

The complaint

Mrs W complains that Vanguard Asset Management Ltd transferred the funds in her Vanguard account to a third party without her consent.

What happened

Ms W had an investment account with Vanguard which was contacted by solicitors acting for Mr G in court proceedings in which Ms W was a defendant. They provided a copy of a court order in those proceedings dated 20 February 2023 one of the provisions of which was the setting aside of an assignment of bonds made by Mr G to Ms W.

The solicitors said they had been informed by Ms W's previous solicitors that she had surrendered the bonds and paid some of the proceeds into her account with Vanguard and it requested further information.

The solicitors thereafter provided a further court order dated 6 June 2023 rejecting Ms W's application for permission to appeal the original court order and her application for a stay of execution. Following receipt of this court order Vanguard transferred the monies in Ms W's account into an account in the name of Mr G. It informed Ms W of what it had done by way of a letter dated 18 July 2023.

This led Ms W to complain to Vanguard but it didn't uphold the complaint, saying that it had complied with the court order that had been sent to it. Ms W referred her complaint to our service and it was considered by one of our investigators. He didn't think that Vanguard had done anything wrong in transferring the monies out of Ms W's account on receipt of the court order.

Ms W didn't agree with the investigator and said that there had been no analysis by the investigator of the regulations Vanguard needed to comply with.

Because Ms W didn't agree with the investigator the matter was referred to me for review and decision. I issued a provisional decision and set out below my main findings.

- I am not required to set out the rules that Vanguard had to comply with but they include the need for it to act honestly, fairly, professionally and in the best interests of its clients and to provide information that is clear, fair, and not misleading.
- Ms W's account didn't contain the bonds but was funded with cash and there is nothing to suggest that Vanguard was aware that the source of the funds was the bonds the subject of the court order.
- The first time it had any information about the source of the funds was when it was contacted by Mr G's solicitors stating that Ms W's previous solicitors had stated as such.
- I have been provided with nothing that indicates that Vanguard was provided with

evidence that supported what the solicitors said.

- Its explanation to me as to the action it took related to her not complying with the court order but any failure on her part to comply was a matter for the court and nothing to do with Vanguard and had no bearing on its actions.
- The court order of 7 June 2023 didn't make Mr G the beneficial owner of the funds in the account as Vanguard has suggested.
- The solicitors may have had good grounds for believing that the funds in the account were from sale of the bonds but it wasn't reasonable for Vanguard to transfer the funds out of the account based only on what they stated.
- The solicitors said they were going to apply for an order for payments out of the money in the account and Vanguard should have awaited such order before transferring the money.
- Ms W has provided no evidence that suggests the funds in the account weren't the proceeds from sale of the bonds the subject of the court order of 20 February 2023 but were from another source and as such there is no basis for me requiring Vanguard to pay this back to her.
- Vanguard should have informed Ms W of what was happening and a small award for distress and inconvenience is warranted for its failure to communicate with her and it should pay £100 for this.

I gave both parties the opportunity of providing any further information they wanted me to consider before making my final decision. Vanguard didn't provide any response. Ms W did respond and in short made the following key points:

- Her account was blocked so she never received any information that her funds had been transferred out.
- The legal position so far as the order of the court setting aside the assignment of the bonds is that the contract became voidable not that the proceeds were never hers as the ombudsman stated.
- It isn't appropriate to comment on the circumstances behind Vanguard being provided information about the source of funds.
- She has provided evidence that the source of funds in her Vanguard account was from sale of a French property.
- The release of the funds by Vanguard allowed Mr G's solicitors to take further action against her caused additional mental distress and she has an unpaid tax bill for sale of the French property which is attracting penalties and interest.

As the evidence of the source of funds in Ms W's account with Vanguard was incomplete and didn't in my view establish the funds weren't from sale of the bonds the subject of the court order I asked her for further evidence to support her argument on this. She responded but didn't provide the further evidence I asked for.

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 have considered everything that Ms W has said and the evidence she has provided in response to my provisional decision but am not persuaded I should change my main findings as set out above which findings form part of this final decision. Ms W has taken issue with certain terms and phrases I have used within my provisional decision and I haven't made reference to these where I consider that it isn't necessary to do so.

Ms W has said she wasn't notified about the transfer out of funds in her account. So it is clear, I accept that she wasn't made aware of the transfer before it took place and didn't suggest that she had been. I said that Vanguard should have informed her of what it was doing and I upheld her complaint because it failed to do so. She was made aware of the transfer out shortly afterwards which is what led her to complain.

Ms W argues that the effect of the court order of February 2023 wasn't to make Mr G the beneficial owner of the proceeds from the bonds. However, I am not satisfied that I need to clarify whether it did or didn't. I have found that Vanguard shouldn't have transferred the money from her account based on the information it was provided with. It doesn't follow from this finding that the money in the account was never capable of being transferred to Mr G and I have been provided with no information by which I could reasonably find that it is more likely than not she is entitled to return of the money.

In saying that I have considered the evidence provided by her that in May 2021 she received money from the sale of a property in France and her argument that this is what was used to fund her Vanguard account. However, she hasn't provided her bank statements for the period between May 2021 and the deposits being made into her Vanguard account between November 2021 and January 2022 and there is no obvious link between the sale proceeds and the deposits. So, this doesn't provide persuasive evidence that the funds in her Vanguard account weren't the proceeds from the bonds in any event.

Moreover, I am mindful that if she is able to establish that is the case she would have the right to get the money back from Mr G and that is the more appropriate avenue by which she should seek recovery in my view.

Ms W has referred to the release of funds being used by the solicitors to continue further action against her which has caused her additional distress. There is nothing to support this but in any event this I can't make an award in this complaint for distress arising from court action taken against her.

Ms W has also referred to an unpaid tax bill for the sale of the French property that is attracting penalties and interest. I assume she is suggesting that if the money had remained her in Vanguard account this bill could have been paid and the penalties and interest avoided. However, whilst I have found that Vanguard shouldn't have transferred the money from her account when it did based on the information it had available, I have made clear I am not in a position on the evidence provided to make a finding that she was entitled to this money, such that it would have been available to her to pay a tax bill.

Putting things right

I am still of the view that Vanguard shouldn't have transferred the money based on the information available to it at the time and should have informed Ms W of what was going on. I still think an award of £100 for the distress and inconvenience for these failures on its part is appropriate

My final decision

I uphold this complaint for the reasons I have set out above. Vanguard Asset Management Ltd must pay Ms W £100 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 29 March 2024.

Philip Gibbons
Ombudsman