

The complaint

Mr H has complained that Trading 212 UK Limited ('Trading 212') sold a shareholding held within his ISA without his consent. He says he should not have been allowed to buy the shares if they weren't compliant with HMRC ISA eligibility requirements. The notice period he was given that the position had to be closed was too short and didn't allow him to make a proper decision. He would like to be reimbursed for his losses.

What happened

Mr H had made three purchases of Polestar Automotive Holding UK Plc ('Polestar') in August 2022. He bought a total of 3,100 shares costing £25,742.61 and which were held within his ISA.

On 19 June 2023 he was notified by Trading 212 that the shares no longer eligible to be held within an ISA under HMRC rules and he would have to close his position. He was on holiday at the time and didn't see the notices and discovered the shareholding had been sold by Trading 212 on 5 July incurring a loss of £16,248.00

Mr H raised a complaint with Trading 212 who replied to him on 18 September 2023. It didn't uphold his complaint. It said;

- Trading 212 has an obligation to ensure that stocks held within its ISA service remain ISA eligible. It performs checks to determine if new stock should be added or previous ones removed if they are no longer deemed ISA-eligible.
- This was found to be the case with Mr H's Polestar holding on 19 June 2023. It sent messages to all its affected shareholders allowing them until 5 July to remove the shares. It had acted within its terms and conditions.

Mr H brought his complaint to this service. He said that the final response was poor, inadequate and didn't answer the points he had raised.

Our investigator who considered the complaint didn't think it should be upheld. He said;

- He hadn't seen any evidence to show that Polestar shares were ineligible when Mr H purchased the holding. That status changed in June 2023, long after Mr H had bought them in August 2022.
- He'd not seen any regulatory failing by Trading 212 in communicating with Mr H. It wasn't Trading 212's responsibility for how a customer's email platform functions or that they were on holiday and without internet access. It didn't have an obligation to send a letter.
- The service provided was execution only and it was for Mr H to manage his account.
- He thought the two-week notification was fair and reasonable. Trading 212 notified its customers of the change in status as soon as it became aware.
- Trading 212 wasn't obliged to provide customers with HMRC notification – Mr H could ask HMRC for that if he wanted to. And it would be for Mr H to carry out his

own research before investing.

- If Mr H had wanted to transfer the holding into his Invest Account, it was for him to do. And he could have reinvested the sale proceeds into that account if he had wanted to.
- Trading 212 had acted in accordance with the regulator's guidelines and its own terms and conditions.

Mr H didn't agree with the outcome. Trading 212's terms and conditions didn't allow it to close investments unilaterally. A preferable course of action would have been to transfer the holding to his Invest Account. He referred to the Polestar's merger in September 2021 and that the businesses that converted into Polestar documented the circumstances that would render the new entity ineligible for inclusion within an ISA. And the two weeks notification he had been given was insufficient bearing in mind this information had been available for ten months.

As the complaint remains unresolved, it has been passed to me for a 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.

After doing so I've reached the same outcome as the investigator and broadly for the same reasons. I'll explain why.

Eligibility of Polestar

In his response to the investigator's view Mr H has said that Gores Guggenheim which converted into Polestar Automotive Holding UK PLC upon its merger with Polestar Automotive Holding UK Limited was initially eligible for HMRC's ISA criteria but the merged company – Polestar Automotive Holdings UK PLC was not. That merger announcement was in late September 2021 and filings by Gores Guggenheim to the SEC clearly documented the circumstances that would render the new entity ineligible for ISA inclusion ie that Polestar Automotive Holding UK Limited had a parent company that wasn't listed on a HMRC recognised stock exchange. The merger didn't complete until June 2022, two months prior Mr H's investment.

It's clear that Mr H is unhappy that a non-eligible instrument was offered as part of his ISA in the first instance. After contacting Trading 212 about this my understanding is that eligibility status isn't always clear cut and it's likely the case that Trading 212 believed the shares were compliant at the time. There isn't a specific procedure to approve separately with HMRC each trade instrument offered.

I asked Trading 212 how the asset was permitted to be held within an ISA after the merger. It told us that until June 2023 in respect of the ISA eligible stocks information was received and checks carried out on a monthly basis. After that, reviews were carried out daily. And any complex cases – which I assume would include Polestar – were referred to a third-party financial services industry resource for additional oversight. It said it is not always a straightforward process and in the circumstances of the Polestar holding it wasn't entirely clear at the time.

I note that in Trading 212's response to Mr H's complaint that it said as Polestar was a depository receipt instrument with a parent complaint not listed on a recognised HMRC

exchange then it was no longer compliant. And because of this its terms and conditions allow for it to take action;

‘6.10. If a company goes bankrupt or is delisted from the respective stock exchange, we may attempt to obtain prices for the instrument on the over-the-counter (OTC) market. If this is not possible, you shall be informed that your positions in shares of this company shall be closed, and you agree to the closing prices.’

Mr H has said he wasn't advised that Polestar was a depositary receipt with an unlisted parent company at the point of purchase. I understand from Trading 212 that at the point of purchase Polestar was listed as a Special Purpose Acquisition Company ('SPAC') in 2022. But similar with other depositary receipts, they can become ineligible for HMRC ISA purposes over time. I asked for evidence of HMRC's change in status for the shareholding from ISA eligible to ISA ineligible.

Trading 212 explained that there isn't a formal list of financial instruments which HMRC produces to enable a firm to cross-check for ISA eligibility. Instead HMRC provides a list of criteria for which types of stocks, shares and other financial instruments that can be purchased or held within an ISA. It is for the firm to assess whether any instrument is or remains eligible for ISA inclusion, hence its reference to a third party for additional oversight in complex cases. It provided a link to HMRC's website –

<https://www.gov.uk/guidance/stocks-and-shares-investments-for-isa-managers>

Trading 212 further said there is a significant amount of information which has to be considered and it is guidance only so it would not be uncommon for the information to be interpreted differently by different brokers. As such an event which might subsequently render a financial instrument ineligible for ISA inclusion might not be interpreted as such at that point and exactly when it is deemed ineligible may vary. Trading 212 has an obligation to notify its clients of such events as soon as possible as soon the ineligible status is understood or known, and this is what it did in the case of Polestar.

Mr H bought the shares at a point when Trading 212 was of the opinion were ISA eligible so there was nothing to prevent Mr H from holding the shares within his ISA account. We know that status changed after the merger – which I accept Mr H considers Trading 212 should have known – but it didn't. However, I've also borne in mind that the account was an execution only account and so it was Mr H's responsibility to make sure that he only made investments that were eligible for his ISA as it was his responsibility to ensure that status.

I appreciate Mr H will be unhappy with my findings here but Trading 212 monitored the ISA eligibility for its trading supported instruments through its internal audit. And when it identified the shareholding might not be eligible it consulted with a third party. So, while I accept the point Mr H is making here but Trading 212 acted in line with how I would expect as it monitored the situation, sought advice, and went on to ensure the non-eligible investment was removed by selling the asset.

I'll now go on to consider the sale.

The sale

Trading 212 sent a notification on its app to all affected shareholder on 19 June and also sent Mr H an email on the same date. Mr H says the notification was badly worded and the email went into his spam folder. He was only given three weeks to take action and was on holiday during this time and didn't check his account and was without internet access. He should have been given clear consultation period of at least two months by letter sent to his home address.

I've reviewed the notifications that were sent to Mr H on 19 June headed Polestar Automotive Holding UK PLC – ISA Status;

'We have identified Polestar Automotive Holding UK PLC as an instrument that does not satisfy HMRC eligibility criteria. Subsequently, investors who have purchased the stock through an ISA account would have to term their positions. You will be able to sell your share(s) at your own discretion until Wednesday 05/07/2023 14:00 GMT. At this point, if your position is still open it will be closed on your behalf.'

I agree with what the investigator has said about this point. It wasn't Trading 212's responsibility to know the whereabouts of Mr H, that he may not have checked his account or was without internet access. It was an execution only account and Trading 212 fulfilled its obligation in providing the necessary information to Mr H.

I'm satisfied that the wording in the notifications is clear and explained what needed to be done. Trading 212 had a duty to let customers know of the ineligible status and remove the holding from its customers ISA accounts as soon as possible. So, I think Mr H's suggestion that he should have been given a two-month consultation period via a letter isn't reasonable. Mr H was given 16 days to take what action he wanted to if he didn't want the shares sold which I don't think was unfair under the circumstances.

Mr H says that Trading 212 could have moved his holding into his Invest Account which would have allowed him the opportunity to recoup some of his losses – Polestar had risen in value since the sale. However, Trading 212 couldn't do this on Mr H's behalf. I say this because taking such action would have required Trading 212 to make a unilateral decision about what instruction it thought a customer would want to give in the absence of a response further to sending notification that a decision was required.

Trading 212 provided an execution only service so wasn't in the business of making decisions on customers' accounts such as transferring an asset from a more tax advantageous environment to a taxable account. It could equally have been the case the Mr H was happy for Trading 212 to sell the shares and was relying on it to carry out that transaction without him having to give instruction.

And Trading 212 told us that a transfer between account wasn't a service that it offered as it could not facilitate in-specie transfers at the time either internally or externally in any event. It pointed out that it did suggest an alternative to Mr H which he could have acted upon if he still wanted to hold Polestar shares. It said;

'However, the company shares are still accessible via the Invest Account. We do not intend to force you to buy it there – that is entirely up to you. It is simply our suggestion if you wish to use the proceeds from your closed position to reopen it in the Invest Account. Yet, at the current market price (\$4.24), you will be able to purchase 2,850 Polestar units by using the proceeds from your closed ISA position (£9 441.27).'

Mr H rejected this suggestion but the loss he suffered as a result of the sale was because of the performance of the investment itself. But the proposal Trading 212 made to Mr H, if he had wanted to repurchase into his Invest Account for which it would have re-opened an identical position.

Trading 212 does have an obligation to ensure the holdings within the ISA are compliant. It sought to notify Mr H of this and as the holding was still in Mr H's account by the time

specified, I'm not persuaded Trading 212 did anything wrong when it sold the holding. Ultimately, the holding wasn't compliant and needed to be removed.

Nevertheless, I would expect it to have handled this fairly and I appreciate Mr H feels strongly about the holding being sold without his instruction. But I'm satisfied that Trading 212 acted fairly and reasonably when it informed Mr H of the ineligibility of the shares and the action that it would take – by selling the shares – if it didn't receive instruction from him.

Overall, I am satisfied that Trading 212 acted as it should have done and complied with its regulatory obligations by informing Mr H of the share's loss of ISA eligibility status and giving him the option of selling or transferring the holding. It wasn't aware of the shareholding's ineligibility prior to June 2023. And ultimately the ISA was an ISA only account and it was Mr H's responsibility to monitor and manage that account.

No doubt Mr H will be disappointed in the outcome of his complaint, its clear he feels strongly about it but I hope I have been able to explain how I reached the decision that I have.

My final decision

For the reasons given, I don't uphold Mr H's complaint about Trading 212 UK Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 23 April 2024.

Catherine Langley
Ombudsman