

## **The complaint**

Mr F complains about correspondence sent to him by Equiniti Financial Services Limited (Equiniti) in February 2023.

He complains that Equiniti had previously agreed to delete his records and stop sending him correspondence regarding the payment of dividends but despite this, it then wrote to him again.

Mr F says he has suffered significant stress as a result of repeatedly receiving correspondence from Equiniti over several years.

## **What happened**

The background to this matter has already been subject to a separate complaint with this service, which was resolved in January 2023.

The background is that Equiniti took over the administration of Mr F's shares in 2021. Mr F then received correspondence relating to those shares including promotions. Mr F closed his investment, but he continued to receive correspondence from Equiniti containing information about dividend monies he was owed from the investment.

Mr F complained about that contact. Equiniti explained it had to administer the payment of dividend monies that were still owed to Mr F.

Our investigator considered that complaint and concluded that the terms and conditions of the account allowed Equiniti to contact Mr F and so it could contact him to inform him he was owed money. The investigator also noted that Equiniti had to keep information that was required for regulatory purposes.

During the course of the investigation of that complaint, Equiniti agreed to make the final dividend payment to Mr F and then close his account. It said it would only retain the information necessary in order for it to comply with regulatory requirements and it would remove Mr F from its mailing list.

The investigator considering the complaint thought that was a reasonable resolution in the circumstances.

The investigator noted that if Equiniti did then send Mr F anything further, he could make a new complaint to our service.

It was then agreed that the payment of the outstanding dividend would be made to charity and the case was concluded with the agreement of the parties.

In February 2023 Equiniti sent a further letter to Mr F.

Mr F complained to our service and said that legal steps should be taken to close Equiniti.

He said Equiniti should delete his data and compensate him for the distress it had caused. Mr F also said that he had been caused considerable stress by the continued sending of correspondence which he said amounted to harassment.

We referred Mr F's complaint to Equiniti on 27 February 2023.

On 6 March 2023 Equiniti responded and acknowledged that the letter shouldn't have been sent to Mr F. It said it had arranged for its complaint handler to review this and for a distress and inconvenience payment to be made to Mr F.

On 7 March 2023 Equiniti confirmed that it paid Mr F 50 euros for the distress and inconvenience caused.

Mr F said the compensation paid by Equiniti was insufficient to address the distress he had been caused. He said compensation was due for the years of suffering he said he had sustained as a result of the actions of Equiniti and the resulting impact on his mental health. Mr F said the impact had been significant and the £5,000 level, outlined in our compensation for distress and inconvenience guidance, was insufficient to compensate him. However, Mr F said he was unable to instruct solicitors in order to claim \$1,000,000 he said Equiniti should pay him in compensation, with a further \$100,000 per delayed day. So he said he would agree to £5,000 compensation.

Our investigator considered Mr F's complaint about the letter sent to him by Equiniti in February 2023. She noted that our service did not have any power to stop businesses from operating.

The investigator took into account the background and that Mr F had previously made it clear to Equiniti how receiving correspondence had affected him. The investigator considered Mr F's strong feelings on the matter and was satisfied that receiving the letter caused him distress. On that basis she didn't think the compensation paid by Equiniti was sufficient. The investigator noted Mr F's comments about the level of compensation he felt was appropriate. However, taking into account the circumstances and the impact on Mr F, the investigator felt that £150 was appropriate compensation.

Mr F disagreed and said the compensation shouldn't address only one letter, but rather the countless letters and emails he said he had received over several years, which had been sent after Equiniti had assured him it wouldn't send him any further correspondence. He said that Equiniti's actions had had a significant impact on his mental health, and he asked that the review of his complaint should include a review of all the information he had provided.

Equiniti didn't agree with the investigator that this complaint should be treated as a new complaint. It said Mr F's former complaint should be re-opened. Equiniti said as it hadn't issued a final response letter for this matter and no referral rights had been given to Mr F, that our service couldn't review his complaint about an item of correspondence sent in February 2023. It didn't agree with the investigator's conclusions.

As no agreement could be reached the matter was referred to me for review.

I issued a provisional decision where I concluded that Mr F's complaint should be upheld in part. I concluded that the compensation for the distress caused to Mr F should be increased to £300 and any payment already made to Mr F could be deducted from that amount.

An extract from that provisional decision is reproduced below and forms part of this decision.

Both parties were given an opportunity to respond with any further representations they wished to make.

Mr F acknowledged receipt of my provisional decision and said he didn't agree with the proposed compensation.

Mr F said he had endured significant difficulties for years, which he said were thoroughly documented in his case. So he felt £300 was inadequate to address, what he described as, the magnitude of the issues he had faced.

Mr F also said the level of compensation was unlikely to incentivise Equiniti to change its practices given its size and resources.

Mr F asked for a thorough review of my provisional decision and said the final compensation amount should be significantly increased, ideally in the range of \$300,000.

Equiniti responded and said it didn't agree with the compensation I had proposed. In summary it said:

- Mr F had referred to years of being impacted but the share register only migrated to Equiniti in July 2021. So it was only from that point that Equiniti had contact with Mr F.
- Mailings were sent to Mr F which outlined details of the migration and he was asked to provide his email address and bank mandate details. These mailings were important as they ensured that Equiniti had the correct details registered and it met its regulatory obligations.
- Mr F's first complaint was made in 2022, less than a year after the migration. That complaint was considered by our service and no adverse finding was made against Equiniti and no compensation was awarded. So, it said that showed Equiniti hadn't acted inappropriately.
- With regards to *this* complaint, it acknowledged that Mr F had been caused some distress and inconvenience, but it felt £300 compensation was excessive as Equiniti had only sent one letter to Mr F.
- It said it hadn't sent a final response letter as Mr F had confirmed, via our service, that he wanted no further contact from Equiniti.
- It said the previous complaint shouldn't be taken into account because that complaint was closed.

### **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.

In particular I have considered the representations made by both Mr F and Equiniti in response to my provisional decision.

Having done so, I remain of the same view and for the same reasons set out in the extract from my provisional decision.

#### *Provisional decision*

#### *"What I've provisionally 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.*

*I have also considered all the available evidence and arguments to decide whether we can consider this complaint.*

#### *Preliminary issue*

*Equiniti argues that our service shouldn't treat this matter as a new complaint but instead we should reopen the old complaint made by Mr F. It also says that it didn't issue a final response letter and no referral rights to our service were given to Mr F, so we can't consider his complaint.*

*So, I need to consider as a preliminary issue, whether this matter should be treated as a new complaint, or whether the old complaint should be re-opened.*

*The first complaint was made by Mr F to Equiniti in July 2022 and was about correspondence sent by Equiniti in 2021 and 2022. That first complaint was resolved by our service in January 2023.*

*This event occurred in February 2023, after the closure of that complaint. So, I don't think this issue could've been resolved as part of that complaint.*

*I consider this is a new event that occurred after the resolution of the first complaint, even though there is a link between them. On that basis I think this new event, should be viewed as a new complaint.*

*I also note the investigator specifically referred to the potential for a new complaint, in her view issued in January 2023, where she said:*

*"If Mr F receives anything further from B he can register a new complaint with B and, refer the matter afresh to this service who will take account of the above and how they expected B to deal with things."*

#### *Does the lack of a formal final response letter with referral rights prevent our service from looking at this complaint?*

*The rules say that we can't look at a complaint until the business being complained about has looked at it first. Disp. Rule 2.8.1 explains that:*

*The Ombudsman can only consider a complaint if:*

*(1) the respondent has already sent the complainant its final response or summary resolution communication; or*

*(2) in relation to a complaint that is not an EMD complaint or a PSD complaint, eight weeks have elapsed since the respondent received the complaint; or*

*Mr F's complaint about the correspondence sent in February 2023 was made to our service in the first instance. We then provided the complaint to Equiniti on 27 February 2023. Equiniti then had eight weeks to investigate this complaint.*

*I consider the emails Equiniti sent in March 2023 confirmed that it had investigated the matter and that its final response was to pay Mr F compensation of 50 euros. I note that it didn't send Mr F a formal final response letter with referral rights however I consider the*

*reason for this was the nature of the complaint - namely that Mr F didn't wish to receive any further correspondence from Equiniti.*

*The purpose of issuing a final response letter with referral rights is to inform the complainant of the outcome of their complaint and their right to refer the matter to our service. That is an obligation on the business who is subject to the complaint but the absence of a final response letter with referral rights, doesn't, of itself, mean that we can't look at the complaint.*

*In this case Mr F was already aware of his right to refer the matter to our service as he had contacted us in the first place, and he was also informed of the outcome of his complaint, which was a payment in respect of distress and inconvenience.*

*So, as I consider that Equiniti has investigated the complaint and it has acknowledged it shouldn't have sent the letter to Mr F, I don't think there is anything to prevent our service considering this complaint.*

*In any event, more than eight weeks have passed since we provided Equiniti with the details of Mr F's complaint, so I consider it has had sufficient opportunity to investigate. I consider therefore that our service is able to consider this new complaint.*

*What is fair and reasonable compensation in the circumstances?*

*The business has accepted that it shouldn't have sent the letter to Mr F in February 2023, and it has explained that the letter was sent in error.*

*Mr F hasn't complained about the contents of the letter. In summary, his complaint is that having been very clear that he didn't wish to receive any further correspondence, and having been assured that was the case, he then received a further item of correspondence. He has expressed in strong terms how distressing he found this and how it impacted his mental health.*

*Mr F also asks that I take into account all the incidences before this one, in what he has described as several years of receiving correspondence from Equiniti and its predecessors, rather than considering it as one single item of correspondence.*

*I don't think it is right to consider the totality of all the previous incidences as they are part of a separate complaint which has already been resolved. I also note that the investigator considering that previous complaint concluded that the terms and conditions of the account allowed Equiniti to contact Mr F in relation to his shares and where there was an outstanding dividend.*

*However, I do consider the background to this matter is relevant to the impact of Equiniti's error in February 2023.*

*I don't think it would be correct to look at the February 2023 event in isolation. I consider it has to be viewed within the context of what had happened before. As sending one letter to a consumer in error on one single occasion, is quite different to sending a letter with the knowledge that the consumer strongly didn't wish to receive any further correspondence as he had expressed this on several occasions in the past. And in addition, having indicated to the consumer that no further correspondence would be sent.*

*Having said that, when considering the background to this matter, I should highlight that it*

*isn't unusual for dividend payments to be received after an investment has been closed and the firm administering those payments will need to contact the person the money is owed to. So, while I acknowledge the background to this event was of Mr F receiving correspondence that he didn't wish to receive and making that clear to Equiniti, the context to this is that the correspondence was being sent for a legitimate purpose – namely so that Equiniti could satisfy its obligation to the person owed the money - Mr F. Even if, that isn't what Mr F wanted.*

*I also take into account that Equiniti indicated that once the last payment was made to Mr F, his records, save for those required to be kept for regulatory purposes, would be deleted and he wouldn't receive any further correspondence. And I think by January 2023, Equiniti was aware that sending correspondence to Mr F was causing him upset. So, I think Equiniti would have known that to issue a further letter in those circumstances, albeit accidentally, was likely to cause Mr F some distress.*

*I note that Equiniti recognised at an early stage that it had made an error by paying 50 euros compensation. However, I don't think that was sufficient compensation to address the impact to Mr F given the background to the matter I have described.*

*Mr F has referred to years of receiving unsolicited correspondence and has said this has significantly impacted his mental health, so he believes compensation of £5,000 is warranted and he has referred to our guidance in relation to awarding compensation for distress and inconvenience. We may award compensation at that level in certain circumstances; for example where the error has caused sustained distress which has affected the consumer's health, or there is severe disruption to daily life for a significant period, or in circumstances where the impact of the error is extremely serious.*

*I am sorry to hear of the distress Mr F has been caused but I have to consider the amount of distress caused to him by this particular incident. I have to consider what is fair and reasonable in the circumstances of this complaint. So, I don't think it would be fair to award compensation for distress caused by previous incidents because the previous history has already been the subject of a complaint which was resolved with the agreement of the parties.*

*I am considering this one incident, albeit within the context of the background as I have said. I accept that Mr F was understandably upset to have received this letter given he had already strongly expressed his concern about receiving correspondence from Equiniti, which had been such that it had led him to make a complaint. I also note that he contacted our service shortly after this incident to express his upset at receiving the letter in those circumstances. So, I agree that he was caused some distress by receiving this piece of correspondence in February 2023. I also take into account that Equiniti acknowledged its error at an early stage rather than prolonging the matter, which I think assisted in reducing the impact of its error.*

*So, I think fair and reasonable compensation for the distress caused to Mr F would be £300."*

I have addressed the points raised by both parties in response to my provisional decision below.

Mr F says the compensation is insufficient to address what he describes as the "years" of difficulties he has experienced. Whereas Equiniti points out that the shares register was migrated in 2021, so it says the timeframe of contact with Mr F is limited.

Equiniti also says that I shouldn't consider the previous complaint because that complaint was closed. Equiniti points out that the previous complaint didn't result in any finding against Equiniti, or any compensation being awarded.

I think there is a difference between re-opening a previous complaint - which I am not doing here, and considering the factual background to *this* complaint in order to assess the resulting impact on Mr F.

When considering the background to this complaint, I have taken into account that Equiniti wasn't in contact with Mr F until 2021 and the reasons why it contacted him. However, as I have said in my provisional decision, whose findings are reproduced here, I don't think it is right to consider the sending of one item of correspondence by Equiniti in February 2023 in isolation.

As I have said, by the time Equiniti sent that letter it was aware that Mr F didn't wish to receive any correspondence, and that this was a view he had expressed strongly. So, as a result Equiniti would have been aware that sending correspondence to him, even by accident, was likely to cause distress, and more distress than if it had sent him correspondence for the first time. So, I still remain of the view that £300 is fair and reasonable compensation in the circumstances and reflects the distress caused to Mr F.

I also don't think it is right to consider the totality of any previous incidences where correspondence was sent to Mr F by Equiniti, for the reason I have already expressed in my provisional findings, that they are part of a separate complaint which has already been resolved.

I note the comments Mr F has made regarding the level of the award and its impact on Equiniti. Mr F considers the compensation is insufficient to incentivise Equiniti to change its behaviour. It is important to clarify therefore that our service doesn't fine or punish businesses. The awards we make are designed to compensate the consumer, in this case Mr F, for any financial loss they have sustained or any distress and inconvenience they have been caused, as a result of the businesses' actions.

### **Putting things right**

Equiniti should pay Mr F £300 for the distress caused, less the amount it has already paid him, which I understand to be 50 euros.

### **My final decision**

My final decision is that Mr F's complaint against Equiniti Financial Services Limited is upheld in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 4 March 2024.

Julia Chittenden  
**Ombudsman**