

The complaint

Mrs G and her children, Mr G and Miss G, complain that Interactive Investor Services Limited won't redesignate two general investment accounts ("GIAs") from Mrs G's name into Mr G and Miss G's names. And they complain that Mr G's junior ISA ("JISA") didn't mature into an ISA account when he reached the age of 18. As a result, Mrs G holds accounts in her name containing assets that she says don't belong to her; and she has a second ISA in her name, instead of Mr G's, which isn't allowed under the ISA rules.

The complaint is brought on their behalfs by a third party. For ease of reading, I'll refer to everything as if it's been said by Mrs G.

The accounts Mrs G complains about were opened with a predecessor business. Interactive Investor took over the accounts in 2018 and is responsible for this complaint. For ease, I'll refer to the business as Interactive Investor throughout.

What happened

In or around early 2017, Mrs G says she contacted Interactive Investor to ask how to set up GIAs and junior ISA accounts for her children. She completed the required account applications and funded the accounts. She says she understood the accounts would transfer into the children's own names when they reached the age of 18.

She complains that the two GIAs remain in her name, even though they were set up as designated to her children. The children are now 18 and she's instructed Interactive Investor to transfer the accounts to them.

She says the JISA account for Miss G correctly matured into an adult ISA when she reached the age of 18 and she has been able to deposit money into the account herself. But the JISA account for Mr G didn't mature into an adult ISA when he reached 18. He couldn't deposit money into the account and, despite contacting Interactive Investor, the matter remained unresolved by March 2020. So that he didn't lose his ISA allowance for that year, he opened a fresh ISA account, but Mrs G says this was wrongly set up in her name. The same thing happened for the 2020/21 tax year. Mrs G made her own ISA subscriptions for these years, so it looks like she's made a double subscription each year, which is against the rules.

She wants the GIAs transferred into the names of the rightful owners – Miss G and Mr G. And she wants Mr G's ISA account put in his name. She would also like compensation for the time and trouble she's been caused.

Interactive Investor said that, when the GIAs were set up, Mrs G was able to assign them to the intended beneficiaries, but they remained legally hers. They weren't set up as bare trustee accounts. Interactive Investor can't transfer the accounts to Mrs G's children without them opening accounts in their own names.

Turning to the ISAs, it said a separate email address was provided meaning separate ISAs were opened and weren't linked to Mrs G's ISA account.

Our investigator's conclusions

Our investigator didn't recommend that Mrs G's complaint about the trading accounts should be upheld. She said the accounts didn't have the status or structure of a bare trustee account and the owner of the accounts was Mrs G.

The investigator didn't think it was reasonable that Interactive Investor had allowed Mrs G to open multiple ISA accounts in the same tax year. She thought Interactive Investor should transfer any subscriptions that were over the permitted limit into a GIA in Mr G's name. And that it should pay Mrs G £100 for the distress and inconvenience caused.

The parties' responses

Interactive Investor said it had sought guidance from HMRC about the ISAs. It said it could void the ISA and return the funds to Mrs G's bank account or transfer the stock into her trading account. These assets would be subject to capital gains tax as they shouldn't have been held in an ISA wrapper. It said it was Mrs G's decision to open separate ISA accounts for each of the tax years and it was her responsibility to ensure she didn't exceed the annual allowance. And it said Mr G wasn't entitled to £40,000 in a tax-free wrapper as the JISA contributions were limited to £18,000 a year.

Mrs G responded to say that Mr G had lost out on £40,000 of ISA contributions and that Interactive Investor should have stopped two ISAs being opened in the same name in the same tax year.

My provisional decision

As neither party agreed with the investigator's conclusion, the complaint was passed to me.

I thought the GIA's set up for the children should be transferred into their own names and I explained why. I said:

Mrs G says her intention when she opened and funded the two GIAs designated to each of her children, was that these accounts would transfer into each of their sole names when they reached the age of 18. Interactive Investor says it inherited the accounts from the previous business and they were set up as designated accounts. It says this was simply to segregate savings between beneficiaries whilst the ownership of the accounts remained with Mrs G. It told us the children would have had to provide their permission to set the accounts up as bare trustee. It couldn't provide any recorded phone calls from when the accounts were set up, or any additional paperwork.

I don't find it's necessary for a trust deed to be drawn up to establish a bare trust. What's important is the donor/settlor's intentions. Whilst it would have been helpful for Mrs G to clearly evidence her intentions at the time, I'm persuaded there is enough evidence to show she intended the accounts to be held as bare trustee accounts. I say this because:

- In her letter to set up the accounts dated 8 February 2017, she asked for two accounts to be opened in her name designated to each of her children. She said the first account "is for my son" and gave his full name and date of birth; and the second account "is for my daughter" and gave her full name and date of birth. If she wanted the accounts designated simply to remind her of the intended beneficiary, I wouldn't have expected her to provide dates of birth. I*

think this supports her intention that the accounts would be transferred to the children once they reached 18.

- Most importantly, Mrs G has provided evidence to show that the accounts were funded from bank accounts in each of her children's sole names. These payments were rejected by Interactive Investor because it had set the GIAs up in Mrs G's name and the money was being transferred from bank accounts which weren't in her name. It told her the children should transfer the money to Mrs G's bank account and then she should fund the accounts from there. I'm satisfied the money used to fund these accounts was the children's and not Mrs G's. There's nothing to suggest the money was gifted to Mrs G or that she should have any ownership over the accounts now that the children are 18.*
- Interactive Investor sent Mrs G regular statements and valuations. She received a separate statement for her own GIA, SIPP, and ISA accounts; a separate statement for her son's GIA and JISA accounts; and a separate statement for her daughter's GIA and JISA accounts. This supports her intention that the two GIAs designated in her children's names were not hers.*
- Mrs G's actions when her children reached the age of 18 support her intentions. She contacted Interactive Investor to ask why the accounts hadn't automatically transferred to her children.*
- Mrs G has told us she has not paid any tax on the income or gains in the accounts. These have been declared in the children's own tax returns.*

For these reasons, I think the money that was used to fund the children's accounts was always their own and that Mrs G had to be named on the account because they were under the age of 18. Now that they have both reached the age of 18, the accounts should be in each of their sole names.

Interactive Investor says it can't re-designate the accounts. But it will need to arrange for the assets in each account to be transferred into an account in the relevant child's name. And the children will need to complete whatever account opening forms and procedures that Interactive Investor requires. This should be carried out at no cost to Mrs G or her children.

Mrs G is concerned that the transfer of the accounts from her name to her children will be wrongly treated as a gift. But I think the evidence she's provided shows that the accounts should always have been treated as her children's accounts and that the money came from their own sources.

I agreed with our investigator's conclusion about Mr G's ISA account. I said:

Interactive Investor told us that Mr G's JISA automatically converted to an adult ISA when he turned 18 in January 2019. But restrictions were placed on the account, meaning it was effectively blocked, until such time that Mr G provided the documentation it had requested. I'm satisfied from what Interactive Investor has provided that it most likely would have sent a letter to Mrs G in August 2018 to tell her what Mr G needed to provide to be able to access his ISA once he turned 18. And that it most likely would have sent a letter to Mr G on the day he turned 18 to request the identity documents it required, because they hadn't been received. And I'm persuaded that Mrs G would have been familiar with what was required because

her daughter had already turned 18 and had provided the necessary documents to enable her to access her adult ISA.

Interactive Investor said it didn't receive the documentation it had requested from Mr G until March 2021. So from January 2019 to March 2021, his ISA account couldn't be funded.

Mrs G says she, or her son, made numerous complaints and telephone calls because Mr G's ISA couldn't be funded and that, by March 2020, they were becoming increasingly concerned because he wanted to utilise his annual ISA allowance before the end of the tax year. But I've not seen evidence of any contact with Interactive Investor about this. And I asked Interactive Investor for its contact records, and it said it only has what it sent to Mrs G in August 2018 and Mr G in 2019. From what I've seen so far, Interactive Investor told Mr G what it needed for him to be able to unblock and fund his account, but Mr G didn't send in the required paperwork until March 2021.

In the meantime, Mrs G says Mr G was forced to open a fresh ISA account so that he didn't miss out on his 2019/20 subscription. But the account was opened using Mrs G's customer number and details. That's because, as noted above, the GIA was wrongly in Mrs G's name rather than her son's. Our investigator thought Interactive Investor should've had procedures in place to recognise that Mrs G had funded two ISA accounts. I agree. Whilst a different email address was provided, the account was clearly set up as being Mrs G's when she'd already subscribed for an ISA in that tax year and Interactive Investor should reasonably have had procedures in place to identify this.

For this reason, the ISA should be voided.

As noted above, I've not seen evidence to show that Mr G provided the documents he needed to be able to fund an ISA account, until March 2021. For that reason, I don't find he should receive the tax-free ISA benefits of the voided ISA. The ISA only contains cash and Interactive Investor should transfer this to Mr G. There should be no cost to either Mrs G or Mr G for transferring and closing the ISA.

Interactive Investor has provided information which shows that capital gains were made within the ISA. The transactions may need to be declared in Mr G's tax returns.

I went on to consider the compensation Interactive Investor should pay for the distress and inconvenience it had caused. I said:

Mrs G has been caused a considerable amount of distress and inconvenience because, firstly, Interactive Investor didn't set up the GIAs correctly and the accounts failed to automatically transfer into the children's names when they turned 18. And, secondly, it failed to recognise she'd funded multiple ISA accounts in her name. I think it's fair and reasonable that Interactive Investor pays Mrs G £500 for the distress and inconvenience she's been caused.

Responses to my provisional decision

Interactive Investor acknowledged my provisional decision but didn't provide any further evidence, information or comment.

Mrs G responded in some detail to say, in summary, that:

- In December 2021, she had liquidated the two GIAs designated to her children and transferred the proceeds to accounts in their names, repurchasing the investments. She said a “nominal” cash sum remained in each of the original accounts as she didn’t want to close the accounts until the matter was resolved. She said it would be too time-consuming now to calculate the cost of the transfers. But she said Interactive Investor had continued to charge a monthly account fee and she would like this refunded.
- She said the documents needed for Mr G to access his adult ISA had been supplied twice by them, and it was only on the third occasion that Interactive Investor unblocked his account. She provided various information and supporting documents which she said shows Interactive Investor, rather than her and Mr G, were at fault.
- She thinks the loss of the tax wrapper warrants a higher level of compensation.

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.

Firstly, Mrs G responded in some detail to my provisional decision. I’m not going to respond to every single point made. No discourtesy is intended by this. Instead, I’ve focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there’s something I’ve not mentioned, it isn’t because I’ve ignored it. I haven’t. I’m satisfied I don’t need to comment on every individual argument to be able to reach what I think is the right outcome.

The general investment accounts (“GIAs”)

In my provisional decision, I said Interactive Investor needed to transfer the assets held in each of the designated GIAs to Miss G and Mr G. Until Mrs G responded to that, neither party had made us aware that the investments held in the GIAs had been sold, and the proceeds transferred to new accounts in each of the children’s names. Mrs G says a small amount of cash remains in each account. So to complete the transfer, Interactive Investor should transfer the cash held to each of the new accounts in Miss G and Mr G’s names.

Had the investments not been sold and re-purchased in the new accounts, I would have directed Interactive Investor to transfer the investments at no cost to Mrs G or her children. Mrs G says it will be too time consuming for her to calculate the costs incurred in taking the action she did so, without that evidence, I can’t order Interactive Investor to reimburse her.

In taking the action she did, the two designated GIAs have only held cash since December 2021 but Interactive Investor has continued to charge a monthly fee. It’s not entirely clear to me why Mrs G didn’t transfer the entire cash balance and close the accounts. She says it made sense to keep the accounts open until this service issued a final decision. I appreciate she isn’t the expert here, but keeping the accounts open wasn’t necessary and would have avoided incurring the monthly fees, which were charged in line with the agreed terms.

That said, Mrs G was trying to resolve matters because – as I have concluded - Interactive Investor made a mistake in not re-designating the accounts when the children turned 18. I think in the circumstances it would be fair and reasonable for Interactive Investor to refund its fees charged from the date Mrs G transferred the sale proceeds out, to the date of account closure.

Mr G’s ISA account

In my provisional decision, I said the ISA account that was opened – because Mr G couldn't access his JISA – was opened using Mrs G's customer number and details. And that, because she'd already used her ISA contribution, this ISA needed to be voided.

Mrs G re-sent evidence of an Interactive Investor statement which shows the ISA account linked to the GIA account in Mrs G's name designated to Mr G. But I was already aware of how the account was set up, and this statement, when I came to my earlier conclusion. I think Mrs G was acting with the best of intentions. But Mr G would only be able to keep the tax-free benefits of this duplicate ISA if I found he had provided the necessary documents for Interactive Investor to set up the account. I've gone on to reconsider that.

In my provisional decision, I said I didn't think Mr G should receive the tax-free ISA benefits of the voided ISA because I hadn't seen evidence to show he'd provided the documents needed to fund the ISA until March 2021.

Mrs G says the documents were sent in twice. She feels strongly that Interactive Investor either lost them or destroyed them because it couldn't match the documents to the account. She's provided examples of Interactive Investor's failures and her own diligent record keeping which she says suggests the fault is more likely to rest with Interactive Investor. She's also provided a call history and suggested that if Interactive Investor was asked to supply recordings of the calls it would prove her case.

I've considered everything Mrs G has told us. Even if I accepted that she, or Mr G, did send the documents Interactive Investor needed, I've not seen evidence to show that Interactive Investor received them. Whilst I accept it's *possible* that Interactive Investor received them, I've seen insufficient evidence to conclude that's what's likely to have happened. And, whilst there were phone calls in 2019 and 2020, if recordings are available the content is unlikely to change my conclusion. That's because, the calls wouldn't show any proof of receipt. Without that, I can't say Interactive Investor acted wrongly in not removing the block from the ISA account.

I set out in my provisional decision why I thought £500 was fair and reasonable compensation for the distress and inconvenience Mrs G was caused. I appreciate Mrs G thinks this sum should be higher and I've reconsidered this in the light of her further comments. But I'm not persuaded to change my conclusion.

My final decision

My final decision is that Interactive Investor Services Limited should:

1. Refund the fees charged in Mrs G's GIA designated to Miss G, from the date the bulk of the investments were sold in or around December 2021 to the date of settlement.
2. Refund the fees charged in Mrs G's GIA designated to Mr G, from the date the bulk of the investments were sold in or around December 2021 to the date of settlement.
3. Arrange for the cash, and any remaining assets, in Mrs G's GIA, designated to Miss G, to be transferred into Miss G's name at no cost to Mrs G or Miss G.
4. Arrange for the cash, and any remaining assets in Mrs G's GIA, designated to Mr G, to be transferred into Mr G's name at no cost to Mrs G or Mr G.
5. Void Mrs G's duplicate ISA. Transfer the assets in that ISA to Mr G, at no cost to either Mrs G or Mr G.

6. Pay Mrs G £500 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G, Mrs G and Mr G to accept or reject my decision before 12 December 2023.

Elizabeth Dawes
Ombudsman