

## The complaint

Mr T complains that ITI Capital Limited delayed the transfer of his share dealing account to another broker when it closed its UK retail business.

## What happened

In 2022 ITI decided to stop providing a service in respect of UK retail clients and emailed Mr T on 22 July 2022 informing him of this. It explained that he would need to close his account and transfer the money or assets to himself or transfer the account to a new broker. It emailed Mr T again about this on 18 August 2022. Mr T instructed a new broker that emailed him on 18 August 2022 stating that it had initiated the transfer and sent this to ITI for review but warning that ITI had said the transfer could take up to eight weeks because of high volumes, due to the closure of its UK retail client business.

ITI sent a further email to Mr T on 24 August 2022 warning of the closure of his account and setting out his options. Mr T emailed in response on 25 August 2022 stating he had instructed a new broker already which was already dealing with the transfer of his account and asked for confirmation that it had received this. When no response was forthcoming he emailed again on 31 August 2022 and then again on 9 September 2022.

ITI did then respond by email of 16 September 2022 confirming receipt of the transfer request but stating *"However, in your account you have a negative cash balance of 4.59 GBP due to monthly custody fee as per attached statement."* It asked him to either fund his account in this sum or contact the dealing desk. Mr T emailed on 23 September 2022 expressing his dissatisfaction with his inability to get through on the telephone and stating he was never made aware of the fees and wanted the outstanding custody fee waived as he wasn't prepared to pay this. ITI responded and said the matter had been escalated to the compliance team. Mr T then emailed on 3 October 2022 informing ITI that he hadn't heard from the compliance team and querying when he could expect his shares to be transferred to the new broker.

On 3 November 2022 the new broker emailed Mr T informing him it had never had any acknowledgment from ITI as to the transfer request despite sending multiple follow up emails and suggested he contact ITI and that in the meantime it was putting his transfer on hold. Mr T referred a complaint to our service the same date.

ITI had in the meantime treated his email of 26 September 2022 as a complaint but didn't provide its final response to this until 29 November 2022. Its conclusion was that his complaint was upheld as its service fell below the standards expected and his transfer request had been subject to delay. It made a without prejudice offer of £150 for the distress and inconvenience caused and also said it would waive custody fees of £15.66 which, allowing for the negative balance on the account, meant an additional £11.07 payable to Mr T.

The transfer thereafter took place on 2 December 2022. The shares were transferred over but Mr T thought the dividend payments were lower than they should have been. Mr T also didn't think the offer from ITI was fair and so one of our senior investigators proceeded to

investigate the complaint,. He thought the offer from ITI was fair and made the following key points:

- It would be reasonable to have expected the transfer to have completed within 30 days.
- On 16 September 2022, within 30 days, ITI informed Mr T that there was a negative balance of -£4.59 on his account and although it didn't specifically state this was preventing transfer the inference was clear enough that this was why the transfer didn't take place at that time.
- Although the amount was small, it was not unreasonable for ITI to expect the negative balance to be cleared before completing the transfer and terms and conditions that require this are typical across the industry.
- The account was execution only and Mr T was responsible for actions taken on the account, including payment of fees.
- The regular custody fee was being taken from a cash balance that was from an account migrated from another provider which balance was added to with dividends but from which withdrawals were also made and which likely went into a negative balance in around June 2022.
- He cannot say ITI unreasonably caused delay in transfer of the shares to a new broker when the fees were fair and put him into a negative balance which it reasonably required him to pay before transfer.
- Even if it did unreasonably cause delay in the transfer there isn't any evidence of any financial loss.
- Mr T said he wanted to pay off an outstanding mortgage with the shares but didn't proceed with selling the shares because the mid-price of the shares was £5.38 on 18 August 2022 but only £4.93 when the transfer completed on 2 December 2022.
- However, the share price was between £6.00 and £6.20 on many occasions in the months following the transfer and Mr T hasn't sold the shares. He is therefore not persuaded Mr T would have sold the shares to pay off the mortgage if the transfer had taken place earlier.
- The lack of communication from ITI clearly caused inconvenience and stress to Mr T but the overall offer of £161.07 including waived fees fairly reflects the inconvenience and frustration caused.
- He has not seen that ITI underpaid dividends to Mr T although account charges may have reduced the amount payable.

Mr T didn't agree with the opinion of the senior investigator. In summary he made the following points:

- ITI have clearly treated him unfairly through long delays in processing the transfer, ignoring telephone calls and emails, and its admittance it had fallen below expected standards. He suffered serious distress and inconvenience over several month and the offer of £150 is derisory.
- They sent him a final offer giving him only seven days to accept which has previously

been stated to be against usual protocol which isn't now mentioned and if he tries to accept that now ITI won't even reply.

- He disputes that custody fees are usual as stated as neither his previous broker nor current one have ever charged any fees and ITI at no point informed him such fees were payable.
- ITI did underpay him for every dividend as he has previously explained and no reason was provided for any deductions which must be for some fee never disclosed to him. Again both his previous and current broker pay him the full dividend so he disputes its common practice to deduct anything from dividends.

The senior investigator addressed the issues Mr T had raised but didn't change his opinion. Mr T continued to dispute that he had been paid the right amount for four dividends he had received and provided his calculation showing £17.72 had been deducted from these. He also continued to dispute that it was normal practice to deduct fees for holding shares in a nominee account.

### **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.

In doing so, I've taken into account relevant law and regulations; relevant regulators' rules guidance and standards; codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time. But I think it's important to note that while I take all those factors into account, in line with our rules, I'm primarily deciding what I consider to be fair and reasonable in all the circumstances of the case.

The purpose of my decision isn't to address every point raised and if I don't refer to something it isn't because I've ignored it but because I'm satisfied I don't need to do so to reach what I think is the right outcome. Our rules allow me to do this, and it simply reflects the informal nature of this service as a free alternative to the courts. Having considered everything I agree with the conclusion reached by the senior investigator that the offer made by ITI is fair and reasonable and broadly for the same reasons.

I have set out above the sequence of events in relation to Mr T's transfer of his account to his new broker in some detail and I don't think I need to add to this. ITI has accepted that it didn't provide the service it should have done and because of this the transfer of the account was delayed. In the circumstances the main issue to be decided is whether the offer it made to resolve the complaint was fair and reasonable in all the circumstances.

I agree with the senior investigator that all things being equal and there being no issues arising with the transfer, it would be reasonable to expect that a transfer would take no longer than the period allowed for the transfer of assets held within an ISA wrapper – namely 30 days.

However, in this case there was an issue with transfer, namely there was a negative balance on Mr T's account arising from the custody charges applied to his account. Mr T was made aware of this by ITI's email of 16 September 2022. I have seen no evidence that suggests that ITI had miscalculated this such that the negative balance didn't exist and whilst the amount was small, there was nothing wrong in ITI expecting this to be cleared before it completed the transfer.

I have considered Mr T's argument that custody fees aren't commonly charged by brokers,

as the senior investigator said was the case. He cites his own experience with the broker before ITI and his current broker. However, I have no information about the charges payable by the previous broker and in any event regardless of what other brokers he has dealt with might do, there was no reason that ITI couldn't, in the reasonable exercise of its own commercial judgment, decide that it would charge for this.

ITI hasn't provided a copy of its terms and conditions in this complaint but I have seen a rate card for ITI from 2019 in which its charges are set out - one of which is a custody fee. The record of transactions carried out in respect of his account also make regular references to a custody fee being charged. In the circumstances and on the information available I am satisfied ITI didn't do anything wrong in charging custody fees on Mr T's account.

ITI did waive the custody fees when it provided its final response to the complaint in November 2022. However, this wasn't on the basis these shouldn't have been charged but because at that point the transfer had already taken longer than it should've and wasn't due to complete for a further week. It doesn't support a finding that ITI should have waived the fees when it wrote to Mr T on 16 September 2022, which was only around three weeks after his new broker sent the transfer request.

I accept that the email of 16 September 2022 didn't specifically state the negative balance on the account needed to be cleared for the transfer to proceed but having considered what it said I think this was implicit. In the circumstances I think it is reasonable to expect Mr T to have understood from the email that whilst there was a negative balance on his account the transfer wouldn't go ahead.

The account that Mr T had with ITI was execution only so it was for Mr T to manage this and take action when this was necessary. In this regard, and as the investigator noted, it is likely that the negative balance on the account arose before his transfer instructions to the new broker and was something that he needed to put right.

However, although I am not persuaded that ITI did anything wrong in not proceeding with the transfer as of 16 September 2022 because of the negative balance on the account, it should not have left matters there and should have responded to Mr T's emails in response. If it had done so then the issue over the negative balance would likely have been resolved and the transfer would, more likely than not, have been completed sometime before the date of actual transfer, which took place on 2 December 2022.

ITI acknowledges that its inaction delayed the transfer and has offered a total of £161.07, including the waived fees, in respect of the distress and inconvenience caused by the way it dealt with the transfer. I note that Mr T considers this offer to be derisory. However, whilst I understand he will have been very frustrated by ITI failing to respond to his various communications, the amount offered is in line with what I would award for distress and inconvenience for the failure on the part of ITI to communicate with him and the period of delay in the transfer resulting from that. I therefore think the offer made for this by ITI is fair and reasonable in the circumstances.

I am not persuaded that Mr T suffered any financial loss due to any delay in transfer. He argues that his intention was to sell his shares to help pay off a mortgage but didn't then do this. The share price was higher in January and February 2023 than at any time between August 2022 and 2 December 2022. If he wanted to sell his shares to pay off his mortgage he could have done so after the transfer and would have been in a better position than if there had been no delay and he had sold earlier.

Mr T has raised a second issue in relation to ITI's actions, namely that he hasn't been paid the proper value for dividends received. He has referred to four dividends for which he says

he has received less than the actual value, amounting to a total deficit of £17.72. However, having considered the available evidence I am satisfied that Mr T has received what he was entitled to and that he has misunderstood what happened.

I say this because on looking at the transaction report for his account the correct dividend amounts can be seen being credited to the account on the date the dividends were due. It can then be seen that the dividends sit in the account for some time before any withdrawal is made. The amount subsequently withdrawn is then the amount remaining in credit on the account at the time of withdrawal, which is less than the dividends credited because deductions having been made in the meantime in relation to custody fees.

For example, the first dividend Mr T refers to resulted in £112.35 being credited to his account on 29 April 2021 - the correct figure based on the price at the time, as he has calculated himself. At the time of payment into his account it was already in debit by £0.98 due to custody fees and over the following weeks the account was subject to additional custody fees of £0.92, so a total of £1.90 was deducted from the account for these. The sum of £110.45 was then subsequently withdrawn from the account on 19 May 2021 - being the dividend payment of £112.35 less the accrued custody fees.

The same can be seen for each of the dividends he has referred to. So, contrary to what Mr T thinks, he hasn't received less than he should have done. He has received the value of dividends less the custody fees deducted, which ITI was entitled to charge for - as I have already found - but which it subsequently agreed to waive, as I have referred to above.

### **Putting things right**

In summary, ITI didn't deal with the transfer as it should have done and its failure to communicate with Mr T following its email of 16 September 2022 meant the transfer didn't take place when it should have done. The offer that ITI made to Mr T of £161.07 in respect of its failings is fair and reasonable in the circumstances for the distress and inconvenience caused by its failings and ITI should pay this to him if it has not already done so.

### **My final decision**

I uphold this complaint for the reasons I have explained above. ITI Capital Limited has to pay Mr T £161.07 for distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 8 May 2024.

Philip Gibbons  
**Ombudsman**