

The complaint

Mr P complains about IG Markets Limited, referred to as “IG” or “the business”.

In summary, he complains that IG shouldn’t have allowed him to buy American Depositary Receipts (ADRs) in Sea Limited within his ISA. He says that when IG informed him of the ISA ineligibility, he was left with limited options and was forced to crystallise a loss.

To put things right, he’d like his ISA allowance reinstated and compensation paid for financial loss.

What happened

One of our investigators considered the complaint and thought it should be upheld. In summary, he said:

- IG concedes that Mr P shouldn’t have had the opportunity to buy ADRs in Sea Limited within his ISA, however Mr P chose to have them transferred to his General Investment Account (GIA), demonstrating a wish to remain invested in that particular instrument.
- Mr P had the same number of shares in his GIA, as he did in his ISA, so in the future he could still benefit from a rise in share price.
- The above notwithstanding, when IG found out about its ineligibility, it acted promptly.
- The issue remains with the options it presented to its investors.
 - The option to transfer the holding to the GIA required selling and repurchasing the holding in the non-ISA environment and this caused a change in Mr P’s desired holding and crystallised a loss on his position.
- Whilst Mr P wants IG to reinstate his ISA allowance taken up by the value of the investment in the ADRs, the investigator doesn’t agree.
- It’s not clear if Mr P has other ISA accounts with other providers, but he’s not utilised his ISA allowance for 2023/24.
- This means that he can mitigate his allowance this year, albeit without the direct type of investment in the ADRs at the price he purchased.
- Mr P still has 75 shares in Sea Limited, and much of his loss is due to purchasing shares at the top of the historical market. But if the share prices increase, he will benefit. Because of this he can’t ask IG to compensate for the crystallised loss.
- IG has however caused considerable distress and inconvenience for which it should pay Mr P £500 compensation.

Mr P disagreed with the investigator’s view and asked for an ombudsman’s decision. In summary, he said he remained unhappy about the following points:

- IG allowed him to purchase an ineligible holding in his ISA, thus consuming a percentage of his ISA allowance for that year with no way of getting it back to reallocate to another holding.
- Having or not having used his future ISA allowances is not relevant to his matter as that is after the fact. He invests his ISA allowance yearly to maximise the benefit this

structure allows.

- This ordeal has caused him great frustration.
- He doesn't accept that IG acted promptly, and it should have to change its controls and processes.
- He doesn't disagree that he wished to remain invested in Sea, and if advised, would've happily done so. However, having to sell or transfer (the only option available to him) both required him to sell at market value at the time, hence crystallising a loss.
- He was allowed to purchase ineligible shares to begin with.
- He has lost his ISA allowance to the ineligible investment.

As no agreement has been reached, the matter has been passed to me for review.

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, I agree with the investigator's conclusion for much the same reasons. I'm going to uphold the complaint.

On the face of the evidence, and on balance, I'm persuaded that IG acted unreasonably by allowing or giving Mr P the opportunity to buy ADRs in Sea Limited within his ISA. I agree that this shouldn't have happened.

However, I don't think the business is responsible for the losses claimed. Based on what the investigator and IG say Mr P hasn't utilised his ISA allowance for 2023/24, he therefore has an opportunity to mitigate any allowance/loss. That notwithstanding, I still agree with the investigator that IG should pay Mr P £500 compensation for the distress and inconvenience caused.

But before I explain further why this is the case, I think it's important for me to note I very much recognise Mr P's strength of feeling about this matter. He has provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope he won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised under a separate subject heading, it's not what I'm required to do in order to reach a decision in this case. In other words, I don't have to comment upon every single point made. My role is to consider the evidence presented by Mr P and IG, and reach what I think is an independent, fair and reasonable decision based on the facts of the case. Despite what Mr P says, I don't need any further evidence to make my decision.

I uphold this complaint, in brief, for the following reasons:

- There's no dispute that IG allowed Mr P to purchase an ineligible holding in his ISA, and it shouldn't have. Whether or not it should've in the first place, isn't something I need to consider, as it looks like there was possibly some disagreement/confusion amongst ISA managers as to whether or not they could allow in their wrapper. I note IG states:
 - *"On further consultation with our trading desk, I would like to further clarify that we can view the stock as never being ISA eligible, and that IG had misclassified it based on the information available at the time."*

- On the face of the evidence, and on balance, despite what he says, I'm not persuaded that in the circumstances IG is responsible for losses claimed.
- Despite what Mr P says, it seems that he hasn't utilised his ISA allowance, and therefore is in a position to be able to help himself mitigate his losses. It doesn't matter that it's after the event so to speak but this does have an impact on what IG may (or may not) be obliged to do by way of redress. I'm mindful that Mr P invests his ISA allowance to maximise the benefit that the structure allows and so this wouldn't be an issue for him.
- Despite what Mr P says, I'm broadly satisfied that IG behaved reasonably once the issue came to light. I appreciate Mr P disagrees, but this doesn't mean the business has done anything wrong. On balance, I'm satisfied it did what it reasonably could to assist. I note IG states:
 - *"Once IG became aware it was non-qualifying we notified the client of his options in line with HMRC guidelines and our T&C's. We have also disclosed this matter to HMRC..."*
- I appreciate what Mr P says about changes to controls and processes but that's not something I can comment upon. It's a matter for IG how it runs its affairs, but that said, IG will probably take on board his comments and observations. In any case, the ineligibility is principally down to HMRC rules/guidelines.
 - Based on what the business says, I understand that as this is an ADR, where the underlying parent company isn't listed on a HMRC recognised exchange, it shouldn't be held within an ISA.
- I appreciate what Mr P says about having to sell his holdings. But in the circumstances, I don't think that was an unreasonable approach given the limited options available.
- I note IG states:
 - *"IG offers a flexible stocks and shares ISA, this allows you to withdraw some of the money invested in your ISA and reinvest it at a later date within the same tax year. Any funds withdrawn can be replenished in addition to the £20k allowance. In order to maintain the subscription the shares must be sold first and the proceeds are then transferred out to buy the shares back in the general investment account (GIA)."*
- On the face of the evidence, and on balance, I'm unable to safely say that Mr P suffered the losses claimed. Based on the investigator's analysis which I don't disagree with, I note the following:
 - In September 2021, Mr P purchased the ADRs at the top historical market price.
 - When Mr P was given the option to sell or transfer, and he chose (of his own volition) the option to transfer. I note IG gave Mr P 30 days' notice in accordance with IG's terms and conditions to decide what to do.
 - This inevitably required a sale of his holding, as an in-specie transfer (from his ISA to GIA) wasn't available. It's arguable that this demonstrated Mr P's wish/willingness to maintain his investment.
 - I note IG says that if it was to move shares without crystallising, investors would lose out on the flexible allowance as that relates purely to cash, not to stocks moved out.
 - After the transfer in September 2022, his holdings remained at 75 shares – in other words the net result of the transfer was 75 shares – and, although the loss was crystalized at that point, any future recovery in share price will inevitably be to his benefit. I note there's nothing to suggest that this wouldn't happen thereby placing him as close to the position he should have been in as is possible.
- I appreciate that this whole episode has caused Mr P (through no fault of his own) a considerable amount of distress and inconvenience. Afterall, IG allowed Mr P to

purchase an instrument that was ISA ineligible. That's why I think in this instance £500 compensation as suggested by the investigator (for distress and inconvenience caused) and agreed by the business is broadly fair and reasonable.

I appreciate that Mr P will be thoroughly unhappy that I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what he wants to hear. Whilst I appreciate his frustration, I can't safely say that IG is responsible for the losses claimed.

In other words, on the face of the available evidence, and on balance, I can't give him what he wants.

Putting things right

IG Markets Limited should pay Mr P £500 compensation for distress and inconvenience caused.

My final decision

For the reasons set out above, I uphold this complaint.

IG Markets Limited should pay Mr P compensation, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 15 December 2023.

Dara Islam
Ombudsman