DRN-4510950

The complaint

Mr R complains that Halifax Share Dealing Limited ('Halifax') threatened to sell his shares without his consent and transferred his shares to another provider which charged a higher fee. He wants an acknowledgement that Halifax wasn't entitled to sell his shares, and reasonable compensation for the higher fee he's paying and for distress and inconvenience.

What happened

Mr R has a stocks and shares ISA provided by Halifax. In the ISA Mr R invested in shares in a company I'll refer to as 'Company P'.

Company P decided to have its shares delisted from the London Stock Exchange and redomiciled in an overseas market. Mr R asked Halifax whether he could still hold the shares in his Halifax ISA. He said two other investment platforms had confirmed they'd allow their customers to hold but not trade the investment.

Halifax told Mr R his options would be to sell or transfer his holding or obtain a share certificate. It said if customers took no action to sell, transfer or withdraw their P shares before 4.30pm on 30 June 2023, Halifax would remove the shares from customers' accounts and sell them as soon as possible.

Mr R and Halifax exchanged a number of messages. Mr R made a formal complaint. Halifax didn't uphold the complaint.

In summary, the points made by Mr R were as follows:

- The terms and conditions of his account didn't include any clause that allowed Halifax to sell his shares without his consent.
- Clause 12.12 said the following, which purported to limit liability but didn't confer a power of sale:

  > '*12.12 If the investments held in your account are subject to a corporate action which causes your investment to become ineligible for our service we will not be liable for any loss.*'

- It wasn't clear what '*ineligible'* meant.
- The overseas market where Company P would be listed was recognised by HMRC for ISA investment purposes so Mr R didn't see any regulatory reason Halifax couldn't hold its shares in his ISA.
- Mr R didn't accept there was any particular complexity arising from Company P being redomiciled overseas, and Halifax's comment about sanctions was speculative.
- Mr R had reluctantly initiated a transfer but the other platform's fees were more expensive than Halifax's fees.

The responses made by Halifax were, in summary, as follows:

- Company P would become ineligible for Halifax's platform due to '*the complexity of dealing with a nominee holding on the [overseas] register and the unknown future sanctions*'. So Halifax had decided *'to sell out of all holdings after 30th June 2023'.*

- Halifax's website said it offered access to a number of global markets, but not the particular overseas market Company P was moving to.

- Halifax had the right to make commercial decisions about how it operated. By holding his shares in its nominee account Mr R agreed to be subject to those decisions.

- Clause 10.1a said '*The nominee company will have legal title to the investments and you will retain beneficial ownership at all times'*.

- The terms and conditions afforded Halifax the right to operate within the parameters of its service offering.

- Halifax had treated Mr R fairly by giving him adequate notice and an opportunity to make his own decision before Halifax would take any action.

- Clause 12.12 said Halifax wouldn't be liable for any loss arising from an investment becoming ineligible for Halifax's service.

- Halifax was aware of another platform that would accept a transfer into an ISA.

Mr R referred his complaint to this service. In summary he said he wasn't satisfied that Halifax's terms and conditions gave it the right to sell his investment without his consent. He said Halifax had an obligation as the nominee to retain safe custody of the shares. And it had caused him to have to either sell his shares in a depressed market and so make a loss, or transfer the shares to another provider where he had to pay a higher fee. He said this had caused him distress and anxiety, particularly certain personal circumstances which he described and the importance for financial security of his investment in Company P.

One of our Investigators looked into Mr R's complaint. In summary she said she understood Mr R was frustrated that there was no particular provision in Halifax's terms and conditions which explicitly specified that Halifax could sell his shares the way it had said it would. But she thought the terms Halifax cited in its response to his complaint were enough to indicate shares could be sold if they became ineligible for Halifax's service. She said Halifax had the right to execute a sale as the nominee, and it wasn't unusual for share dealing platforms to say they'd sell a customer's shares in certain circumstances.

Mr R didn't agree with the Investigator's view. In summary he said he agreed with the Investigator's comments about the terms and conditions, but Halifax wasn't entitled to disregard its duties relating to safe custody of assets.

Mr R also said that from 1 December 2023 Halifax had changed clause 12.12 of its terms and conditions as follows, to insert a power to sell shares where none existed before:

> '*If the investments held in your account become ineligible for our service, for example because of a corporate action or due to a change in any law or regulation, we may dispose of the investments as soon as reasonably practicable. If this happens, we will not be liable for any resulting loss. The proceeds from the sale of any investments will be paid into your account.*'

Because no agreement could be reached, the 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.

Having done so, I'm not upholding the complaint, for broadly the same reasons as the Investigator. I'll explain why.

The purpose of this decision is to set out my findings on what's fair and reasonable, and explain my reasons for reaching those findings, not to offer a point-by-point response to every submission made by the parties to the complaint. And so, while I've considered all the submissions by both parties, I've focussed here on the points I believe to be key to my decision on what's fair and reasonable in the circumstances.

Having considered the terms and conditions in force at the time, I'm satisfied Halifax didn't contravene them by acting as it did in respect of Mr R's shares in P Company. Various clauses indicated Halifax would allow only certain investments on its platform, and customers didn't have the right to use the platform for investments outside those Halifax would allow.

In setting out the service Halifax would provide, clause 4.1 said, '*You can use the service to make deals in certain types of investments.*' Clause 8.1 on '*Asset Eligibility*' said any stocks to be added to Halifax's platform would be subject to eligibility checks to ensure they met Halifax's trading criteria. And clause 12.12 indicated a corporate action could cause an investment that had previously been eligible to become ineligible for Halifax's service.

Mr R said it wasn't clear what '*eligible'* meant. Nevertheless, it was clear Halifax wouldn't be obliged to allow any and all investments on its platform. And the terms and conditions didn't say Halifax would continue providing its service for investments it regarded as ineligible.

Although the terms and conditions didn't specify how an ineligible investment would be removed from the platform, Halifax gave Mr R a fair and reasonable range of options. Other than closing Mr R's account, I can't see there were any other options Halifax could or should've offered in respect of Mr R's investment when it became ineligible for the service. And the fact the terms and conditions didn't specify how an ineligible investment would be removed doesn't, in my opinion, mean Halifax should be required to allow an ineligible investment to remain on its platform. As the legal owner of the investment Halifax was able to execute a sale. I think the way it proposed to do that in these circumstances – which was effectively as a last resort, if Mr R wouldn't transfer, sell, or withdraw it – was not unreasonable and not unfair to Mr R. And I'm not persuaded it was contrary to the agreement between Halifax and Mr R, as set out in the terms and conditions.

It's not generally unreasonable for Halifax, in its capacity as a nominee service provider, to determine the eligibility of assets for its platform. That is a legitimate exercise of Halifax's commercial discretion. Halifax doesn't need Mr R's agreement to the reasons for its commercial decision – it's is entitled to form its own view about the complexity of the business it will undertake and the risks to which it will expose itself.

As Mr R noted, an update to Halifax's terms and conditions said explicitly that Halifax had a right to sell shares it deemed ineligible for its platform as a result of a corporate action. Halifax also added that it could, in general, sell shares not meeting its criteria. Halifax already told Mr R it believed it had the right under the terms and conditions to act as it did.

So I think Halifax intended to make the terms and conditions clearer or more explicit with this particular update. Where a business updates its communications to make them clearer or more explicit, that doesn't necessarily mean the previous communication was deficient to the point that it failed to be clear, fair and not unreasonable. I can understand Mr R's point here, but, taking everything into account, I don't think the update by Halifax gives me a basis to say Halifax treated him unfairly or unreasonably under the previous terms and conditions.

Mr R pointed out that Halifax was obliged to keep his assets in safe custody. I haven't seen that Halifax's decision to have Mr R's investment removed from its platform made the custody of the investment unsafe or caused the investment to be lost or diminished. Mr R was able to have his asset transferred, and I don't see that any decrease in its value was due to any failing by Halifax. And Halifax's safe custody obligations didn't require Halifax to continue to have custody if it had decided the asset was ineligible for its service.

I understand Mr R's frustration about the fee he now pays. However, the fact his new platform charges a higher fee to hold the investment than Halifax did also doesn't mean Halifax acted wrongly in ceasing to allow the investment on its platform. Whether or not another provider will hold the asset, and what it will charge to do so, is a matter for that provider's commercial discretion. It doesn't affect the discretion Halifax has to decide what business it will do on its own platform.

Overall I'm satisfied the terms and conditions of Mr R's account didn't preclude Halifax doing what it did in relation to Mr R's shares in Company P. And I don't think Halifax has otherwise acted unfairly or unreasonably in the circumstances of this complaint.

My final decision

For the reasons I've set out above, my final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 26 March 2024.

Lucinda Puls
Ombudsman