

The complaint

Mr C's complaint is about a dividend payment Halifax Share Dealing Limited trading as Bank of Scotland Share Dealing ('HSDL') paid to him, which it now says was an error. HSDL is asking Mr C to return the money. Mr C feels that both the timescale for repayment and HSDL's offer of compensation is unfair.

What happened

The events leading up to this complaint are well-known by both parties and are not in dispute. So, the following is a summary of the background to this complaint.

In June 2023, Mr C received a payment into his bank account via his HSDL stocks and shares Individual Savings Account ('ISA') for an amount of £5,241.59. Mr C says he didn't recognise the payment or the reference attached to it, so he phoned HSDL to check it was correct and that he could spend the money. HSDL told Mr C during this phone call that the payment was a dividend for a shareholding he'd held.

In July 2023, HSDL discovered via a third-party that the payment it made to Mr C was an error on its part.

On 10 August 2023, HSDL wrote to Mr C to tell him that, due to a clerical error the dividend payment he'd received was not in fact his because he'd sold the shares prior to the corporate event linked to the dividend payment. It asked Mr C to have the funds available in his share dealing account so it could recover payment.

On 21 August 2023 it wrote to Mr C again with a more detailed explanation of what had happened and why he wasn't entitled to the dividend. It said it needed to reclaim the money to pass on to the purchaser of the shares he'd sold and it asked Mr C to make contact.

Following further conversations and HSDL treating the matter as a complaint, it issued its final response on 14 September 2023. In summary HSDL acknowledged an error had been made, which it said was due to confusion about the irregular format in which the company Mr C had held his shares in had published its Scheme of Arrangement. It said that, while it accepted Mr C was told the payment was a dividend and that expectations were likely set as a result, it didn't consider the conversation was binding and it asked Mr C to return the money by 29 September 2023. It said in recognition of the inconvenience caused, it agreed to write off £241.58 leaving £5,000 payable (the actual amount from the available transaction statements shows this to be £241.59 to leave £5,000 payable.)

Dissatisfied with its response, Mr C referred his complaint to us. One of our Investigators considered the matter and they upheld the complaint. In summary they said they were satisfied the payment was made in error and that it wouldn't be fair for Mr C to benefit from a mistake. But they said Mr C had proactively queried things and he was told the payment was correct, so to find out it was in fact an error had caused him a great deal of distress and inconvenience. They said they didn't think it was fair that HSDL demanded the return of the

money in full in one payment, so they said both parties should agree a repayment plan. And they said Mr C had indicated he could afford to pay £500, which HSDL should take into account. They said they didn't think the amount HSDL had offered for distress and inconvenience was enough, so they said this should be increased from £241.58 to £500.

HSDL disagreed. It said it was unfair of the Investigator to say HSDL had demanded payment in full and it quoted from its final response letter which it said offered Mr C the option of a repayment plan. So, it said the Investigator's suggestion of a repayment plan wasn't relevant. It also disagreed with increasing the distress and inconvenience payment to £500, which it said was entirely disproportionate to both the level of distress caused and the values involved.

The Investigator questioned HSDL's point that it had offered Mr C a repayment plan – they said it wasn't offered in the final response letter – and they requested a copy of the communication from the third party who highlighted the error to forward to Mr C. HSDL provided the communication requested, but it made no further comment.

Because the Investigator wasn't persuaded to change their opinion, the complaint was referred for a final 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.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

Having done so, I've decided to uphold the complaint for broadly the same reasons given by the Investigator. My reasons are set out below.

HSDL has acknowledged it got things wrong here. And I'm satisfied the payment Mr C received from HSDL in June 2023 – an amount of £5,241.59 – should not have been made to him. The payment was a dividend connected to a corporate event for a shareholding Mr C no longer held. Mr C sold the relevant shares on 6 June 2023. To benefit from the corporate action he still needed to be holding the shares at 6pm on 7 June 2023. Because he'd sold them before this point, the dividend payment should've gone to the buyer instead. Mr C was not entitled to the dividend payment – the payment was mistakenly made to him.

So, HSDL was also wrong to tell Mr C that the dividend payment was correct when he enquired about it. Again, HSDL hasn't disputed this.

Should Mr C have to pay the money back to HSDL?

I think the position in law is clear here that, typically when one party mistakenly pays money to another, they are entitled to recover it.

And this is the case regardless of whether the recipient genuinely believed they were entitled to the payment. This is because, typically the recipient of the funds is deemed to have been unjustly enriched.

In this case, HSDL mistakenly paid the dividend payment to Mr C. And because I've not seen evidence to persuade me that Mr C has changed his position as a result of the

payment such that it would be unjust or unfair to require him to pay the money back, I think it is fair and reasonable in all the circumstances for HSDL to reclaim the mistakenly paid money from Mr C.

But I don't think it is fair and reasonable in this case for HSDL to require Mr C to repay the monies in full, in one go as a lump sum. While Mr C has not been specific on what he did with the funds, it appears they are not readily available or at his immediate disposal. So, in the circumstances I think it is fair for Mr C to repay HSDL over a reasonable period of time by means of a mutually agreeable repayment plan.

I can see HSDL appears to have taken exception with the Investigator's recommendation for HSDL to set up a mutually agreeable repayment plan with Mr C saying that it had already offered this to him. And it quoted a line from its final response letter, which it says said:

'If you are not in a position to make payment in full then please reach out to me as a matter of urgency, but before the 29th September 2023. From there, we can discuss a mutually agreeable repayment plan.'

But this does not appear to be a quote from the final response letter it issued to Mr C. I've looked at both copies Mr C and HSDL have provided to us and neither contains this quote. HSDL may have intended to say this, but the evidence suggests otherwise. The response letter actually says that HSDL: '...must now make a formal request that the funds owed are returned by 29th September 2023.' And: 'To arrange payment please contact us on...Alternatively, if you prefer to initiate payment through your bank account, please use the account details below...' It concluded by saying: 'If you wish to discuss the matter, please contact me before the payment due date to prevent any further action being taken.'

This suggests to me that HSDL required immediate payment in full by 29 September 2023. The previous letters HSDL sent in August 2023 say or in my view, imply the same. So, I've not seen any evidence to show that HSDL offered Mr C the option of a mutually agreeable repayment plan.

But I think a repayment plan is a fair and reasonable resolution here. Mr C indicated to our Investigator that he could afford £500 a month. And while HSDL can keep this in mind, I expect it to come to a mutually agreeable plan for repayment of the monies over a reasonable period of time.

While I think it is reasonable for Mr C to repay HSDL, it is clear to me that its error has caused Mr C a significant amount of distress and inconvenience. And like the Investigator, I don't think HSDL's offer to write-off £241.58 from the amount payable in recognition of the distress and inconvenience caused is sufficient or fair here. I think a fair award is £500 – I disagree with HSDL that this is out of line with both the distress caused and the value concerned. I say this because I'm firstly mindful that Mr C proactively enquired about the validity of the payment and he was told it was correct – he didn't for example just accept it when it arrived in his bank account without question. So, I think Mr C genuinely believed the money was his – I think it was reasonable for him to do so given what he'd been told.

I accept the fact Mr C might have genuinely believed he was entitled to the payment is no defence when considering whether it is fair for him to return what turned out to be a mistaken payment. But, Mr C has described the shock of opening HSDL's letters of August 2023 following his return from holiday, to discover that the money wasn't in fact his and he needed to repay it. So, given Mr C reasonably believed the money was his, I think this would've caused him a considerable amount of stress and distress.

Mr C says the matter generally has caused a great deal of stress – he’s had many sleepless nights and has found it difficult to focus on other things. And given what I’ve said above, coupled with the fact that HSDL’s communication both in August and its final response in September 2023 said or implied that the money needed repaying in full immediately, I think Mr C’s assertions are both plausible and persuasive. I consider the impact of HSDL’s error on Mr C to be significant here. So, taking everything into account and having considered the matter carefully, I think an award of £500 for the distress and inconvenience caused is fair in all the circumstances.

For the reasons above, I uphold this complaint.

Putting things right

- To keep things simple, rather than pay Mr C £500, HSDL should deduct £500 from the amount Mr C needs to repay in recognition of the distress and inconvenience the matter has caused.
- Taking into account what Mr C can reasonably afford (indicated to be not more than £500 a month) HSDL should make contact with Mr C direct to agree, and put in place, a mutually agreeable repayment plan for repayment of the balance owed – an amount of £4,741.59.

My final decision

I’ve decided to uphold this complaint. Halifax Share Dealing Limited trading as Bank of Scotland Share Dealing should now put things right as I’ve set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 18 April 2024.

Paul Featherstone

Ombudsman