

## The complaint

Mrs D has complained that Halifax Share Dealing Limited, trading as IWeb Share Dealing ('HSDL'), didn't allow her to participate in a bond exchange that was being offered on one of her investments. She has lost income of £3,698.00.

## What happened

Mrs D held a range of investments on HSDL's platform for ten years. This included EnQuest 7% Notes 2022 ('ENQ1') which was purchased via the platform in 2014. ENQ1 announced an offer in March 2022 to exchange to Notes offering a coupon of 9% and redeemable in October 2027. Those terms were favourable, so Mrs D wanted to participate but was unable to do so.

Mrs D was told that HSDL had made a 'business decision' not to offer the exchange opportunity as it said it was a complex instrument and deemed to be for qualified investors so not available to its retail customers such as Mrs D.

A retail customer would have to pass an Execution Services Appropriate Test ('ESAT') which could only be done after the new stock was added to its system and there was no guarantee of a positive outcome of that test. Its decision not to offer this corporate action was in line with its terms and conditions.

HSDL considered it had resolved the issue. But Mrs D remained dissatisfied and brought her complaint to the Financial Ombudsman.

This complaint has been reviewed more than once but the final investigator's opinion was that it should succeed. She said;

- She was satisfied the bond was aimed at retail clients, in line with the regulator's guidelines it simply being callable didn't make it a complex instrument.
- She didn't agree that HSDL's terms and conditions made clear that investors such as Mrs D had universally waived their rights to participate in corporate events. The term it had referred to – 12.7 – didn't apply in this case.
- Mrs D had held ENQ1 on the platform since 2014 so it appeared the buy/onboarding restriction didn't apply at the time. HSDL didn't say when the restriction came into force and Mrs D's online statement didn't indicate that it was restricted in any way.
- Mrs D had been able to participate in corporate events in ENQ1 in April 2015 and October 2020. Screenshots provided by Mrs D supported her position.
- The investigator hadn't seen any evidence that HSDL had made Mrs D aware of any changes nor did its terms explain the impact of restrictions. She didn't think that HSDL had treated Mrs D fairly and thought it was likely Mrs D would have transferred her shares elsewhere if she had known she couldn't participate in corporate actions that could benefit her financially.
- She thought the complaint should be put right and outlined the compensation

recommendation and that HSDL should pay Mrs D £150 for the trouble and upset she had been caused.

HSDL said it hadn't responded to requests for information as the additional opinion that had been given by the investigator had caused confusion. It didn't provide anything further. It said if an ombudsman requested further information it would provide it.

As the complaint remains unresolved, it has been passed to me for 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.

After doing so, I have reached the same outcome as the investigator and broadly for the same reasons. I will explain why.

I'm satisfied that both parties have been given enough opportunity to give me any submissions they wanted me to consider. I'm also satisfied that I have sufficient information and evidence to reach a fair and reasonable decision.

HSDL has referred to its terms and conditions in responding to the complaint. Mrs D used the nominee services of HSDL who held legal title of her assets on her behalf. When she became a client, she waived some of her rights as a shareholder to receive corporate action options in the same way as if she held the holding in her own name.

HSDL said that term 12.7 explained that the nominee – HSDL – has commercial discretion in terms of the choices available in corporate actions such as the one Mrs D has complained about. Term 12.7 says;

'12.7 The terms of a corporate action may require us to make a single election on behalf of our nominee company holding in the company. If it does, we may not be able to offer clients the same choices that would have been available if the shares in that company were held directly.'

Where possible we will use reasonable efforts to give you an option which best approximates the offer available to shareholders but we cannot guarantee that this will match the option given by the company.'

But I don't think HSDL has correctly applied the term in this instance. The term refers to HSDL having to make a *single election* on behalf of all its nominee clients. But that wouldn't have been the case here. Mrs D had wanted to participate in the corporate action, and I've seen nothing to suggest that she couldn't have elected to do so independently of other nominee customers. The terms to participate in the corporate action were for a minimum of 1,000 notes and Mrs D held over 9,000 so that wouldn't have been an issue.

I think the crux of this complaint surrounds HSDL's decision to classify the Notes as too complex for its platform of retail investors and how it went about that. It is entitled to make that decision but any decision to do so should be both fair and reasonable. And I don't think its decision was fairly applied in this case. I'll explain why.

I should first say that EnQuest's 'Exchange Offer Memorandum and Prospectus' says 'the target market for the Notes is retail clients' which suggests to me that EnQuest didn't envisage any additional complications with the Notes that would deem it to be too complex for a retail investor.

Mrs D was classified by HSDL as a retail investor. And it thought ENQ2 was a complex instrument – it was callable – and therefore it wasn't right that it should be offered to its retail customers or be available on its platform. However, I note HSDL has said that the stock Mrs D already held, ENQ1, was also deemed as complex by HSDL and was 'buy restricted' on its platform for that reason.

HSDL provided us with a screenshot of the Key Investor Information Document for ENQ1 and I see ENQ1 was also callable. So, if that is the point HSDL is making, I haven't seen anything to suggest that there was any determinable difference about this point between the two issues of the Notes that would cause one to be available on its platform and the other not.

And Mrs D had been able to buy the ENQ1 holding via HSDL's platform in 2014 which she has been retained ever since. So, there weren't any restrictions on the Notes at the time. And since purchase Mrs D had taken part in two corporate actions. Mrs D told us that the previous ENQ exchange offer in 2015 was far more complex and presented greater risk than the 2022 one and HSDL never questioned her competence at the time. Mrs D had never been informed that she wasn't able to or wouldn't be able to participate in corporate actions in the future.

If it had been the case that HSDL had changed its outlook on the complexity of the Notes – which would have impacted on its customers' ability to partake in any corporate action – fairly and reasonably, I would have expected it to have informed Mrs D.

And I would have expected that information to have been given prior to and independently of any corporate action notice which themselves are usually time sensitive. That would have allowed Mrs D to either take the ESAT test – if that is what was preventing her from participating in any corporate action – or have moved her holding to another platform if she wished to do so. That decision would then have been made in light of Mrs D having sufficient information to make a fully informed investment decision.

Mrs D has told us there is nothing on her portfolio valuation/statements that suggests there is any difference in her holding of ENQ1 and the other investments she held. There was nothing to make her consider there was anything unusual about the holding or that restrictions may have applied. So, I can't see that Mrs D would have been alerted to any potential issue with her participating in a corporate action by any alternative means than being informed by HSDL of its change in position. And that change in position would impact on Mrs D's ability to manage her investments as she chose to do within HSDL's term.

From the information Mrs D has provided and the submissions she has made, they have led me to view Mrs D as a well informed and experienced investor. So, I don't think it would have been unlikely for her to have moved her holding away from HSDL or taken the ESAT test if she had been fully informed. Her previous behaviour suggests she was willing to participate in corporate actions.

Taking all of the above into account, I am of the opinion that Mrs D has been disadvantaged by HSDL's actions. She wasn't able to participate in the corporate action. I've not been given anything to show that HSDL made Mrs D aware of any changes to her ability to manage her holding of the Notes or that the terms referred to sufficiently explain any impact of the restrictions imposed.

In conclusion, I don't think HSDL has been fair or reasonable in its treatment of Mrs D and she has lost out financially because of that. So, I uphold the complaint and HSDL needs to put the matter right.

## **Putting things right**

To put the matter right HSDL should;

- Pay Mrs D the 1.5% exchange fee Mrs D would have received on the Notes she held in the ENQ1 bond.
- Pay the 2% shortfall in annual interest between the original and new bond.
- Pay 9% coupon interest on the Notes held by Mrs D for the additional period the new bond runs for. The consequential loss of interest should be paid according to the payment dates outlined in the ENQ1 and ENQ2 policies as the issuer may redeem the bond prior to the 2027 date of maturity. HSDL provide a payment schedule and share this with Mrs D so she knows when to expect payments.

Payments should be made to the wrapper the ENQ1 bond is held in, which I understand to be an ISA.

Mrs D has been caused trouble and upset by HSDL by not being able to participate in the corporate action. So HSDL should pay £150 Mrs D in recognition of this.

## **My final decision**

For the reasons give, my final decision is that I uphold Mrs D's complaint and Halifax Share Dealing Limited, trading as IWeb Share Dealing, should put the matter right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 28 July 2023.

Catherine Langley  
**Ombudsman**