

The complaint

Mr M complains that Trading 212 UK Limited sold shares he held within an Individual Savings Account (ISA) when they were no longer ISA eligible.

What happened

On 14 July 2023, Mr M purchased shares in a business I will call company F. The shares were purchased and held within his ISA with Trading 212. In October 2023, Trading 212 emailed Mr M to tell him that the shares no longer satisfied HMRC ISA eligibility criteria. Trading 212 told Mr M he had until 15 November to sell the shares and said that if he didn't sell the shares by this date, it would sell the shares on his behalf.

Mr M asked Trading 212 not to sell the shares and asked if the shares could be transferred to a non-ISA investment account. It said it had taken the decision to close positions held in company F as it didn't have a facility to transfer shares between accounts or to other broker services at this time. Although Mr M expressed a desire to retain the shares, Trading 212 sold the shares on 15 November.

Mr M complained to Trading 212 that the sale of the shares had caused him a monetary loss. Trading 212 didn't uphold the complaint and clarified that 'buy' orders for shares in company F had been suspended by its execution broker, and that as a result it was unable to re-purchase any shares into a non-ISA investment account at the time. Trading 212 said that because Mr M didn't instruct the sale of the shares by 15 November it sold them.

Mr M brought the complaint to the Financial Ombudsman Service and one of our Investigators looked into things. The Investigator thought that Trading 212 had reasonably decided the shares in company F had become ineligible to be held within an ISA. And, because Mr M hadn't sold the shares himself by 15 November, it was reasonable that Trading 212 sold the shares on the date it said it would. Mr M asked that an Ombudsman decides the complaint and it's been passed to me to decide.

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.

The crux of Mr M's complaint is that Trading 212 sold his shares in company F despite his instruction not to. Mr M has strong views about the service Trading 212 should have been able to provide him when it told him the shares in company F were no longer eligible to be held in an ISA account. However, I've decided that Trading 212 didn't treat Mr M unfairly in the circumstances. I will now explain why.

When Mr M purchased the shares in company F he used his execution-only account with Trading 212. The shares had already been de-listed but were still tradable on the 'over the counter market.' Mr M purchased them, and they were held in an ISA account with Trading 212. As Mr M's account was an execution-only account, Trading 212 didn't provide investment advice about the purchase of the shares. So, I'm persuaded that it was Mr M's

decision to invest into company F despite being reasonably aware that shares had been de-listed at this time. As Mr M holds an execution only account with Trading 212, he has a responsibility to make sure his ISA account only holds eligible investments. Regardless of this, Trading 212 also has a responsibility to regularly assess the eligibility of an asset held in an ISA taking into account the guidelines provided by HMRC.

The Invest Terms Mr M had agreed to when he took out his ISA with Trading 212 explained, in section 6.2:

“We may take any action that we, in our reasonable discretion, consider desirable to ensure compliance with applicable laws and regulations. We shall not be liable for losses, damages or delays arising from our compliance with any statutory or regulatory requirements”

Trading 212 says that when it became aware that the shares in company F were no longer eligible to be held in an ISA it notified Mr M in October. It explained to Mr M that he could sell the shares before 15 November, or if he didn't it would sell them on his behalf to ensure his account remained ISA eligible. In respect of de-listed shares, Trading 212's Invest Terms conditions at the time Mr M made his share purchase in July 2023 said:

“6.7: We shall have the right to introduce new Investments and Market Hours, trading at the Trading Platform and to suspend and/ or remove from the Trading Platform any Investment and Market Hours at our sole discretion.”

And,

“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.”

The same conditions were in place at the time Trading 212 notified Mr M that it considered shares in company F were no longer ISA eligible. The Invest Terms support that Trading 212 is permitted to sell the shares in company F without an instruction from Mr M in certain circumstances of this complaint. However, as this gets to the crux of Mr M's complaint, I've considered whether it was fair and reasonable for Trading 212 sell the shares when it did, even though Mr M said he didn't want them sold.

There's no dispute Mr M made it clear to Trading 212 that he didn't want to sell the shares and that he would make a monetary loss if they were sold - and not reinvested into a non-ISA investment. However, although it was Mr M's preference to keep his shares and transfer them to a non-ISA account, Trading 212 has shown me that the intermediary broker it uses had suspended buy orders for shares in company F at the time. This means the option to sell the shares within the ISA and then re-buy them in a non-ISA account wasn't an option that was reasonably available for Trading 212. This left another option of a potential transfer of the shares to a non-ISA account with another broker but Trading 212's Invest Terms support that - at the time - it didn't offer this service. I can't tell Trading 212 what services it must provide a customer and I can't reasonably hold Trading 212 responsible for a restriction its intermediary broker had on buying shares in company F at the time.

I understand Mr M is frustrated and upset that he hasn't been able to retain the shares in company F and I acknowledge he has a strong view that the actions of Trading 212 contributed to the monetary loss he's suffered. However, Mr M purchased the shares in company F without advice from Trading 212 after the shares had already been de-listed but were still tradable on the 'over the counter market'. Trading 212 may have taken longer than it could have to confirm shares in company F were no longer eligible to be held within an

ISA, but it was market conditions that resulted in Mr M making a monetary loss. And, regardless of whether the shares were held in an ISA or not, it is the prevailing share price that has impacted the value of Mr M's holding - not the actions of Trading 212.

Trading 212 has provided a screenshot of the trade it instructed its broker to execute once it became clear Mr M hadn't sold the shares by 15 November. This persuades me that Trading 212 took reasonable steps to obtain the best price available when Mr M hadn't instructed the sale of the shares.

Taking all of this into account, I'm persuaded Trading 212 took reasonable steps to ensure Mr M's ISA remained eligible once it became clear he wasn't going to instruct the sale of the shares in company F. This is a regulatory responsibility. At the time, Trading 212 didn't have the option of selling and re-buying the shares within a non-ISA investment, nor did it have a service that would allow it to transfer the shares in company F to another broker. So, I'm persuaded Trading 212 acted fairly and reasonably in the circumstances.

I've noted Mr M's comments about other investments he's made in Contracts For Difference (CFD's) with Trading 212 and other providers, but I can only address the complaint he brought to the Financial Ombudsman Service in my decision. I can't comment further on any other concerns Mr M may now have as Trading 212's final response addresses only the complaint he made about the sale of the shares in company F. Regardless of this, the statements Mr M has provided also support that his trading in CFD's began after Trading 212 had sold Mr M's shares in company F, and I consider this to be a separate matter that my decision cannot address.

Mr M has also commented on responses he's received about a complaint he raised with HMRC. Unfortunately, I cannot make any further comment in this regard as The Financial Ombudsman Service does not deal with complaints about the service HMRC provides.

Mr M believes the actions of Trading 212 in selling the shares he held in company F is a criminal matter and should be reported. I acknowledge Mr M's strong views in this regard, but if he believes this to be the case, Mr M can reject my final decision and take any other form of action if he feels it's appropriate. I would remind Mr M that if he accepts my final decision, he cannot take any further action on this specific complaint he raised with Trading 212.

My final decision

For the above reasons, I've decided that Trading 212 UK Limited acted fairly and reasonably when it sold Mr M's shares in company F.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 25 November 2024.

Paul Lawton
Ombudsman