DRN-4401357

Financial Ombudsman Service

The complaint

Mr S complained that Halifax Share Dealing Limited ('Halifax') delayed the transfer of his ISA to Halifax. He said the delay caused him to miss out on selling an underperforming investment and buying a better-performing investment, and so caused him a financial loss.

What happened

Mr S had a stocks and shares ISA with his previous broker. On 28 July 2021 he applied to Halifax to have the holdings in his ISA transferred to another ISA which he already held with Halifax.

On 29 July 2021 Halifax sent Mr S a transfer form to complete. After some delay due to Halifax not sending a correct return envelope Mr S completed the form on 1 September 2021 and Halifax received it on 6 September 2021. On the form Mr S selected an '*in-specie*' transfer, which meant his investment would be transferred to Halifax rather than the investment being sold and cash being transferred instead. He later told us that Halifax had told him that the time taken for the transfer wouldn't be affected by whether it was in-specie or in cash.

On 9 November 2021 Halifax sent an acceptance form to Mr S's previous broker to accept the transfer of his investment. However, Halifax was unable to accept the particular investment that Mr S wanted to transfer. So Halifax should've said the transfer had to be in cash.

After Halifax wrongly sent an acceptance form to Mr S's previous broker, there followed a period of confusion and delay. Ultimately, to facilitate the transfer, Halifax converted Mr S's investment into a different investment and credited it to Mr S's Halifax account. Mr S said he received the transfer on Friday 4 February 2022 and made an order on the same day to sell the investment. The sale was completed on Monday 7 February 2022.

In an email to Halifax on 1 December 2021 Mr S said, '*The main reason that I wanted to move this investment to Halifax is to change the type of investment because of the poor … performance*'.

In an email to Halifax and his previous broker on 1 February 2022 Mr S said '*Every day that my money is invested incorrectly, I am losing money*'. And, '*These delays mean that I did not have access to my funds and I also couldn't change my portfolio*'. And '*I worked hard to make this money! Not having access is absolutely unacceptable*'.

In an email to Halifax and his previous broker on 6 February 2022 Mr S said, '*Next week I should be able to reinvest the funds differently as I wanted in August*'.

On 14 February 2022 Mr S complained to Halifax about its handling of his ISA transfer.

In March and April 2022 Mr S sold the holdings in his Halifax ISA. He's said he transferred his funds to a different ISA provider because he lost trust in Halifax.

On 30 August 2022 Mr S bought shares in a company I will refer to as 'A' at a price of 158 USD per share.

Mr S's complaint

On 13 February 2022 Mr S complained to Halifax. He said errors by Halifax had meant that, during the period of delay, he missed out on buying shares in A. He said those shares had performed better than his previous investment and so he'd missed out on better investment growth.

Mr S said he'd previously bought shares in A in 2012. And he'd sold them in late 2020 to reduce his tax liability, with the intention of re-purchasing the shares inside an ISA wrapper. He said A had performed very well during the Covid lockdowns and he was confident A was low-risk and would perform well in future. He mentioned that he'd also purchased small amounts of higher-risk shares with amounts of money he could afford to lose.

Mr S also said he was thinking of moving his ISA to a different provider, depending on Halifax's response to his complaint. And he said:

> '*I will also need … time to recover from this unexpected and not pleasant experience before I make any further investments or transfers. I will need to get reassurance from Halifax that the lessons were learnt and any new transfer from Halifax to a new provider will be made quickly (should I decide to move my business elsewhere)*'.

Halifax acknowledged it had made some errors. In particular Halifax acknowledged it had failed to supply a correct return envelope when it sent Mr S the transfer form, and it had wrongly told his previous broker on 9 November 2021 that it could accept the transfer of his investment. And that had caused delay. Halifax apologised and offered Mr S £500 in redress.

Mr S wasn't satisfied with Halifax's response. So he referred his complaint to this service.

Our Investigator's view

One of our Investigators looked into Mr S's complaint. She said if Halifax hadn't sent wrong information to Mr S's previous broker on 9 November 2021 then the transfer wouldn't have been delayed and Mr S would've been able to sell his investment much sooner. She thought Mr S would've been able to sell on about 13 November 2021 if Halifax hadn't made the error it made on 9 November 2021.

The Investigator recommended that to put things right Halifax should not only pay the £500 it had offered Mr S. She said Halifax should also pay Mr S any amount he lost on the investment he was unable to sell between 13 November 2021 (when he would've sold it) and 7 February 2022 (when he did sell it). And Halifax should pay Mr S 8% simple interest on any amount due, covering the period from the date Mr S would've sold the shares but for Halifax's error to the date Halifax pays the redress to Mr S.

The Investigator didn't think it was possible to know when and even if Mr S would've purchased shares in A, if Halifax hadn't made the error it made. She said that in the absence of call recordings (which Halifax hasn't provided despite several requests from this service) she had no reason to doubt Mr S's testimony that he did tell Halifax that he wanted to buy shares in A once the transfer was done. But she took into account that Mr S didn't actually purchase shares in A after the transfer was done. So she didn't think it could be assumed that he would've purchased shares in A during the period of delay if there had been no delay. The Investigator also noted that Mr S had requested a transfer in-specie which she said showed his intention at the outset was retain the investment he had.

Mr S didn't agree with the Investigator's view. He said his intention had been and still was to invest in A. But there were many reasons for him to delay the investment. In summary, the reasons Mr S set out were as follows:

- Mr S and his wife were stressed as a result of the error by Halifax and the loss of access to funds. This meant: '*It took a lot of time to unwind and it was hard to move on because Halifax refused to take responsibility for their mistakes and I had to fill a complaint to the ombudsman in a timely manner and I had a backlog of tasks at work because I had to deal with this transfer during my working hours where the relevant providers were working*.' Reinvesting could be done on Mr S's own time whereas a complaint to this service had to be made quickly to ensure evidence could be collected.

- Mr S had to close his Halifax ISA and move to a different provider, and research an ISA provider that could be trusted and would charge minimal fees.

- Mr S had made very clear to Halifax in phone calls that he was losing money each day he was unable to access his investment and reinvest his funds in A.

- Conditions changed after the transfer was complete. In particular:

  'I could not foresee that a new international war against Russia would begin after the transfer was completed and interest rates would go up so much. I have changed my portfolio and included much more savings rather than investments because there I can easily get 5% tax free profits with 0 risk. Such situation was not available during the transfer.

  Despite the above, I did try to obtain [A] stock in several attempts after the transfer, the price was quite high considering the high interest at the time hence I put limit request orders that were not fulfilled for several months. These attempts were genuine but did not end up in a transaction hence I don't have official document evidence for these attempts …

  In the end I managed to buy [A] by the end of August 2022…'

Mr S provided evidence that in August 2022 he purchased shares in A in a new ISA that he'd opened with a different provider (not Halifax). He said:

> '*It took me time to recover from the mess Halifax … put me through. I sold all my Halifax ISA investments portfolio because I couldn't trust Halifax. I opened a different ISA provider … transferred the Halifax ISA … and learned their investment tools.*
>
> *I wanted to invest more in [A] stocks but I decided for the time being to reduce the total amount of investments, not only [A] stock and increase the ratio of savings.*
>
> *This due to the recent higher local interest rates and issues with global markets due to the implication of war in Ukraine, recession, inflation, etc.*
>
> *For the long term, I am planning to buy more [A] stock and double my [A] investment once the global markets stabilize.*'

Because no agreement could be reached, this complaint was passed to me to review afresh and 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.

It's not in dispute that Halifax made an error which delayed the transfer of Mr S's ISA holdings to his Halifax ISA. What is in dispute is the impact that had on Mr S and what Halifax should do to put things right for him. Mr S says if the transfer hadn't been delayed he would've invested in A. So, in addition to the redress recommended by our Investigator, he wants to be compensated for missing out on an investment in A.

Having considered this, I think the remedy recommended by our Investigator was fair. I'll explain why.

I accept that when Mr S initiated the transfer it was his intention to sell the investment he held in the ISA from the previous broker. Mr S was consistent in his communications about that, including on 1 December 2021 when he said in an email that the investment had performed poorly and he wanted to sell it. He made similar statements in later emails during the period of delay. And he sold the investment at the first opportunity after the transfer was complete.

However, I'm not satisfied that, on the balance of probabilities, I can conclude that Mr S would've bought shares in A after the transfer, if the transfer hadn't been delayed. I'll set out my reasons for this below.

In emails to Halifax and his previous provider during the transfer delay Mr S described the impact the delay was having on him. He mentioned the stress he was feeling and the inconvenience he experienced when he repeatedly followed up issues with both providers. And he said he was losing money because he was unable to sell the investment that he felt was performing poorly. He also mentioned that he was unable to change his portfolio while he didn't have access to his ISA holdings. At no time did Mr S mention in these emails that he was missing out on being invested in A. He didn't say what plans he had for investing the monies elsewhere.

In his complaint to Halifax Mr S mentioned that, during the delay when he had contact with Halifax, his written communication had been more considered than his communication by phone. He said he was likely to have contradicted himself during phone calls whereas his email communications were more considered and more representative of his actual views and circumstances. This indicates that a greater weight can be placed on Mr S's written communications than his phone communications during the time of the delay. And I think if Mr S had've been determined to invest in A throughout the period of delay he would've mentioned in the emails he wrote that described the impact the delay was having on him. So I think that even if he mentioned during phone calls to Halifax that he could've had a better investment if he'd been able to invest in A – Mr S's emails tend to show that he wasn't determined to invest in A after the transfer.

Mr S has said one reason why he didn't invest in A after the transfer was complete was that he needed time to recover from the impact the delay had had on him. I accept that he was distressed by the events that had occurred. But I note Mr S was able to submit an order to sell his investment on Friday 4 February 2022, the day on which his transfer had finally been completed. So Mr S was capable of submitting trade orders on the Halifax platform. And so I think if Mr S had been determined to invest the transferred amount in A then he could've done so on Monday 7 February or soon after – I think this is the case even though I accept that Mr S was distressed and inconvenienced by the delay. Whatever the non-financial impact was on him, I'm not satisfied I can say the delay caused Mr S to be unable to buy shares in A in early 2022.

Mr S said that by February 2022 market conditions had changed in such a way that investing in A was no longer advisable once the transfer had taken place. The key events Mr S referred to were the war between Russian and the Ukraine, and rising interest rates. Having considered this I'm not persuaded based on this that Mr S would've purchased shares in A in November 2022 had the delay not occurred.

I acknowledge that a war, such as the conflict between Russia and the Ukraine, is likely to cause disruption to investment markets. So, in the event of war, I'd expect some investors would reconsider their positions, depending on their investment objectives. But I'm not persuaded that in this case the war in the Ukraine caused Mr S to change his position in February 2022 from being determined to invest in A to deciding not to invest in A at that time. Russia's invasion of the Ukraine happened on 24 February 2022. Mr S said he couldn't have foreseen the war between Russian and the Ukraine – if that is so then he could've invested in A at any time from 7 February 2022 (when he sold his transferred investment) until the date of the invasion. Even if Mr S had've been aware that war was likely, for example due media coverage of the build-up, he didn't appear at the time to be influenced by that. His email of 6 February 2022 said he would now be able to '*reinvest the funds differently as he wanted in August*'. I also note that when Mr S did invest in A, in August 2022, war between Russia and the Ukraine was still continuing. So, overall, it's hard to conclude that the war was a major factor in Mr S's investment decision making.

I accept it's reasonable for Mr S to change his investment strategy in line with changes in interest rates. But I'm not persuaded interest rate changes caused him to decide not to invest in A after his transfer was complete. The Bank of England base rate rose from 0.1% to 0.25% in December 2021, and from 0.25% to 0.5% on 3 February 2022, and then to 0.75% in March 2022. So rates had recently increased at the time the transfer was completed, and they continued to rise. But by the time Mr S bought shares in A, in August 2022, the base rate had risen a further three times, to 1.75%. So it's difficult to conclude that Mr S would've invested in A before 7 February 2022 and then changed his mind because of rising interest rates.

Mr S cites the price of shares in A as a relevant factor explaining why he didn't buy shares immediately after his transfer was done. He said '*the price was quite high considering the high interest at the time hence I put limit request orders that were not fulfilled for several months*'. However, Mr S's purchase of shares in A was made on 30 August 2022 at a price of 158 USD per share. And the price of A was lower than 158 USD during most of June and July 2022. In mid-June 2022 the price was 130 USD per share – its lowest point since June 2021. I understand Mr S might have adjusted his target price according to various factors. However, his method of buying shares in A when he did casts further doubt on whether he would've bought shares in A any earlier than he did if Halifax hadn't delayed his ISA transfer. Mr S showed he wanted to enter the market at a price he thought was relatively low – rather than simply buy shares in A as soon as possible. So I think that, if Halifax hadn't delayed his ISA transfer, Mr S still might not have bought shares in A immediately. And, if he **had** tried to buy shares in A after the transfer, it's likely he would've placed a limit order which would've taken some time – possibly months – to be fulfilled. So, on balance I'm not persuaded Mr S would've bought shares in A at an earlier date, even if he'd attempted to do so.

I also note that Mr S had the opportunity to mitigate any losses he'd suffered while the price of A was below the November 2021 price. While I acknowledge changing macroeconomic conditions, the real opportunity Mr S was deprived of as a result of Halifax's actions was the chance to buy A at its price in November 2021. He had the opportunity to mitigate that in the summer of 2022 when the price then was lower than in November 2021. So if Mr S had suffered a loss due to the difference in price between A shares in November 2021 and August 2022, he could've mitigated that loss by buying the shares in the interim.

In addition to what Mr S told us about his plans for the transferred ISA monies, I've considered his actual investment activity during the period of the delay. The portfolio history of Mr S's Halifax ISA for the period 27 January 2021 to 20 April 2022 shows Mr S bought and sold a variety of shares in that time, including after he made his application to transfer his ISA. None of the shares Mr S purchased were shares in A. This is despite Mr S saying he wanted to increase his holding of A in 2020/21. I understand Mr S will have had reason to buy shares other than A during that time – he said he bought small amounts of higher-risk shares. And he might have had the transferred funds earmarked for investment in A. But I see that Mr S invested some thousands of pounds in diversified funds, including an index fund. And the fact he didn't invest any of his other monies in A during the relevant time tends to show he wasn't, at that time, particularly determined to invest in A.

I can't say for certain what Mr S would've done if Halifax hadn't made the error it made and so hadn't delayed his transfer. But I don't need to say for certain. To reach the conclusion that Mr S should be compensated for missing out on an investment in A, I need to be satisfied, on the balance of probabilities, that Mr S was more likely than not to have invested in A after the ISA transfer if the transfer hadn't been delayed. Having weighed up the all the evidence I can't say it's more likely that not that Mr S would've invested in A after the transfer if it hadn't been delayed.

I don't doubt Mr S had an interest in buying shares in A, before during and after the transfer of his ISA to Halifax. But I can't say he would've done so immediately after his ISA transfer (or at any particular time after that) if it weren't for Halifax's error. Mr S's intentions are not clear enough for me to be satisfied that it's what he would've done.

It's important to remember that what I'm considering is the likely position Mr S would've been in but for Halifax's error. Mr S's testimony that he wanted to buy A shares particularly (as opposed to any other investment) is one piece of evidence to help me determine that. Overall, given the lack of contemporaneous evidence of his intention to use this particular portion of cash to buy these particular shares, his trading of other funds around the relevant time and his decision not to reinvest the proceeds of the transfer and sale for some time, including when A was trading below its November 2021 price, I find that Mr S hasn't suffered a loss of investment gain by failing to be invested in A during the time that Halifax delayed his transfer.

So I don't think Halifax caused Mr S to miss out on being invested in A. And it follows that I'm not persuaded he would have invested the proceeds of this particular fund sale in anything else either, until he used it to buy shares in August 2022. Therefore I think the redress recommended by our Investigator is enough to put Mr S back in the position he would've been in but for the mistake by Halifax.

Putting things right

My decision is that to put things right for Mr S Halifax must do the following:

(1) If it hasn't already, pay Mr S £500 for the delay and distress and inconvenience that Halifax caused him.

(2) Compare the fund price of the investment Mr S transferred on 13 November 2021 and 7 February 2022 and pay Mr S any difference. Halifax may deduct the amount of

any income Mr S earned in the relevant period from the investment. If there is no difference, or if Mr S was better off after he sold the fund on 7 February 2022, then Halifax does not need to do anything further.

(3) Add 8% simple interest on any amount that's due to Mr S as a result of the calculation at (2) above. This should be calculated from 13 November 2021, the date Mr S is likely to have sold the investment he transferred but for Halifax's error, up until the date Halifax pays its settlement to Mr S.

My final decision

For the reasons I've set out above, my decision is that to resolve Mr S's complaint Halifax Share Dealing Limited must calculate and pay the award set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 6 December 2023.

Lucinda Puls
Ombudsman