

## The complaint

Mr C complains that Interactive Investor Services Limited did not allow him to transfer unsettled funds between accounts when he reasonably expected to be able to do this. He says this prevented him from making planned trades at more favourable rates.

To put things right, Mr C wants IISL to pay him financial compensation and undertake not to deprive him of the facility to transfer '*credit provided by the security of ....sales*' in future.

## What happened

Mr C held three accounts with IISL. On 5 April 2023 he placed trades to sell shares held in one of his accounts, with a view to using the proceeds to buy shares in one of his other accounts.

His trades were executed immediately; with a settlement date of 11 April 2023.

Mr C was able to view this information. He understood that the sales proceeds would not reach his trading account until 11 April. But he had previously sold shares in similar circumstances and used the proceeds of sale the same day to buy other shares. So he assumed he was able to use the expected proceeds to make purchases in his ISA straightaway on 5 April.

After attempting unsuccessfully to transfer the anticipated proceeds to his ISA ahead of the settlement date, he complained to IISL.

IISL didn't uphold Mr C's complaint, mainly saying that it would not allow a client to spend cash that had yet to settle in the account, and pointing in support of its position to its terms and conditions.

Mr C brought his complaint to this service. One of our investigators looked into what happened. She didn't recommend upholding Mr C's complaint, mainly saying:

- IISL had taken a commercial decision, as it was entitled to do, to allow customers to use proceeds from unsettled trades within the same account
- it hadn't ever allowed customers to transfer proceeds to another account before settlement, as Mr C had tried to do here, and there was nothing in IISL's terms of service that suggested this was possible
- she didn't agree that the business risks were the same whether or not the 'proceeds' remained in the same account or that allowing the 'proceeds' to be applied towards future trades within the same account meant, by natural extension, that 'proceeds' could be transferred for this purpose to another account.

Mr C disagreed. Briefly, he said his main concerns were as follows:

- the investigator ignored the fact that IISL didn't distinguish between the way it treated funds whether or not they were subject to an internal transfer and specifically, it didn't

say anywhere that funds remaining in the same account could be used to fund a purchase before a sale had settled.

- The detail of the contract between Mr C and IISL would in law be subject to the provisions of the Unfair Contract Terms Act (UCTA) and anything hidden in the small print deemed insufficiently prominent to apply. Mr C said that failure to meet the standards in UCTA amounted to not acting fairly and treating clients reasonably.
- Having routinely allowed Mr C the use of unsettled funds when not subject to an internal transfer, Mr C was encouraged by IISL's conduct to believe such use would be allowed in the context of an internal transfer; and to refuse to permit this is unfair and unreasonable.
- Mr C felt that the investigator had accepted at face value IISL's assertion that additional complications applied when transfer to another account was involved and made no allowance for the fact that the complications were assumed rather than a real risk.
- Mr C suggests that as IISL's terms prohibit using sale proceeds to fund trades ahead of the sale settling in any event, this demonstrates the fundamental unfairness of the policy.

In ongoing correspondence, Mr C has also taken issue with the investigator's interpretation of IISL's terms which, she suggests, supports IISL's position. Mr C's view is that there is a clear distinction between making a withdrawal of funds as opposed to doing an internal transfer.

As the complaint isn't resolved, it comes to me to make a 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.

We provide an informal complaints handling service and this is reflected in the approach I've taken when considering this complaint. I'd like to assure Mr C that I've carried out an independent review. Having done so, I've reached the same conclusion as our investigator.

It's part of my role to identify and concentrate on the core issues I need to address in order to reach a fair outcome. This means I won't necessarily mention everything Mr C has brought to my attention and I've expressed some of his concerns in my own words. But I will comment on everything that makes a difference to the outcome of the complaint.

I appreciate that Mr C feels strongly about what happened. Mr C puts things this way: *'...(IISL) should explicitly spell out PROMINENTLY that proceeds can't be transferred within my ... account until settlement has taken place. To rely on an ambiguous provision, hidden within the depths of an extensive set of Ts & Cs, is to take unfair advantage of the unequal bargaining power of an individual consumer dealing with a large sophisticated business.'*

I understand the crux of Mr C's complaint is that IISL should have allowed him to place trades in his ISA account on the strength of the expected proceeds he would receive when trades he had instructed settled in his General Investment Account. So this is the focus of my decision.

I must take into account the relevant law, regulatory requirements and best industry practice when making my decision. But to be clear, it's not for me to legally determine whether or not there's been a breach of contract in law, in the same way that a court or tribunal would. It's not what I'm required to do. Neither is it for me to determine whether or not IISL's terms and conditions are in breach of UCTA – which is outside the purview of our service as an alternative dispute resolution service (alternative to the courts) and beyond my role as an ombudsman.

I can however consider the customer service Mr C received.

So far as the terms and conditions are concerned, IISL is entitled – in the reasonable exercise of its legitimate commercial judgement – to set its own terms of business. But it's for customers to consider and agree these before going ahead, so that they know where they stand with the business. Mr C would have had to sign up to and agree IISL's account terms and conditions in order to use its services. If Mr C disagreed with anything, or needed further clarification, he could have questioned IISL at the time, and ideally before going ahead if he felt there was any ambiguity.

In the section headed 'Holding money and custody of investments', IISL's relevant account terms of service include the following:

'6.3.3

- a) The value from sales of investments held in our safe custody within your Account will be reflected on your Account from the date your order is placed and will be available for the purposes of buying other investments. You will not be able to withdraw such sale proceeds from your Account until the settlement date shown on the contract note.'

Despite what Mr C suggests, I'm not persuaded that IISL is hiding behind its terms and conditions to justify a poor level of service and not paying him any compensation. IISL provided information upfront to clients indicating that anticipated proceeds from investment sales would be available to be used to fund other purchases held within the same account – whilst also making reasonably clear that the proceeds couldn't be removed from the account until after they had been received.

On balance, I think the material terms relating to Mr C's complaint are, broadly speaking, clear, fair, and not misleading. I've seen nothing in IISL's terms that says customers can transfer unsettled proceeds between accounts. So I don't find that IISL did anything wrong or made any error when it declined to allow Mr C to transfer unsettled funds which it hadn't at that stage received.

I appreciate that Mr C says an internal transfer isn't a withdrawal – but that doesn't affect my overall view. Unless and until the physical proceeds are received in an account, then no actual transfer of funds out of the account can happen – irrespective of whether the money is withdrawn or moved internally.

Even though I have found that IISL acted within its terms of service, I still need to consider whether IISL acted fairly and reasonably overall – and I think it did. As a broker, IISL was reasonably entitled in my view to expect to hold sufficient cash deposits before allowing clients to use the monies – especially in a way that could expose the business to more risk than it was comfortable taking.

There is always some degree of risk that a planned sale might fail, be reversed or be cancelled by the market before settlement. In that event, IISL would need to restore the account and any subsequent planned trades would need to be 'unwound' – a process that might understandably be more complex if this involved transactions with cash in another account, especially if tax implications were a consideration.

The fact that IISL chose to accept some degree of business risk, when it allowed clients to place trades within the same account as funds were expected, was a matter for its own commercial discretion. Whilst Mr C thinks the risks are commensurate, it doesn't follow on from this that IISL was required to allow clients to treat the proceeds as being available to trade in other accounts. The fact alone that IISL didn't also choose to take the same approach to him transferring the value of his trades out of the trading account ahead of the trades settling isn't a good enough reason for me to uphold Mr C's complaint.

Mr C feels that common industry practice amongst brokers and platforms such as IISL supports his position, along with the fact that IISL allows trades in these circumstances within the same account. But what Mr C wanted to happen wasn't part of IISL's normal operating process and I'm not persuaded that its position here is out of step with general industry practice.

I would also mention that even if I were to uphold this complaint, when thinking about any redress, I would need to keep in mind that the ombudsman approach to redress is to take into account what Mr C could have done differently to mitigate any loss. IISL has said that Mr C always had the option to add funds from another source the same day via debit card if his priority had been to action particular trades. In those circumstances, Mr C wouldn't necessarily be entitled to the redress he is seeking for investment loss in any event.

In order to uphold Mr C's complaint I would have to find that IISL made an error or acted unfairly or unreasonably. After having taken into account everything that Mr C and IISL have told me, I haven't seen enough to show that IISL did anything wrong or that it treated Mr C in a way that wasn't fair and reasonable. So I can't uphold this complaint.

I appreciate that my decision will be disappointing for Mr C but I hope that setting things out as I've done helps to explain how I've reached my conclusions.

### **My final decision**

For the reasons I have set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 February 2024.

Susan Webb  
**Ombudsman**