

The complaint

Ms B has complained after restrictions were placed on her investment account held with Brown Shipley & Co Limited trading as Brown Shipley.

Ms B is being represented with this complaint, but for ease I will refer to all actions and comments as those of Ms B.

What happened

Ms B has held an investment portfolio account for a number of years, which she says was initially inherited. The management of the account has changed several times and Brown Shipley took responsibility of it in 2012.

In October 2020, Brown Shipley wrote to Ms B to inform her that due to restrictions, her account would need to be transferred out from them.

In December 2020, Ms B says she informed Brown Shipley to close her account with them and transfer the proceeds to her solicitors' 'client account'. However, Ms B says she was subsequently informed that the Brown Shipley custodian (based in Luxemburg) had partially rejected the request, as an embargo had been placed on the account on 19 October 2020.

Ms B complained to Brown Shipley. She says she was only formally informed of the reasoning behind the decision in May 2022. Brown Shipley said lawyers for their custodian had made the decision that restrictions would need to be placed on Ms B's US-related investments, under the US' Office of Foreign Asset Control's (OFAC) Iranian Transactions and Sanctions Regulations. They said they were satisfied that Ms B qualified as an "ordinary resident in Iran" for purposes of the regulations and stood by the restrictions.

Ms B remained unhappy. She said she was a UK private individual and that the regulations had been unfairly applied to her. She was unhappy that more notice hadn't been given and that she was having to pay management fees throughout. She brought her complaint to our service for an independent review.

Our investigator looked into it, he said he felt Brown Shipley were acting fairly and complying with the regulations in applying the embargo. He also felt it was fair they charge fees for a portfolio that remained invested, as there were costs involved for them.

Ms B responded with several points to the investigator's view. Amongst them, she said:

- The embargo was placed on 19 October 2020. However, she was written to, to move investments from them on 29 October 2020 and wasn't informed about the embargo until later on.
- A OFAC licence for Ms B to move investments was only applied for in March 2022.

- Ms B has not been able to communicate with the custodian or provide further information to them.
- Ms B is not domiciled in Iran and management fees since the embargo was placed should be refunded.

I issued my provisional findings on the matter on 22 March 2024. An extract of which forms part of my final decision below.

Many points have been made in relation to this complaint – I've tried to set out the key issues I think are important here. And I've answered them below in turn.

Fairly applying the embargo

I understand that Ms B is unhappy that restrictions were placed on her account by Brown Shipley's custodian. However, businesses have a legal obligation to protect the security of their accounts and to comply with various laws and regulations.

It's not our role to say whether a business has acted unlawfully or not – that's a matter for the Courts. Our role is to decide what's fair and reasonable in the circumstances. I'm satisfied that Brown Shipley have acted fairly and in line with their legal and regulatory obligations and in accordance with the terms and conditions of the account when complying with the embargo placed by the custodian. Having been made aware of the circumstances involved and the legal guidance for the custodian, I haven't seen anything to conclude that they are acting unfairly here.

Delays in informing Ms B of the embargo

Ms B has also complained that despite being given notice to close her account in October 2020, she wasn't formally told of the embargo until the end of January 2021. I understand this will have been a distressing and inconvenient period for Ms B. I can also see that several attempts were made to find out the status of the account. However, I think Brown Shipley acted fairly and in a timely manner here.

They have explained that during this four-month period, they were discussing the case with various compliance and legal partners, as well as involved third parties. They were needing to undertake a proper legal review and complete their necessary due diligence. They also weren't aware at the time of the full details they could give to Ms B. Brown Shipley have provided evidence to show they were trying to deal with this in a timely manner and I haven't seen sufficient evidence of avoidable delays here.

Delays in applying for the OFAC licence

Whilst the embargo was placed in October 2020 and Ms B was made aware of it in January 2021, Brown Shipley did not apply for the OFAC licence for Ms B until 2022. After approximately 18 months.

Brown Shipley have said that the reasons for this stemmed from the complex nature of the matter. They have provided a timeline of events. I can see communications between Ms B's representatives and Brown Shipley and the custodian between

February and July 2021. These included challenges to the embargo as well as various questions. Including whether residency may change. I think this timeframe was reasonable and they were acting fairly here in seeing if the matter could be resolved.

Brown Shipley state that they made it clear in August 2021 that the licence needed to be applied for and the request was passed on in September 2021. They say that it took six months to review the application before it was submitted in March 2022. However, I don't find this timeframe to have been reasonable and I haven't been provided with anything to substantiate a six-month period here before application.

I can't be sure that Ms B has experienced any financial loss, for the licence not being applied for sooner. The investments haven't been realised, so it's impossible to ascertain at this stage if the proceeds are less than Ms B would have received. However, I do think Ms B has suffered distress and inconvenience for this period of time. I think £500 is fair compensation for the impact of it.

Refund of fees paid

Management fees were switch off for Ms B's account in October 2021 and she has questioned why the fees she paid post-embargo but prior to this point, haven't been refunded.

Brown Shipley have agreed to consider the fees from this time, after the decision on the licence and possible lifting of the embargo. They have suggested they would consider refunding them. I asked Ms B's representative if they were willing to accept this position and consider the decision of the refund of fees at a later point and I haven't been told they're not happy to do that.

In summary, whilst I haven't seen enough to conclude that Brown Shipley (through their custodian) have applied the embargo on Ms B's US investments unfairly, I do think they could have done more to apply for the OFAC licence sooner. Whilst there isn't currently a financial loss arising from this, there has been distress and inconvenience caused by how long it took. I think £500 is fair for the impact this had. Brown Shipley have also agreed to consider any refund of management fees still outstanding, once the licence application has been reviewed.

Brown Shipley didn't respond to the provisional decision with any further points for consideration.

Ms B responded in full. Amongst her points in response, she said:

- Content of legal advice should have been made available including the basis for the embargo.
- Content of the information given to the custodian regarding Ms B, should have been made available to her.
- £500 compensation for the distress and inconvenience caused to Ms B is not sufficient. The worry has been compounded by the lack of transparency.
- Approximately £13,500 had been paid in fees since the account embargo was put in place (until fees were stopped) and haven't yet been refunded.

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.

Having done so, and having considered the response from Ms B to my provisional decision, my findings remain as I set out. Let me explain why.

Whilst I appreciate her comments that the legal advice and information the custodian had received should be made available, I don't agree. Brown Shipley have said this is confidential and was legal advice that they sought and received privately and directly. I am satisfied with this response and that Brown Shipley have acted fairly here.

Ms B has maintained that she isn't happy that Brown Shipley aren't refunding fees paid. However, I remain of the view that they have acted fairly here, in not refunding them but offering only to consider refunding them, post a licence application decision. They consider that a refund could be a potential sanctions breach, and I think this is a fair position they have taken.

Brown Shipley are required to have controls in place. The OFAC guidance states that a transaction could be prohibited, even if there is no blocked person or blockable interest. US dollar currency investments automatically engage OFAC regulations and breaches can see significant financial penalties for firms. Brown Shipley have determined that such a transaction in this case could constitute an unauthorised and prohibited export of services, in breach of the regulations. As explained, I think this position, although it could be seen as cautious, is fair and reasonable and I won't be requiring them to do anything differently here.

Ms B also responded to my provisional decision to say that they didn't agree with my thoughts that £500 compensation would be fair in the circumstances. They said the impact of the situation has been much higher and compounded by a lack of transparency. However, as I feel that Brown Shipley's position is fair and understandable, as well as their reluctance to share third party advice, it follows that I don't agree further compensation is warranted. I maintain for the reasons I set out, that £500 compensation for the period of delay that I identified is sufficient.

In summary, I remain satisfied that Brown Shipley have fairly applied the embargo and in not refunding fees paid. I do think there was a delay in the application for the OFAC licence, and £500 compensation for the impact of this is fair. Despite concluding that Brown Shipley are acting fairly in not currently offering any refund, I note they have said they will consider their position on this further once the licence decision is made.

My final decision

My final decision, for the reasons set out above, is that Brown Shipley & Co Limited trading as Brown Shipley should pay Ms B £500 for the distress and inconvenience caused to her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 25 July 2024.

Yoni Smith
Ombudsman