

The complaint

Mr T complains that Interactive Brokers (U.K.) Limited ('IBUK') has unreasonably refused to assist him in obtaining share certificates for holdings which were due to be delisted. Mr T says this caused him a loss when IBUK thereafter closed their position in July 2023.

What happened

Mr T has held execution only share dealing accounts with IBUK since 2013. He held a long position of 5,500 shares in a business, which I will call "P", split across two accounts.

On 26 May 2023, Mr T contacted IBUK to enquire whether it held any information about the delisting of P shares on the London Stock Exchange ('LSE'). This was since P had recently announced its intention to redomicile in Central Asia, with its decision stemming from sanctions related to the Russia-Ukraine conflict. Thereafter, P confirmed in June 2023 that it would delist from the LSE. It has since changed name to a different company, that I will call "S".

IBUK replied to Mr T on 29 May 2023, explaining that it had not yet received confirmation of the delisting of P shares but if that were to happen, Mr T would hold non-tradable shares. Accordingly, he could request to transfer to another broker. IBUK reminded Mr T that it *"does not issue any physical paper certificates for shares"*.

On 16 June 2023, IBUK sent Mr T a warning message confirming that P shares would be delisted from the LSE effective 17 July 2023. It explained that *"any open position in [P] should either be closed out or transferred out before June 30, 2023. Interactive Brokers reserves the right to force close any position left in your account[s] after the deadline"*.

On 20 June 2023, Mr T wrote to IBUK asking it to complete a CREST withdrawal request to transfer the P shares (in paper form) to the registrar, Computershare. He explained he wanted to retain his P shares but he had been unable to action the process himself without a broker ID.

IBUK replied to Mr T the same day, explaining how it could not transfer positions in paper-certified form; the transfer would have to be made electronically, in book-entry form. IBUK also explained that upon receipt of the electronic delivery, the registrar could convert the position into certificated form. IBUK gave Mr T the steps to submit a request for an outbound position transfer.

Two days later, there was a further series of written exchanges between Mr T and IBUK. Mr T asked how to make a transfer on the online system, to which IBUK set out an explanation for him. He also asked IBUK to try to make an electronic transfer to Computershare on his behalf. Though IBUK had explained to Mr T about using another broker, it agreed to attempt the electronic transfer (from one of the two accounts) at Mr T's request.

Mr T later confirmed to IBUK the same day that Computershare couldn't accept the electronic transfer – as IBUK had previously expected. He then asked IBUK again to facilitate his paper-certified transfer. IBUK was not able to do this – and Mr T remained

unhappy, asking to lodge a complaint.

On 30 June 2023, IBUK wrote to Mr T again about the delisting of P shares. It said to Mr T that *“we have decided to update the previously announced deadline from Friday 30 June 2023 to Tuesday 25 July 2023”*. It then reiterated the same warning about closing or transferring open positions by the deadline and its reserved right to close any remaining open positions after the revised date.

Mr T took no further action with the shares. However, he did write to IBUK on 20 July 2023 to set out how he did not agree to it closing the position after the deadline and he gave no such consent for that to happen. He told IBUK again that it ought to arrange the CREST withdrawal via Computershare to obtain paper certificates for the P shares on his behalf.

IBUK rejected Mr T's complaint. It said it was more than happy to help Mr T transfer the P shares to another business that would accept the shares, but it could not obtain the paper certificates via Computershare as Mr T had asked for.

Mr T still disagreed. He said he accepted IBUK's general position that it could only trade shares electronically. However, he felt that exceptional circumstances should apply and IBUK ought to assist him in the way he had asked for.

IBUK then closed the position as of 25 July 2023 and thereafter updated Mr T's accounts with the sale proceeds.

Mr T then brought his complaint to this service. He explained that IBUK had wilfully disregarded his reasonable request for it to obtain the paper certificate from Computershare despite being given plenty of notice to do so, and he felt it could have chosen to exercise discretion to help him, give the shares were worth many times the market value at the date of disposal.

He explained how he held shares of P with a different investment broker, and that business swiftly sought and supplied the share certificate upon request. By selling his shares without alternative, the sale value was a fraction of the true value because of the impact of the Russia-Ukraine conflict. He hadn't wanted to sell the shares until their price had recovered. Mr T said that in order to resolve the matter, he wanted the shares returned to him.

An investigator reviewed the complaint, but he did not believe it should succeed. He said that the customer agreement between Mr T and IBUK permitted the disposal of the shares, and Mr T had signed and agreed to be bound by the agreement when he set up his share dealing accounts.

Furthermore, the investigator noted how Mr T had been able to obtain the relevant share certificates for P shares with a different broker and he believed Mr T could have acted on IBUK's instruction to transfer the shares to another broker before the deadline. The investigator therefore did not find IBUK at fault for the shares having been sold because Mr T took no action before 25 July 2023.

Mr T said he appreciated the investigator's efforts, but he wholly disagreed with the outcome that had been reached in the complaint. He made further detailed written submissions. I have read these in their entirety. In summary, Mr T said:

- He fully accepts and understands that execution only brokers operate in a low cost manner, and accordingly these businesses do not offer paper share certificates as to do so would be costly and time consuming.

- However, he does not agree that in operating this way, that IBUK can ignore its duty of safeguarding his assets.
- He believes IBUK ought to have adopted an exceptional approach and acted for him to obtain the paper certificates, as the different execution only broker did.
- In his view, IBUK has avoided undertaking any reasonable duty by relying on small print in terms and conditions.
- There is a substantial difference between the price of the stock and the value of the stock, particularly in this instance of geopolitical tension – and IBUK is liable for this difference as it forced the sale of the P shares.
- By its action - contrary to his clearly stated instructions - IBUK crystallised losses on P by disposing of Mr T's shares. This action not only caused an immediate actual loss but also robbed him of the opportunity of loss-recovery and gains from a future re-rating of the stock.
- It is an unfounded assumption by the investigator that Mr T took no action. In fact he asked the different broker, and a third business about transferring the shares, but they declined.
- The different broker was able to obtain the paper certificates in just two weeks and he now holds S shares registered on the overseas exchange.
- It seems to be the case that IBUK simply couldn't be bothered to help.
- It would be very inexpensive for IBUK to rectify the matter – it could simply buy the shares back, raise a CREST withdrawal form and apply to the company registrar for a paper certificate, as it should have done in the first place.
- Overall, he feels that IBUK's actions were unreasonable and cavalier, given other brokers have shown it was possible to safeguard his interests following the proposed delisting of the P shares. That IBUK didn't act in the same way causes him to question its motives.

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

I should also point out that I will focus on the issues I believe to be central to the complaint to decide what I think is fair and reasonable in all of the circumstances. I do not intend that as a discourtesy to the parties. However, we are not a court; and though there are rules I may rely on in respect of complaint handling procedures, I'm not required to comment on each point or make specific determinations on every submission put forward by the parties.

Having reviewed matters carefully, I've reached the same overall outcome as the investigator and I'll summarise my reasons for that below.

It's accepted that IBUK acted as nominee for Mr T's P shares, with Mr T having beneficial ownership of them. It is for that reason that IBUK updated Mr T after he had become aware of P's intended delisting from the LSE, as this had a direct effect on Mr T's interests as a shareholder of P. I am satisfied that it provided Mr T with prompt notification of his options at that time, as well as reinforcing that it could only act in electronic form in relation to share dealing.

I appreciate Mr T understand this approach from IBUK and he believes it fair in general circumstances. I also note it is also consistent with the information that IUBK provides to all of its customers via its website, where it is set out that it cannot accept physical stock certificates onto a customer's account – they can only be held electronically.

Furthermore, section 26 of the terms and conditions which apply to Mr T's share dealing accounts with IBUK permitted it to sell Mr T's shares:

“26. Liquidation of Positions and Offsetting Transactions: A. IBUK, IB LLC, AND THEIR AFFILIATES SHALL HAVE THE RIGHT, IN THEIR RESPECTIVE SOLE DISCRETION, BUT NOT THE OBLIGATION, TO LIQUIDATE ALL OR ANY PART OF CUSTOMER'S ASSETS OR POSITIONS IN ANY OF CUSTOMER'S ACCOUNTS, WHETHER CARRIED INDIVIDUALLY OR JOINTLY WITH OTHERS (INCLUDING BY THE ENTRY OF OFFSETTING TRANSACTIONS), AT ANY TIME, IN ANY SUCH MANNER, AND IN ANY MARKET, AS IBUK, IB LLC, OR THEIR AFFILIATES DEEM NECESSARY.”

Mr T's principal argument is that IBUK has capriciously applied the terms and conditions by selling the shares at the second deadline; his view is that it did not have to do so, and could otherwise have exercised discretion to obtain the share certificates. However, I do not accord with this view.

We do not act in the capacity of a regulator. Our decisions don't ordinarily interfere in how a business may conduct its operations or exercise what may be commercial judgment on the provision of a particular service, where that remit falls to the Financial Conduct Authority. That notwithstanding, this service's role is to investigate disputes and resolve complaints informally to decide what is fair and reasonable in all of the circumstances whilst being mindful of the considerations I've already explained above – such as the terms and conditions and the relevant laws, guidance and best practice applying to IBUK. I am therefore able to consider the overall fairness of IBUK's procedure in these circumstances.

IBUK has told us how holding open positions of a delisted stock for an exclusively online brokerage firm could potentially foist the risks and obligations associated with issuing paper stock certificates onto it – the very thing acting electronically is designed to avoid. IBUK submits that it is entitled to make business decisions to refuse to hold paper share certificates (and accordingly liquidate positions for shares where a customer requires paper certificates), provided that these are correctly set out to its customers. I don't believe that is an unreasonable approach for IBUK to take – and importantly, Mr T had acquired knowledge of this when setting up his accounts and agreeing to the terms and conditions.

I realise Mr T feels IBUK ought to have amended its practice by applying discretion to its normal procedure on this particular occasion, but I do not believe that because another broker chose to do so that this compels IBUK to act in the same way. This complaint is specific to IBUK and I can only look at its actions or inactions in relation to Mr T's complaint.

In my view, IBUK has not acted unreasonably or unfairly in the circumstances. It had no control over the shares being delisted from the exchange. Since IBUK does not support any physical paper certificates for shares, any open positions in P needed to be either closed by the time P was delisted from the LSE or transferred to a broker that supported the particular overseas stock exchange where P intended to redomicile. I note Mr T says he did try to obtain a broker and sadly couldn't arrange this by the extended deadline, but it was not the fault of IBUK that he was unable to do so.

IBUK also made endeavours to attempt an electronic transfer to the registrar, however, it

told Mr T expressly how it “*want[ed] to be clear that we will attempt this transfer, however, there is no guarantee this will work. We recommend that you transfer the stock to another bank or broker that will accept our electronic delivery.*”

A clear warning – and a further extension of the deadline – were sent by IBUK and duly received by Mr T. Therefore, I cannot conclude IBUK acted unfairly when it closed the position on 25 July 2023, in line with the terms and conditions applying to Mr T’s share dealing accounts. It follows that I am not persuaded IBUK is accountable for any losses Mr T believes arise from that closure, when it supplied reasonable notice to sell the P shares if they remained in Mr T’s accounts after that date.

My final decision

Though I realise my decision won’t be what Mr T has hoped for, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr T to accept or reject my decision before 4 November 2024.

Jo Storey
Ombudsman