

The complaint

Mr and Mrs G complain that Octopus Investments Limited (“Octopus”) didn’t tell them it couldn’t accept partial transfer instructions from their ISA accounts to a new provider. They say, if they’d known, they would have given instructions for full transfers. This would have meant their shares would have been sold earlier, and at a higher price.

The complaint is brought on their behalf by their financial advisor who I’ll refer to as C.

What happened

I set out the background to this complaint in my provisional decision dated 28 February. For the sake of completeness, I will repeat it again here.

Mr and Mrs G each had an ISA account with Octopus which contained various AIM shares. In July 2022, Mr and Mrs G wanted to withdraw £5,000 each from their accounts and then make partial transfers to another provider. The transfers required their existing shares to be sold and then the cash transferred to the new provider, rather than an in-specie transfer.

On 19 July 2022, C phoned Octopus to check its requirements. C says he was told that he only needed to instruct the new provider. He says he wasn’t told a partial transfer wasn’t possible.

C provided Mr and Mrs G’s withdrawal instructions on 21 July. He decided to wait until the withdrawals had been completed before giving the partial transfer instructions. The two £5,000 withdrawals were completed, and Mr and Mrs G’s bank accounts were credited on 27 July. Octopus emailed Mr and Mrs G to confirm the payments had been made. But C was unaware and, when he called Octopus on 29 July to check what was happening, he was wrongly told the withdrawals were still in progress.

C gave the partial transfer instructions to the new provider on 3 August 2022 (once he’d found out the withdrawals had been completed). Octopus didn’t receive the instructions until 12 August, because the new provider had initially sent them to the wrong address. On 17 August, Octopus told C a partial withdrawal wasn’t possible. It accepted C’s verbal instructions for a full transfer on the same day and sales took place on 18 and 22 August. C says if he’d known a partial transfer wasn’t possible, and if he’d been told when the withdrawals had been completed, he could have given full transfer instructions to the new provider on 27 July. Whilst a partial transfer instruction required a “wet signature”, a full transfer could be instructed electronically. So C says the sales could have taken place earlier than they did.

Octopus said it didn’t facilitate partial transfers. It said this may have been missed during the 19 July phone call. But it said the correct position was relayed on 17 August and the transfers still took place within HMRC’s required timeframe of 30 calendar days. It noted that the new provider had sent the instructions to an incorrect address. It offered Mr and Mrs G £75 each to acknowledge that it should have been clearer that it did not offer partial transfers.

Our investigator thought that, if Octopus had given C the correct information during the 19 July call and during the 29 July call, instructions would have been given for a full transfer on 29 July. But that the transfer was still completed within the 30-day timeframe from 29 July, so he didn't think Octopus had caused a financial loss. But he thought Mr and Mrs G had been caused some distress when they found out about the problems with the transfers when markets were falling. He recommended Octopus should pay them £100 each for the distress caused.

Neither party agreed with our investigator's conclusion, so the complaint was passed to me.

My provisional decision

I was minded to come to a different conclusion to the investigator and I explained why. I said:

The £5,000 cash withdrawals

Octopus emailed Mr and Mrs G on 26 July 2022 to confirm that the required shares had been sold and they could expect cleared funds in their bank accounts in three to five working days. They didn't tell C about the email and C phoned Octopus on 29 July for an update. He was told the transfers were still in progress and could take up to two weeks. I find Octopus made a mistake in giving C the wrong information during the phone call on 29 July. I don't find this made a difference to the withdrawals – which were completed as agreed.

But C had decided he wouldn't give the transfer instructions until the withdrawals had been completed. C gave the transfer instructions on 3 August, the same day he received confirmation that the withdrawals had been completed. So I think that if C had been given the right information during his call on 29 July, he would most likely have given the transfer instructions on that day. This is important for deciding whether Mr and Mrs G made a financial loss because of any delay in implementing their transfer instructions and I will consider this further below.

The information about partial transfers

In response to Mr and Mrs G's complaint, Octopus acknowledged it should have given clearer information about it not facilitating partial ISA transfers. But, in response to our investigator, it said it had re-listened to the call which took place on 19 July 2022 and that it hadn't provided any misinformation.

I've listened to the call recording. C says Mr and Mrs G want to give instructions for a partial transfer to another provider and he wants to check if Octopus has any requirements, or if Mr and Mrs G just have to instruct the new provider. The Octopus member of staff says:

"So it would be a portion of the amount going to a different provider, is that correct?"

C confirms that *"Yes, it's just a partial transfer"*.

And the Octopus member of staff says, *"That's absolutely fine"*.

I accept C's specific question was around the requirements for the transfer. And that C and Mr and Mrs G ought reasonably to have read the terms and conditions, which include the fact that Octopus does not facilitate ISA partial transfers. But I think it's fair and reasonable for them to have relied on what they were told on the phone. And

it was reasonable for C to understand that “*that’s absolutely fine*” meant that a partial transfer was possible.

The impact of not telling C on 19 July 2022 that a partial transfer wasn’t possible

I agree with the investigator that, if C had been given the correct information on 19 July – that a partial transfer wasn’t possible - C would have most likely discussed this with Mr and Mrs G and they would have decided to complete a full transfer, because this is what they did on 17 August once they knew a partial transfer wasn’t possible. And I think this instruction would have been given on 29 July 2022 – the date C would have become aware that the withdrawals had been completed, if it wasn’t for Octopus’s error which I detailed above.

Octopus says that, even using 29 July as the instruction date, the transfer was still completed well within HMRC’s required timeframe of 30 days. HMRC information about how to transfer an ISA says:

“ISA transfers should take no longer than:

*15 working days for transfers between cash ISAs
30 calendar days for other types of transfer”*

In this case the transfer shouldn’t have taken more than 30 calendar days. But it doesn’t automatically follow that Octopus has no liability because the transfer was completed within 30 days. Just as there can be valid reasons why a transfer takes longer than 30 calendar days, there can also be reasons why a transfer should take place more quickly. And if it’s found that a business has made a mistake which has led to a delay, it can be held responsible for any resulting financial loss even though the transfer still takes place within the 30-day period.

I’m aware that the new provider also bears some responsibility for the delay here. It didn’t send the partial transfer instructions to the correct address. Had it done so, Octopus would have received Mr and Mrs G’s partial transfer instructions sooner than it did and C would have found out sooner than he did that a partial transfer wasn’t possible. But none of this would have happened if Octopus had given C the right information during the 19 July phone call. The full transfer would have been requested electronically at the end of July. So I think it’s fair and reasonable for Octopus to compensate Mr and Mrs G for the entirety of any loss they’ve suffered.

Unlike the instructions for a partial transfer which required a “wet signature” and were therefore sent by post, the instructions for a full transfer would have been completed electronically. If C had given instructions to the new provider on 29 July 2022, I think it most likely that Octopus would have received these on the same day, as both providers use the TISA system which should send an instant request.

When Octopus eventually received the full transfer instructions, it sold the shares the next day. So I think it’s fair to conclude that it most likely would have sold the shares the working day after it received the instructions. Due to the bank holiday weekend, this would have been 2 August 2022. With the exception of one shareholding, which I’ll refer to as “R”, which was sold three working days after receipt of the instructions. So, using the same timescale, R shares would most likely have been sold on 4 August 2022.

The cash was transferred to Mr and Mrs G’s new provider four working days after the transfer instructions were received. So, had mistakes not been made, it follows that

the cash would have been transferred on 5 August 2022. Mr and Mrs G have been deprived of any additional money that they may have received if the sales were carried out earlier. I'm satisfied they would have invested the entire sum with their new provider, and they've therefore missed out on any investment growth on this additional sum.

In deciding what dates the sales and transfer of cash should have happened if Octopus hadn't made any mistakes, I've used the timescales for when the sales and cash transfer actually took place. In doing so, I'm aware Octopus gave priority to Mr and Mrs G's transfer when it received their instructions because it was aware of the delays which had occurred. So it's possible the sales may not have taken place as soon as 2 and 4 August. But, bearing in mind Octopus's regulatory requirement to obtain the "best possible result" when selling shares, I think it's reasonable to conclude it would have sold the shares as quickly as possible after receipt of the transfer instructions. I can't say for certain exactly when the cash would have been transferred and it's possible it would have been later than 5 August. But, overall, I don't think it's unreasonable to use the timescales of when the transfers actually happened, and I think this gives a fair overall outcome for Mr and Mrs G.

And I set out what I thought Octopus needed to do to put things right. I said:

Octopus should calculate how much Mr and Mrs G would have received had their shares been sold on 2 August 2022, and 4 August 2022 for R shares, net of all relevant fees and charges and compare this to the amount they actually received. If this amount is greater, Mr and Mrs G have suffered a loss and Octopus should pay them the difference.

They've also missed out on the investment growth on that difference. Octopus should obtain the return Mr and Mrs G have received on their investments with their new provider net of fees from 5 August 2022 to the date of settlement and apply this as a percentage to the amount it pays them.

And finally, I consider the amount of compensation I thought Octopus should pay Mr and Mrs G for the distress and inconvenience it had caused. I said:

Whilst Octopus gave C the wrong information about the withdrawals, it gave Mr and Mrs G the right information. So I don't find Mr and Mrs G were caused any distress or inconvenience for which they should be compensated.

In response to our investigator, Octopus said it had offered £75 each to Mr and Mrs G for the mistake it had made in telling C the withdrawals hadn't been completed. But this isn't what it said when it made the offer, in September 2022. It made it clear it was offering Mr and Mrs G £75 each *"to acknowledge that we could (and should) have been clearer in respect of Octopus not facilitating partial ISA transfers"*. Mr and Mrs G will have been caused distress because of this mistake because the sale of their investments didn't take place when they should have, and the share prices were moving against them. Our investigator recommended Octopus should pay Mr and Mrs G £200 (£100 each). In the circumstances I think this is fair and reasonable.

Responses to my provisional decision

Mr and Mrs G agreed with my provisional decision. C provided some historic valuation figures and said he thought the loss was around £8,000.

Octopus didn't agree. It replied in some detail to say, in summary, that:

- In the 19 July phone call, C didn't ask whether Octopus could facilitate a partial transfer, he assumed it could. As no direct question was asked, Octopus isn't fully responsible for the assumption C made.
- The ombudsman's conclusion means Octopus is being unfairly penalised for the error of another business. Mr and Mrs G's new provider sent the transfer request to an incorrect address which caused a nine-day delay. If the new provider had sent the documents to the correct address, there would only have been a delay of around one day. Mr and Mrs G should be directed to raise this part of their complaint with their new provider.
- Mr and Mrs G have benefitted financially because Octopus prioritised the transfers – it did this to assist Mr and Mrs G because it was aware of the delay caused by the new provider and meant Mr and Mrs G received around £15,000 more than they would have done. The transfers were completed considerably quicker than Octopus's typical timeframe

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.

Octopus doesn't think it made a mistake during the 19 July phone call. The absence of C directly asking if a partial transfer was possible doesn't negate the need for Octopus to provide information which is clear, fair, and not misleading. From the extract of the call that I reproduced in my provisional decision, it's clear that it was Octopus who actually asked what C meant by a partial transfer – *"So it would be a portion of the amount going to a different provider, is that correct?"* And when C confirmed that it was, Octopus said, *"That's absolutely fine."* C reasonably did not then need to ask whether a partial transfer was possible, because Octopus had already (wrongly) confirmed that it was.

It's inarguably clear from the call that C, and by extension Mr and Mrs G, intended to instruct a partial transfer. It was therefore misleading for Octopus to say *"that's absolutely fine"* which led C to understand that partial transfer instructions would be accepted. And I'm satisfied C would have acted differently if he'd been given the information Octopus should have fairly and reasonably provided – that it didn't accept partial transfer instructions.

I've considered Octopus's arguments about what C would have done if he'd been given the correct information. I can't know for certain what would have happened after the 19 July call, but I base my conclusions on what I think is most likely to have happened, on balance.

As I explained in my provisional decision, if C had been given the correct information I think he would have had a discussion with Mr and Mrs G and made the decision to request a full transfer on 29 July. This wouldn't have involved any posted documents, and so I don't think any further delays would have happened.

The redress I've decided is based on Mr and Mrs G's holdings being sold on 2 and 4 August. I don't think this is an unrealistically short timeframe to use, and is consistent with the actual time taken to sell their shares once a request was received.

For these reasons, having carefully considered Octopus's response to my provisional decision, I see no reason to depart from my earlier conclusion.

I would remind Mr and Mrs G that dealing fees, final management charges, and the final advisor charge were correctly deducted from the amount that was transferred, so the amount

they receive is unlikely to be as high as C suggests. It will be for Octopus to calculate the amount of compensation and to provide Mr and Mrs G with its calculations.

My final decision

My final decision is that Octopus Investments Limited should:

1. Calculate how much Mr and Mrs G would have received had their shares been sold on 2 August 2022, and 4 August 2022 for R shares, net of all relevant fees and charges and compare this to the amount they actually received. If this amount is greater, Mr and Mrs G have suffered a loss and Octopus should pay them the difference.
2. Obtain the return Mr and Mrs G have received on their investments with their new provider, net of fees, from 5 August 2022 to the date of settlement and apply this as a percentage to the amount it pays them.
3. Pay Mr and Mrs G £200 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr G to accept or reject my decision before 7 May 2024.

Elizabeth Dawes
Ombudsman