

## **The complaint**

Mrs M complains that Trading 212 UK Limited sold shares she held in an Individual Savings Account (ISA) when they became ineligible to be held in her ISA.

## **What happened**

In July 2023, Mrs M purchased a number of shares in a business I will call company F. The shares were purchased using Mrs M's execution-only account with Trading 212 and were held within an ISA.

In October 2023, Trading 212 notified Mrs M the shares in company F no longer satisfied HMRC ISA eligibility criteria. Trading 212 gave notice that Mrs M had until 15 November to sell the shares and said that if she didn't sell the shares by this date, it would sell the shares on her behalf.

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

Mrs M complained to Trading 212 that the sale of the shares had caused her a monetary loss as they were not sold at the price displayed on Trading 212's platform. 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 shares on the 'Over the Counter' (OTC) market, which is the market on which the shares in company F had been purchased, often have low liquidity and infrequent price updates. Trading 212 said that because Mrs M didn't instruct the sale of the shares by 15 November it had to sell them as they could no longer be held in her ISA and that it obtained the best price it could at this time.

Mrs M brought the complaint to the Financial Ombudsman Service and is represented by her husband, Mr M. One of our Investigators looked into things and thought that Trading 212 acted reasonably when it became aware the shares in company F had become ineligible to be held within an ISA. And, because Mrs M didn't sell the shares herself by 15 November, it was reasonable that Trading 212 sold the shares on the date it said it would. Mrs M asked that an Ombudsman decides the complaint and it has 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 Mrs M's complaint is that Trading 212 sold her shares in company F despite her instruction not to and didn't obtain the best price it could. Mrs M has strong views that

Trading 212 should have been able to provide her with a non-ISA account in which to hold the shares, rather than sell the shares. However, I've decided that Trading 212 didn't treat Mrs M unfairly in the circumstances. I will now explain why.

When Mrs M purchased shares in company F in July 2023 using her account with Trading 212, the shares had already been de-listed from a major stock exchange but were still tradable on the OTC market. Mrs M purchased the shares, and they were held in her ISA account with Trading 212. Mrs M's Trading 212 account was an execution-only account which means Trading 212 didn't provide Mrs M with investment advice. So, I'm persuaded it was Mrs M's decision to invest into company F despite being reasonably aware the shares had been de-listed at this time and were only available on the OTC market. As Mrs M holds an execution only ISA account with Trading 212, she has a responsibility to make sure her 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 Mrs M had agreed to when she took out her 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 Mrs M in October 2023. It explained to Mrs M that she could sell the shares before 15 November, or if she didn't it would sell them on her behalf to ensure her account remained ISA eligible. In respect of de-listed shares, Trading 212's Invest Terms conditions at the time Mrs M made her 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."*

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

There's no dispute Mrs M made it clear to Trading 212 that she didn't want to sell the shares and that she would make a monetary loss on the shares if they were sold - and not reinvested into a non-ISA investment. Although Mrs M wanted to keep her shares and move or transfer them to a non-ISA account, Trading 121 has shown me that the intermediary broker it used had suspended buy orders for shares in company F. 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 Trading 212 could reasonably provide Mrs M at the time. 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 121 what services it must provide a customer and I can't hold Trading 212 responsible for a restriction its intermediary broker had on buying shares in company F at the time.

I understand Mrs M is frustrated and upset that she hasn't been able to retain the shares in company F and I acknowledge her strong view that the actions of Trading 121 have contributed to the monetary loss she's suffered. However, Mrs 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 OTC 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 Mrs 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 Mrs 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 Mrs 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 Mrs 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 Mrs M's ISA remained eligible once it became clear she wasn't going to instruct the sale of the shares in company F. This is a regulatory responsibility and means that Trading 212 were obliged to ensure the shares in company F were not retained in Mrs M's ISA. 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.

Mrs M's representative has also commented on a response he's received about a similar 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's representative believes the actions of Trading 212 in selling the shares Mrs M held in company F is a criminal matter and should be reported. I acknowledge Mrs M's representative's strong views in this regard, but if he believes this to be the case, Mrs M can reject my final decision and take any other form of action if she feels it's appropriate. I would remind Mrs M and her representative that if she accepts my final decision, she cannot take any further action on the complaints I have addressed in my final decision

### **My final decision**

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

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

Paul Lawton  
**Ombudsman**