

The complaint

Mr N has complained about the delays he experienced when trying to close his two accounts he held with ITI Capital Limited ('ITI'). Mr N has said that as a result of the delays, he has suffered a loss of around £7,000 and wants this returned to him.

What happened

In July 2020 Mr N's accounts, which he held with a previous firm that had gone into administration were transferred over to ITI. Mr N didn't want to hold his accounts with ITI. He requested that both accounts be closed on 21 January 2021. But he didn't receive the value of his accounts in cash as he had expected.

Mr N contacted ITI and made a complaint in April but at the time of bringing his complaint to the Financial Ombudsman, in July 2021, he still hadn't received his funds despite sending all the appropriate forms. He wants the cash value of the accounts as at the time of the closure request he made in January 2021.

ITI issued its response to Mr N's complaint on 4 June 2021 which it didn't uphold. It said;

- Its understanding of Mr N's complaint was that he wished to close his account and withdraw the holdings.
- He contacted ITI in April 2021 and was advised that he had the ability to trade and act on his account, could call the dealing desk or obtain information from its website. It said it was the customer's responsibility to check the website for updated information and emails were sent to all customers advising them to call the dealing desk if they wished to trade. It was unable to advise Mr N on how to proceed as that decision was his.
- Mr N hadn't completed the 'onboarding' process which would have allowed him to access his holdings and make trades. And as Mr N had been made aware of how he could take action on his account by contacting the dealing desk, plus the fact that he had not completed the onboarding process, it couldn't agree he had suffered detriment as a result of its actions.

Our investigator who considered the complaint thought it should be upheld. He said;

- Despite numerous requests to ITI for information the investigator hadn't received any response and had no choice but to issue his findings in the absence of ITI's input.
- ITI had said that Mr N hadn't completed the necessary onboarding process and could still trade if he wanted to. But Mr N said this wasn't the case and he was unable to access his account.
- It was clear that Mr N had requested to close his account and withdraw all funds as cash in January 2021. Since the request, ITI could have processed the request or made clear to him how he should go about it.

- The investigator hadn't seen any substantial explanation why Mr N wasn't able to withdraw his funds in January 2021.
- The investigator said that ITI should close Mr N's account as per his initial request, pay him the cash equivalent to the value of his accounts as at 21 January 2021 and pay him £200 for the poor service and inconvenience he had been caused.
- A second of our investigators later considered the complaint and thought that it should be upheld, and Mr N should also be paid 8% interest on the value of his accounts from 21 January 2021 to the date of settlement.

We didn't hear back from ITI and Mr N raised additional concerns as ITI had announced it was withdrawing from the UK retail market.

As the complaint remained unresolved, it was passed to me for a decision.

I issued my provisional decision explaining that I intended on reaching a different conclusion than the investigator. But I asked both parties to give me anything further they wanted me to consider before I issued my final decision. Here's what I said;

"Despite requests, there was very little information or evidence from ITI for the investigator to have relied upon, so the opinion was issued in the absence of that. ITI has provided some further information at my request so I do have additional evidence to consider.

But when the evidence I have for a complaint may be incomplete or contradictory, I have to make my decision based on the balance of probabilities – which, in other words, means I base my decision on what I think is most likely to have happened given the available evidence and the wider circumstances.

The account closure

From what I have seen, my general understanding of how a customer would need to go about closing an account with ITI is that they would request any shareholdings with ITI be sold and any cash on account could be paid out.

Mr N wanted to close his account. After having initial problems accessing the portal to his account he had been sent, he sent a withdrawal instruction for both of his accounts to ITI on 21 January 2021.

But those withdrawal instruction documents only referred to the cash held on the accounts and not any shareholdings. If Mr N had wanted to have his whole account in cash, he would have needed to instruct that his holdings be sold and request for the resulting cash to be transferred to him. So, I've considered the information he has given us and what he has said he was told by ITI in order to do that.

In his complaint to the Financial Ombudsman in July 2021 Mr N said that 'after several phone calls and logging into the account portal I have still not received money due. Having looked on the account portfolio now I see that both accounts appear to be processing'. Mr N has sent us screenshots of this and I note it says 'Your request for closing ITI account has been sent successfully. We will get back to you soon.' And under 'Current Status' it says 'PROCESSING'.

Amongst other contact with ITI, Mr N told us he had phoned and was informed of the

process to close the account, so he called the dealing team as advised and emailed instruction to close his account. He told us he sent off the appropriate proof of identity and the form that had been emailed to him for instruction to close both accounts.

Mr N told us that in chasing up the closure he received varying replies including 'you have already closed this account', 'you haven't closed this account', 'you need to send in the paperwork', the latter for which he had done on several occasions. He says he was stuck in an endless loop.

Mr N has provided us with various email conversations he had with ITI which started on 14 August 2020 when he confirmed he couldn't sign into his account and went on to request new signing in details. On 21 January 2021 he emailed to the 'cash withdrawal' email address at ITI to say 'I would like to confirm that I wish to close these accounts. Please find withdrawal claim form and bank statement.' In response he was sent a holding email from the 'Cash Withdrawal' team but was later emailed on 8 April 2021 and was advised to 'Please complete and send back the attached withdrawal form with a bank statement...'

Mr N raised a complaint and was advised he would need to onboard so he could trade his stock online and then withdraw the funds, or contact the dealing desk, details for which it said had already been emailed to him. Or he could transfer his account to another broker. Mr N told us he had already emailed the dealing desk confirming he wanted to close his account in January 2021 by which I assume he is referring to the cash withdrawal request referred to above which I note was confirmed as being received by the cash withdrawal team.

After further correspondence Mr N was advised in April 2021 that he would need to sell his stock and that details of how to trade were on its website. And in May he was advised to send his cash withdrawal form and bank statement and again in June he was told 'If you wish to liquidate your account, please email us a proof of your ID and a recent bank statement' which I understand he did.

In ITI's response to Mr N's complaint it said he had been informed in April 2021 about his account and I note that in that email from ITI he was told to either onboard and trade online or contact the dealing team. Mr N has told us that he had already contacted the dealing team in January 2021.

The above suggests that Mr N was given different information during his attempts to close his accounts. From what Mr N has told us, he was making genuine attempts at closing his account, and I haven't seen anything to confirm he received consistent or accurate help or advice when he approached ITI. So, I can understand his frustration and think Mr N should be given some compensation in recognition of this.

But I can't agree that Mr N gave ITI the appropriate instructions in order to sell his shareholdings and then request the resulting cash be paid to him so that he could close his account. Mr N's account wasn't a discretionary one, so any instruction to place a specific trade would need to come from Mr N.

Mr N's ability to trade

So, I need to consider whether Mr N made clear that he wanted to sell his shareholdings and for the resulting cash to be paid to him. From what I've seen it seems that Mr N's understanding of closing his account – which would have included selling his shareholdings – was for him to send the 'cash withdrawal' form which he did for both accounts on 21 January 2021 with 'Please close this account' annotated

in the client comments section.

However, both of Mr N's accounts were 'execution only' which meant that Mr N had to give instructions for any disposal of shares on his accounts. ITI couldn't carry out any trades unless instructed to do so by Mr N. And I don't think the annotation of 'Please close this account' on a form – which was designed for the purpose of cash withdrawals – was a sufficient instruction in order for ITI to carry out the trades.

So, in order for me to uphold Mr N's complaint, I would need to see that he tried to place an instruction to sell his holdings but was prevented from doing so because of any actions – or inaction – of ITI. And I can't see that is the case as Mr N didn't give such an instruction.

And I've also borne in mind that without clear evidence of the sales Mr N says he wanted to make but weren't carried out due to ITI's failings, I can't identify a financial loss arising from those sales. So, I've nothing to show that Mr N missed out on particular profits due to being unable to carry out those sales. I don't think it would be fair and reasonable in those circumstances to award redress for such lost profits.

Also, there's no suggestion Mr N attempted to make the particular sales with ITI. As I understand it there were messages on ITI's website that told customers in September and October 2020 that customers could place orders over the phone at online dealing rates and that this was regardless of the status of the client's registration – ie if a customer hadn't 'onboarded' their account as in Mr N's case. So, I don't think it's unreasonable to conclude that Mr N could have traded. And as pointed out by ITI in its response to Mr N's complaint, it was the customer's responsibility to check the website for updated information and emails were sent to all customers advising them to call the dealing desk if they wished to trade.

So, what I have doesn't persuade me that ITI this most likely caused Mr N a financial loss. And I don't overlook that ITI says Mr N could actually have traded by phone anyway – and so was not in fact prevented from making any trades he might have wished to make. I did ask ITI about any phone records it had of Mr N contacting the dealing desk but said it had checked to the best of its abilities and it had no records of calls from his registered phone number."

I concluded that Mr N had been given conflicting information when trying to close his account which must have been frustrating for him. I thought ITI should pay him the increased sum of £250 because of the frustration he was caused. I note there was a typographical error in the final section of my provisional decision where I quoted £200. That should have read £250 as stated in the 'putting the matter right' section of my provisional decision. I have informed ITI of this error and I apologise to the parties.

Overall, I didn't find that Mr N had been able to evidence he tried to sell his shares and was prevented from doing so by ITI. The information he needed in order to sell his shareholdings and close his account was on ITI's website and contained in the emails it sent to him.

ITI responded by saying that it would pay Mr N £200 if that would help resolve the complaint. I contacted ITI to confirm that amount should have read £250 as quoted in the 'putting the matter right' section.

Mr N also replied. He didn't agree with my proposed outcome. He said;

- He didn't agree that the withdrawal form only referred to the cash element of his account. The form only referred to his account as a whole and not just the cash. If it

wasn't sufficient, he should have been told otherwise.

- The 'cash withdrawal' email address he used was the address he already held. He didn't realise the choice of address used was so important when the form itself didn't mention cash withdrawals only. His comment 'close my account' should have been enough.
- Mr N called multiple times to sell his shares and close his account. He finds it coincidental that ITI can't find those calls which are key to his complaint. He had called the dealing team to tell of his intentions, but his shares weren't sold.
- He was given conflicting information. The earliest record ITI has of telling him it had informed him he needed to first sell his shares was April 2021 when he had originally made contact in January. ITI hadn't been able to provide any information from around that time because as it would show it was ITI who had caused the error.
- If he had been told he needed to confirm via email that he wanted to sell the shares, withdraw the cash and close his account, despite having done so via the ITI portal and numerous calls, he would have done so.
- ITI had failed on multiple occasions, given him conflicting information and misinformation.
- He is now no longer able to access any information about his account or withdraw any money held by ITI due to it no longer conducting any UK dealing.
- He referred to the portal information he had been given when trying to close his account. If it had progressed as it should have done, this complaint would never have happened.

In light of the comments that Mr N made I reconsidered my provisional decision and my conclusion provisionally changed. So, I issued a second provisional decision to allow the parties to respond. This is what I said;

"ITI has said it was a customer's responsibility to be aware of information provided on its website. And I don't find that an unreasonable comment as I think it most likely that is where its customers would refer to for information and updates. ITI has told us the relevant information Mr N would have needed about how to trade was on its website, so it was available to him. I've borne this in mind when considering Mr N's complaint. But equally I've taken account of Mr N's comments.

I'm satisfied that Mr N was making genuine attempts to close his account – whether Mr N's understanding of how he went about that was correct or not. And I'm now minded to conclude that ITI should have done more for Mr N. I say this because I've reconsidered the actions that Mr N took and whether it would have been reasonable for ITI – if it wasn't willing to have sold Mr N's shares as a result of the instructions he had given – to have provided further information or guidance in response to those requests for action.

As mentioned in my provisional decision Mr N has sent me screenshots of what he saw when he was trying to close his account via the portal. I can see it says 'You[r] request for closing [your] ITI account has been sent successfully. We will get back to you soon' and its 'current status' was 'processing'. He said it should then have progressed to a further screen to confirm he wanted to close his account. Mr N has

said he was in an endless loop and couldn't progress any further than what ITI's portal was telling him.

I think Mr N took additional action in order to mitigate the position he found himself in. The portal wasn't working as it should have done and he told us that as a result of that, he spoke with ITI many times, including the dealing desk to whom I understand he explained that he wanted to close his account.

Mr N has referred to the many phone calls he had with ITI. I appreciate how frustrating it must be for him that ITI can't retrieve those calls as he says they are very pertinent to his complaint. And Mr N has said that those calls would have been from a work phone number he can no longer access. So, there aren't any recordings available for me to listen to. I should say that I would expect a regulated business such as ITI to have provided me with those calls if they were available. As mentioned in my provisional decision, when information I have is incomplete, I have to base my decision on what I think is most likely.

And upon reconsideration of this complaint I find that Mr N's comments are compelling. I think it most likely that Mr N did place those calls – and in particular to the dealing desk which is the team that ITI has said he should have spoken to in order to sell his shares if he wanted to close his account.

Even if Mr N didn't express himself properly and just explained he wanted to close his account rather than give specific instructions for his holdings to have been sold in order for the resulting cash to have been sent to him, I would have expected the dealing team to have advised him otherwise. I think the dealing team should have picked up on this request and either requested confirmation from him that he wanted his shares to have been sold or explained that he would need to instruct ITI to sell the shares rather than just inform it that he wanted to close his account.

I was previously of the view that Mr N's withdrawal request emailed to the 'Cash Withdrawal' team didn't amount to a sale instruction to be carried out by the dealing desk. But I have reviewed this evidence further and again note he also sent an email saying 'I would like to confirm that I wish to close these accounts. Please find withdrawal Form and bank statement. If you require more information please reply to this email.'

So again, taking ITI's business as a whole, even if Mr N had incorrectly emailed the cash withdrawal team with the request to withdraw his cash – which I note it did action for the cash that was on account – I think it should have taken further action. Included on the form, there was an annotation under the 'client comments, if any' section which said 'Please close this account'. Even if the cash team didn't know how Mr N should go about that I would have expected the cash team to have picked up on the request and passed it onto a team that could have helped. Bearing in mind all of the other actions Mr N had tried to take in order to close his account I am satisfied he was making a clear – and standalone instruction – which should have either been acted upon, clarified or redirected.

Overall, I'm satisfied that it was undeniable in the various different ways Mr N told us he contacted ITI that he was asking it to sell his shares and close his account. What seems to have prevented that happening is that he didn't give those two instructions separately. But I don't think it was fair and reasonable for ITI to have failed to have grasped Mr N's intent here. It had a number of opportunities to confirm that specific instruction to sell the shares (if it even needed to) and I think it would have been reasonable, in these particular circumstances, to have expected it to do so. Had that

happened, I'm satisfied Mr N's shares would have been sold and his account closed in January 2021 as he had wanted.

From what Mr N has said, it seems like he followed the instruction he was given by attempting to close his account via the portal. He gave instructions that he thought were clear and in line with what he had been advised to do. He tried to follow this up and wasn't informed at any stage that he hadn't given the instruction he thought he had – or in the manner or via a route ITI expected it to be given. But I am satisfied that ITI was sufficiently aware of his intent and that he hadn't given the instruction in the way that it needed. On balance, I think it was ITI, more than Mr N, who had the knowledge and opportunity to intervene and correct the course of events here.

I asked ITI what action it would take if Mr N's instruction wasn't in line with its processes and what action was taken to ensure he was aware of anything different or further that he needed to do. But I didn't receive any response that explained what action ITI should or would have taken. So bearing in mind, what I think are genuine attempts to close his account – first by using the portal, then by phoning and emailing – I think ITI should have acted sooner than its response of 9 April after Mr N raised his complaint. In that response he was advised to either onboard – which he had already problems with – or call the dealing desk which he told us he had done on many occasions.

After careful reconsideration, and taking all of the above into account, I think Mr N's complaint should succeed. I think ITI should have been more proactive in assisting Mr N in selling his shares and closing his account. He has provided sufficient evidence – and what I consider to be compelling testimony – for me to conclude that Mr N's version of events are most likely in his attempts to contact ITI. So ITI needs to put the matter right for the losses Mr N has suffered as a result of not being able to sell his shares despite his attempts to do so.

As ITI doesn't have copies of any call recordings available, it's difficult for me to assess when it would be reasonable to have assumed that he was making a firm instruction to close his account with either the dealing desk or another team at ITI. I'm aware of the conflicting information he was receiving from the portal about the actions being processed on his account and if that instruction had processed correctly how quickly his shares would have been sold.

But on balance I think a clear record of the date that Mr N wanted to close his account was when he sent the email of 21 January 2021 to the cash withdrawal team as we know that was received and acted upon as the cash from his account was paid out to him. Bearing in mind that I think this instruction should have been noticed and which should have resulted in Mr N being advised of the action he needed to take – to phone the dealing desk and give it a sale instruction – then I think that date would be a reasonable date to assume that Mr N would have been aware of the action that he did need to take and the sales of his investments would have taken place.”

To put the matter right I said ITI should sell Mr N's shareholdings and pay him any difference in prices from 21 January 2021 to the date the shares were sold. And as Mr N had been deprived of the cash in the meantime, if there was a loss, interest at a rate of 8% simple should be added to that sum from the date the shares should have been sold to the date of payment.

I said ITI should also pay Mr N the sum of £250 for the frustration Mr N has been caused.

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.

ITI didn't respond to my second provisional decision.

Mr N did reply. He outlined his understanding of my proposed outcome, and if his understanding was correct, then he accepted the conclusions outlined in my provisional decision.

As ITI didn't provide anything more for my consideration and Mr N agrees with my proposed outcome, I see no reason to depart from my second provisional decision. So, I confirm those findings and I uphold Mr N's complaint. And ITI needs to put the matter right.

Putting things right

To put the matter right ITI should;

- sell the remaining shares in both his accounts and pay him any difference in price from 21 January 21 to the date those shares are sold.
- As Mr N has been deprived of that money, if any compensation is due to him, interest at a rate of 8% simple should be added to that sum from the date the shares should have been sold to the date of payment to Mr N.
- Mr N should also be paid £250 for the frustration that has been caused.

My final decision

For the reasons given above, I uphold Mr N's complaint and ITI Capital Limited should put the matter right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 13 July 2023.

Catherine Langley
Ombudsman