holding not expecting to lose the tax efficiency of her money. I don't think Aberdeen gave clear enough information about this, and it hasn't provided any further comments that has made me change my mind in this regard.

It follows that I don't think Aberdeen provided Mrs C with sufficiently clear information about her ISA and this has resulted in her agreeing an instruction on the trading portal that has caused her detriment. On balance, if Aberdeen had provided Mrs C with clearer information, I don't think Mrs C would have carried out that instruction. So, it follows that Aberdeen now needs to put things right.

Putting things right

Mrs C has made comments in response to my provisional decision, most of which will be covered by what I describe below as they are in relation to her being put back in a position, she would've been in but for Aberdeen's failings in her complaint.

She has also suggested that I consider looking at compensation for the money that she has been deprived of by not cashing the cheque. Everything that I am going to go on to describe, is with an aim to putting her back in a position she would've been in if Aberdeen had made its terms clearer and she hadn't made a sale that was a withdrawal i.e she would've had her money still in the ISA. In this scenario, she wouldn't have had a cheque issued to her and Aberdeen wouldn't have held her money on deposit. What Mrs C is asking for, is to be compensated twice: to be put back in the position she would've been in *and* to be compensated as if she wanted to make the withdrawal but was denied the use of the money. Mrs C's complaint is that she didn't want to make a withdrawal, and so with the findings I have made already, this is what Aberdeen need to rectify when it puts things right. To put things right, in any other scenario is not logical or fair on Aberdeen. So, I won't be considering what Mrs C has asked for, any further.

Moving on, I think there are a number of issues that need to be considered when I think about how Mrs C can be put back into a position, she would have been in but for Aberdeen's failings here. I don't think Mrs C would have carried out the sale / withdrawal if the terms had been clearer and she was aware of what would happen if she went ahead with the sale. And if she hadn't gone through with the sale then the money would most likely still be invested in

the original holding in her ISA account. So that is what Aberdeen need to look to recreate to put things right.

Firstly, Aberdeen would have charged a fee for carrying out the sale and this should be refunded to Mrs C.

Secondly, Aberdeen has not said it will look to reinstate the money that was withdrawn. So, it will need to compensate her for the loss of tax protection. This is not a straightforward issue to put right. This is because of the amount involved and because Mrs C has told our service that she has used all of her ISA subscription for 2021/22. She has also told us that it is her intention to use the full ISA allowance going forward as well so re-investing the funds is not something that she says she can do.

Thirdly, it is more likely than not that Mrs C would have kept the investment and not tried to sell part of it if Aberdeen's terms had been clearer. With this being the case, Aberdeen should pay Mrs C for any lost investment gains here (if there are any). So, if the fund Mrs C was invested in has gone up in value, Aberdeen needs to pay Mrs C the difference between what the fund value was at the date of withdrawal and the value of the holding when it carries out this calculation. Mrs C should now also cash in the cheque due to the money not being reinstated by Aberdeen.

Finally, I think Mrs C has had a difficult time in trying to get this issue sorted with Aberdeen. I can see that it has been a stressful time for her in trying to put things right and this has involved at times lengthy correspondence with Aberdeen to try and get her withdrawn money reinstated. I think to reflect the difficult time she has had; Aberdeen should pay her a £200 payment for distress and inconvenience.

In conclusion, I direct Aberdeen Asset Managers Limited to calculate the loss that Mrs C has incurred due to its error which led to proceeds being held outside of her ISA from a sale. This means compensating her for loss of tax protection, investment losses, fees and a payment of distress and inconvenience as I have described above.

Aberdeen should use the following assumptions to calculate compensation due about Mrs C's circumstances:

- Mrs C has an annual salary, as well as earning interest from cash savings and she receives dividends.
- Mrs C falls within the higher rate Scottish tax band.
- She uses her annual personal savings and dividend allowance and will continue to.
- She has used her capital gains tax allowance and will continue to.

Aberdeen should also use the following assumptions:

1. Any charges on holding the investment outside the ISA will not be significantly different from those that would have applied if it had been held within an ISA.
2. Mrs C will pay tax on the investment at the tax rate applicable to her.
3. Mrs C will not be able to reinvest the money as she has told our service she will be using her allowances. Therefore, Aberdeen will need to use the period of 10 years that Mrs C will have lost her tax efficiency status for. It is reasonable to conclude that Mrs C will have looked to sell her investment after this period.
4. The tax position will remain unchanged for the assumed period of 10 years.

5. The tax position of the investment will remain unchanged.
6. If the investment pays dividend distributions, it will return 7.5% compounded year (Made up of 5% growth and 2.5% dividend)
7. Pay Mrs C for any investment losses she has incurred from the date of withdrawal to the value of the holding when it calculates this settlement.
8. Pay Mrs C £200 for the distress and inconvenience this matter has caused.

My final decision

My final decision is that I uphold Mrs C's complaint and I direct Aberdeen Asset Managers Limited to put things right as I have described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 18 July 2023.

Mark Richardson
Ombudsman