

## **The complaint**

Mr C complains that Halifax Share Dealing Limited ('HSDL') debited funds from his bank account and paid them into an Individual Savings Account ('ISA'), despite Mr C having cancelled his regular subscription plan. Mr C says this resulted in his 2022/23 ISA account being oversubscribed.

## **What happened**

Mr C had arranged a regular monthly subscription plan to his stocks and shares ISA with HSDL. The subscription was paid from an account with another bank. This was set-up as a regular payment and was received by HSDL on the 24<sup>th</sup> of each month. In addition to a regular monthly subscription plan Mr C had a regular investment instruction with HSDL, so that when funds were received into his stocks and shares ISA, they would be invested the same day in line with the instruction. Mr C says that he cancelled his debit card with his bank in early March 2023, but when he added a new card later in the month, a payment was sent to HSDL on 24 March, and this was credited to his stocks and shares ISA with HSDL.

When Mr C complained to HSDL on 24 March, it refunded the money it had received into the stocks and shares ISA. HSDL didn't uphold Mr C's complaint as Mr C had cancelled his regular investment instruction in early March, but he hadn't cancelled his regular monthly subscription plan. HSDL said it doesn't offer a headroom check and amendment service.

Mr C complained to HSDL again as he thought the payment taken on 24 March was still pending. Mr C thought HSDL should have cancelled it when he called, and not returned the money to him. HSDL didn't uphold Mr C's complaint and said it had received cleared funds – that weren't pending funds – and had returned the funds to Mr C as requested. HSDL didn't think it had done anything wrong and signposted Mr C to HMRC for further guidance in respect of the overfunding of his ISA account.

Mr C, represented by his wife, brought the complaint to the Financial Ombudsman Service and one of our Investigators looked into things. The Investigator thought HSDL hadn't done anything significantly wrong. Mr C asked that an Ombudsman decides the complaint.

## **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.

I understand that Mr C will be disappointed, but for very much the same reasons as our Investigator I don't think HSDL did anything significantly wrong and I won't be asking it to do anything else. I will now explain why.

There's no dispute that HSDL received a payment into Mr C's stocks and shares ISA account on 24 March. Mr C didn't intend for this payment to be made, but as a result of the payment into Mr C's ISA, Mr C says he has overfunded his ISA for the year in question. Mr C says the funds received by HSDL were 'pending' and therefore shouldn't have been applied to his ISA account. I've considered this point very carefully as it gets to the crux of the

complaint – did HSDL act reasonably in treating this subscription as a payment into Mr C's 2022/2023 ISA?

Mr C called HSDL on 24 March to say that he'd seen the payment had been received into his ISA account. HSDL have provided a screenshot of Mr C's ISA account confirming a credit of £1,100 was received into the account on 24 March. At this point HSDL wasn't aware that Mr C had intended to cancel his regular monthly subscription. In his web chat with HSDL on 24 March, Mr C explained the payment shouldn't have been made, but I've seen nothing to suggest HSDL did anything wrong when it requested the payment from Mr C's bank when it did. In reality, what happened here was that HSDL received the funds directly into the ISA account. So, from the moment the funds were applied to the ISA on 24 March, the ISA was oversubscribed. Regardless of what Mr C's bank statements may show, and that he says he received the funds back into his bank account the next day, I'm satisfied HSDL received funds into the ISA account on 24 March and any attempt to cancel the payment would not have prevented HSDL from reporting the ISA had been oversubscribed.

Taking into account the funds were paid into the ISA account because of an investor error, and not an error by HSDL, I would expect HSDL to follow the relevant guidance provided by HMRC. The overriding guidance HMRC provides to fund managers for an 'Investor error repair' is:

*"If you find out (from the investor) that they have subscribed to a disallowed combination of ISAs, or has exceeded the overall ISA subscription limit, you should tell the investor that HMRC will contact them in due course. You should not give any advice to customers, as you may not have all the relevant facts or be certain of the action that HMRC will take."*

Mr C feels HSDL shouldn't have refunded the oversubscribed amount to him when it did. The HMRC guidance to fund managers (HSDL in this case) goes on to say that the excess subscriptions may be removed, and that a fund manager should not repair an investor error without a discovery notice, which will be issued by HMRC. In the webchat on 24 March, Mr C asked HSDL to adjust the ISA headroom or refund the payment to him. HSDL explained that it couldn't amend the headroom and that it would report the oversubscription in its annual returns to HMRC. On the face of it the ISA was oversubscribed, but what needs to be done to put things right is a matter for HMRC.

I've noted Mr C's comment that later in 2023 HSDL told his wife that it had made a mistake in returning the £1,100 contribution back to his bank account. However, in a web chat with HSDL on 24 March 2023, Mr C requested HSDL to return the funds to him. HSDL said it couldn't advise him in this regard, and this seems reasonable when considering the guidance HMRC provides to fund managers. Regardless of what Mr C's wife may have been told later in the year, I'm not persuaded that returning the £1,100 to Mr C when requested was an error by HSDL as Mr C instructed HSDL to send the funds to him.

Mr C says he hasn't heard from HMRC regarding the oversubscribed ISA for 2022/2023. HSDL has says it hasn't received a notice of discovery from HMRC. As neither Mr C nor HSDL has received any correspondence from HMRC, I think it's more likely that the position regarding the ISA contribution received by HSDL on 24 March 2023, and HSDL returning it the same day, hasn't resulted in HMRC deciding Mr C's stocks and shares ISA has been oversubscribed. Of course this is something Mr C may want to check with HMRC, but unless HSDL receive a discovery notice from HMRC, I wouldn't expect it take any further action.

In the circumstances of this case, as I'm persuaded it was an investor error that created a situation where Mr C's ISA had been potentially oversubscribed, I won't be asking HSDL to do anything else. I'm satisfied HSDL made Mr C aware that it couldn't adjust the ISA headroom as this is something it couldn't do and referred Mr C to HMRC for any advice. I

appreciate this disappointed Mr C, but it seems to me that HSDL did follow the guidance HMRC provides for fund managers when an investor error occurs.

### **My final decision**

For the reasons outlined above, I've decided not to uphold Mr C's complaint against Halifax Share Dealing Limited.

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

Paul Lawton  
**Ombudsman**