

The complaint

Mrs P complains about the service provided by Interactive Investor Services Limited, referred to as “*Interactive*”.

In summary, she’s unhappy that the shares in question weren’t transferred to a new ISA manager in line with her instructions. She’s unhappy that the shares were instead transferred to her trading account.

To put things right, she’d like compensation for any losses incurred as well as reinstatement of the shares with her new ISA manager.

What happened

On 16 March 2023, Interactive notified Mrs P that due to corporate action taking place, her Metal Tiger Plc (‘*MTR*’) shares were being delisted from the Alternative Investment Market (‘*AIM*’) linked to the London Stock Exchange, and the company name was changing from MTR to Strata Investment Holdings Plc (‘*STR*’). Interactive also notified Mrs P that due to these changes, the existing shares would be changing to CHESS Depository Interest (‘*CDIs*’).

I understand that due to the changes, the CDIs couldn’t be held in an ISA wrapper so Interactive gave Mrs P 30 days to take action. Otherwise, it would move her shares to the linked trading account – opening an account for her if she didn’t have one – which wouldn’t be within the ISA wrapper.

In its correspondence with Mrs P, Interactive stated the following:

“ISA Customers,

Due to HMRC restrictions on ISA accounts, Metal Tiger CDIs are not considered an ISA-qualifying investment. Therefore, on or after 1st May 2023 (30 calendar days following the delisting) we will arrange to move your shares to a linked Trading Account, opening one on your behalf if you do not already have one.”

Mrs P was unhappy about this and concerned about the effect any Capital Gains Tax (CGT) liability would have on her investment.

I understand that Mrs P made further enquiries. The new provider stated that it would accept the shares within in an ISA wrapper, so she actioned a transfer request to move the shares from Interactive to the new ISA manager.

On 29 March 2023, she notified Interactive that she was transferring her ISA, as the transferee could accept the MTR shares within the ISA wrapper.

Interactive responded the next day to make clear that this wouldn’t be possible due to the ISA rules around qualifying investments. But Mrs P continued with her request.

The correct paperwork was received by Interactive on 28 April 2023, which was over the 30 days from when she was notified of the trade restrictions on the shares.

But the transfer didn't go through – even though Interactive provided the valuation on 2 May 2023. Prior to this, the MTR shares had been transferred to Mrs P's trading account on 1 May 2023 – making them (potentially) liable to CGT.

On 3 May 2023, Interactive tried to transfer the ISA again, but later the same day the transferee cancelled the request because the MTR shares couldn't be transferred via Certificateless Registry for Electronic Share Transfer ('CREST').

Interactive says that on 5 May 2023 it consulted with its back-office to see if it could trade the shares via the Australian Stock Exchange (ASX). But as the UK shares were already delisted at this point, and it hadn't received any statements for the new holdings on the Australian market, it was unable to proceed with the transfer.

After various delays involving incorrect paperwork, and rejections, the STR CDIs settled in Mrs P's trading account on 22 June 2023. However, this was outside of the 30 days notification that she was given on 16 March 2023, and almost two months after she was told to expect the shares to be transferred to her trading account if they were still invested in MTR come 31 March 2023.

Interactive didn't uphold the complaint. In summary, it said:

- It doesn't agree that it did anything wrong by not being able to transfer the MTR shares, because the shares were delisted from the UK market shortly after it received the transfer request.
- It doesn't agree that it has done anything wrong by converting and transferring the MTR shares into Mrs P's trading account as this is what it said would happen.
- It sent the relevant notification on 16 March 2023 notifying Mrs P that MTR shares were being delisted from the AIM and moved to the ASX. It also made clear that if she held MTR shares in her ISA, they'd be transferred into her trading account 30 days after 1 May 2023.
- Because she held MTR shares in her ISA, they were converted and transferred to her trading account as STR CDIs. And because she was given the relevant information beforehand about what might happen, it's not to blame.

One of our investigators considered the complaint but didn't think it should be upheld. In summary, she said:

- In the circumstances Interactive wasn't wrong when it said that MTR shares (and the STR CDIs) couldn't be held in an ISA wrapper.
- Despite Interactive telling Mrs P that the MTR shares weren't eligible for ISA investment once they became STR CDIs, she proceeded with the transfer request. But it wasn't actioned in time, and the shares weren't accepted.
- Interactive accepts that it may not have been clear when communicating with Mrs P that she needed to re-issue the transfer request after the transferee requested and declined the shares. Interactive also didn't contact Mrs P after the transferee rejected the shares.
- In the circumstances Interactive's offer to pay £150 compensation for trouble and upset is broadly fair and reasonable in the circumstances.

Mrs P disagreed with the investigator's view and asked for an ombudsman's decision. In summary, she said:

- She wants to have a proper investigation of the facts. She feels that Interactive has provided inaccurate information.
- Based on correspondence between her husband and the transferee, she feels her application should've been processed around the same time as her husband's. His ISA transfer was requested on 17 April 2023 which Interactive accepted on 18 April 2023, but then cancelled on 5 May 2023.
- The new ISA manager's interpretation of the HMRC rules, which allows CDIs to be held, is correct.
- According to government and/or HMRC information Australian CDIs are a type of depository receipt. They're similar to American Depository Interests in the US and CREST depository interests in the UK. They allow investors to obtain all the economic benefits of owning securities without actually holding a legal title to them.
- They were developed by ASX to facilitate the clearing and settlement of transactions in securities through CHESS where the issuing entity is domiciled in a country whose laws don't recognise holdings or electronic transfer of title.
- Depository receipts qualify for ISAs as long as the underlying shares qualify. A depository receipt can be held in an ISA providing the underlying shares represented by the depository receipt are in the beneficial ownership of the holder and are themselves ISA qualifying. It's irrelevant for ISA purposes whether the depository receipt is listed or traded on a recognised stock exchange.
- ISA managers should check the terms and conditions and any other documents related to the depository receipt for any reference to the beneficial ownership of the underlying investments.
- In the absence of any contradictory evidence, the ISA manager can assume that the holder of a depository receipt is the beneficial owner so the depository receipt can be a qualifying investment.
- The ISA list doesn't disclose those shares that can't be held.

The investigator having considered the additional submissions wasn't persuaded to change his mind.

As no agreement has been reached, the matter has been passed to me for review.

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, I agree with the investigator's conclusion for much the same reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Mrs P says I'm unable to safely say that Interactive behaved unreasonably with regards to her transfer instructions and the trading account.

In other words, I can't safely say that Interactive behaved unreasonably by not being able to transfer the MTR shares as instructed, because they'd been delisted, as per its notification regarding the corporate action.

I also can't say the Interactive did anything wrong by converting and transferring the MTR shares from her ISA to her trading account, because that's what it said would happen if the shares hadn't been dealt with.

Before I explain why this is the case, I think it's important for me to note I very much recognise Mrs P's strength of feeling about this matter. She has provided submissions to support the complaint, which I've read and considered carefully. However, I hope she won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised by the parties under a separate subject heading, it's not what I'm required to do in order to reach a decision in this case. My role is to consider the evidence presented by Mr W, and Investec, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case. I don't need any further evidence to make my decision.

I don't uphold this complaint, in summary, for the following reasons:

- Despite what Mrs P says about her understanding on the matter, I'm persuaded by Interactive's explanation about what happened and why.
- I note that on 16 March 2023, Mrs P was notified of the proposed delisting of the MTR shares (as of 31 March 2023) and its name change to STR.
- I understand that the MTR shares wouldn't be eligible for transfer but would be eligible to be traded as SRT CDIs after being converted.
- Because of the changes, I understand that the CDIs couldn't be held in an ISA wrapper – they weren't considered as an ISA qualifying investment – so Interactive gave Mrs P 30 days to take action, otherwise it would move her shares to a linked trading account.
- I'm satisfied that Mrs P was aware that there could be a potential CGT liability as a consequence, therefore she knew, or ought reasonably to have known, she had to act swiftly.
- I note that having made enquiries with her new ISA manager, Mrs P notified Interactive on 29 March 2023 that she was transferring her ISA to a new manager because – based on what she was told – it could accept MTR shares within the ISA wrapper. I note she made clear that she had sent her transfer request to the transferee.
- Despite Interactive's clarification that this wouldn't be possible I understand that Mrs P continued with her plans.
- Despite notifying Interactive on 29 March 2023 of her intentions, this didn't amount to instructions, so it wasn't obliged to take any action at that point. In the circumstances I don't accept that her original request was 29 March 2023, because the request had to come from her new ISA manager. I'm satisfied that Interactive did nothing wrong by not initiating the process based on Mrs P expressing her intentions to transfer.
- Mrs P says that an earlier request was cancelled by her because of the issues she envisaged. I note Interactive maintains this was as a result of incorrect application. In any case Mrs P withdrew that initial request of her own volition.
- I note the correct paperwork in respect of her request wasn't received until 28 April 2023, over 30 days from when she was told about this.
 - This explains why on 1 May 2023, 30 days after delisting, the MTR shares were ready to be transferred to Mrs P's trading account – making them potentially liable to CGT.
- I note Interactive made clear that the shares would need to be converted to CDIs which are tradable on the ASX before they could be transferred.
- On 30 March 2023 Interactive made clear that it wasn't possible to hold MTR CDIs – because of HMRC regulations. I understand that since the underlying shares wouldn't be ISA eligible at the point the AIM shares were delisted, the CDIs wouldn't be ISA eligible. Despite what Mrs P says, I can't blame Interactive for this.

- I note HMRC stated that: *A depository receipt can be held in an ISA providing the underlying shares represented by the depository receipt are in the beneficial ownership of the holder and are themselves ISA qualifying. It is irrelevant for ISA purposes whether the depository receipt is listed or traded on a recognised stock exchange.*"
- I note Mrs P accepts the need for beneficial ownership to qualify but doesn't agree with Interactive's interpretation of the overall position.
- I note based on information she provided, a depository receipt can be held in an ISA providing the underlying shares represented by the depository receipt are in the beneficial ownership of the holder and are themselves ISA qualifying. So, this may explain why Interactive took the stance that it did, because the underlying shares wouldn't be ISA qualifying.
- I understand that the transfer didn't go through in any event, despite Interactive providing a valuation on 2 May 2023. Interactive attempted to transfer again but was notified that it couldn't transfer via CREST. So, the transfer was cancelled.
- I'm aware that despite consulting its back office to see if it could trade the shares via ASX, it found that it couldn't. And because of a number of issues, including the shares being delisted, the transfer intended by Mrs P, couldn't go through. That's not something I can blame Interactive for.
- On 20 June 2023 Mrs P notified Interactive that the shares had been converted and to proceed with her transfer request. On 21 June 2023, when the conversion took place, Interactive notified her that she'd have to contact the transferee to request a new transfer. Despite what Mrs P says, I understand that Interactive couldn't just automatically transfer the stock to the transferee without instructions to do so.
- On 22 June 2023, Mrs P got in touch to ask why the shares had been moved from her ISA to her trading account and Interactive quite rightly explained that this was due to corporate action and the delisting of shares.
- Despite what Mrs P says, I'm aware that no guarantees were given that shares would be accepted by a counterparty, as this was based on their stock eligibility. I also appreciate that she was told that the shares would need to be converted before they could be moved. It therefore follows that a new transfer request would need to be made. So, in the circumstances, I can't blame Interactive for not transferring at this stage of its own volition without instructions.
- I note that eventually, after the shares were converted, the STR CDIs settled in Mrs P's trading account on 22 June 2023, broadly in line with what she was told – after the shares were delisted.
- In terms of performance, I can't say that Interactive is responsible for the performance of Mrs P's investment because this isn't something that Interactive can predict or control. The performance of her investment is dependent on the financial markets.
- In this instance just because the investment didn't do as well as Mrs P might've expected it to, but has performed in a way such that CGT might be payable, doesn't mean Interactive has done anything wrong. The two issues are unconnected.
- In this in case I'm also unable to say that any losses have occurred due to the unreasonable behavior of Interactive. Therefore, it isn't responsible for any losses she may have suffered.
- I note interactive accepts that it wasn't clear regarding a number of issues, including Mrs P's need to make a new transfer request when the shares had been converted. It also didn't notify her when the request had been rejected by the transferee. Although these points weren't part of the original complaint, in the circumstances I think its offer to pay £150 compensation for any distress and inconvenience caused is broadly fair and reasonable.

- I appreciate what Mrs P says about her husband's transfer request timeline but despite what she believes I'm persuaded that her request was received on 29 April 2023 and Interactive acted in a reasonable manner.

I appreciate Mrs P will be thoroughly unhappy that I've come to the same conclusion as the investigator.

Furthermore, I realise my decision isn't what she wants to hear. Whilst I appreciate her frustration, I can't uphold this complaint and give her what she wants.

My final decision

For the reasons set out above, I don't uphold this complaint.

Interactive Investor Services Limited's offer to pay Mrs P £150 compensation for the distress and inconvenience caused is broadly fair and reasonable. I would expect it to pay this amount unless it has done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 31 May 2024.

Dara Islam
Ombudsman