DRN-4788052

The complaint

Mr M complains that Brewin Dolphin Limited ('BD') caused unnecessary delays in the transfer of his stocks and shares Individual Savings Account ('ISA') to his new provider. He says as a result of the delay, he has suffered a financial loss which he wants BD to put right.

What happened

The following is, as far as possible, a summary of the background and circumstances leading up to this complaint.

In February 2023, Mr M decided to transfer his ISA from BD to another provider. Mr M completed the necessary ISA transfer with his new provider, who in turn sent it to BD with a covering letter dated 23 February 2023. This said that that it had accepted Mr M's investment account and it asked BD to sell his existing holdings and send the proceeds to it by bank transfer.

On 24 February 2023, BD received the transfer instruction.

On 27 February 2023, BD emailed Mr M's new provider and asked it to submit the transfer request electronically using an industry wide recognised system.

On 14 March 2023, Mr M new provider initiated an electronic request, but it was rejected by BD (it was later discovered that the new provider had used an incorrect code, which it why the request failed.)

Following Mr M's financial adviser being notified of the failed transfer, they emailed BD a copy of the ISA transfer forms on 16 March 2023.

On 20 and 21 March 2023, BD liquidated Mr M's investment holdings and the cash sum was held on the investment account.

On 22 March 2023, BD once again asked Mr M's new provider to submit the transfer request using the electronic system.

Around this time, Mr M's representative raised a complaint about the delayed transfer on his behalf.

Between 3 April 2023 and 14 April 2023, BD and Mr M's new provider exchanged messages. This included BD chasing up the electronic transfer request asking for things to be carried out manually because its requests had been rejected.

On or around 17 April 2023, BD says it received a valid instruction and on 18 April 2023 the funds were transferred to Mr M's new provider.

Mr M's new provider received the funds on 20 and 21 April 2023 and on the same days Mr M invested the monies in a range of investment funds.

On 11 July 2023, BD responded to Mr M's complaint saying that because it didn't think it had

caused the delay in the transfer, it didn't uphold his complaint. It said it received the instruction on 22 March 2023 and it told Mr M's new provider that it must initiate the transfer electronically in line with both providers being part of the TeX open transfer network. It said it didn't receive an instruction until 17 April 2023, whereupon the liquidations and transfer payments took place in a timely manner. It said the new provider was using a wrong code to initiate the transfer. It said while the new provider's records indicate transfer papers were sent to it on 23 February 2023, it had no record of this – the first notification was on 22 March 2023.

On 17 July 2023, BD issued a further response following receipt of a copy of the proof of delivery of the paper transfer instruction on 24 February 2023. It apologised for not including this in its timeline when investigating the complaint. It said it requested the new provider make an electronic request on 27 February 2023, which was followed up with another email on 23 March 2023. It said that, while it was still of the view that the complaint should not be upheld, it said it could've done more to chase up the new provider between 27 February 2023 and 23 March 2023, so it offered £200 as a gesture of goodwill.

Dissatisfied with its response, Mr M brought his complaint to us. He provided a timeline of events and in summary said that it should have been possible to effect the transfer using the paper forms. He said BD said as much in an email to his financial adviser. He said it seems illogical that BD was willing to encash his investments using the paper transfer form yet refused to transfer the proceeds using it.

BD said its position was set out in its response letters.

One of our investigators looked at all of this and they concluded the complaint should be upheld. In summary they said, they believed BD had all of the necessary information contained in the paper transfer form received in February 2023 to effect the transfer. They said in their view, it should only have been necessary for DB to request things were done electronically if there was incorrect or missing information. They set out a timeline of events that would've likely occurred had things happened as they should have, which would have ultimately led to BD selling Mr M's holdings on 27 February 2023 and Mr M investing the proceeds as he ultimately did on 6 March 2023. They said to put things right, BD should carry out a calculation to establish if the delay caused a loss and if it did, they should pay Mr M the amount of money he would need to put his back in the position he would have been in but for BD's error. They also said BD should pay Mr M £100 in recognition of the distress the delay caused, which took into account the fact Mr M's involvement in getting the transfer completed, and so the inconvenience caused to his, was limited.

BD disagreed with the investigators findings. It referred to the TeX terms and conditions, an extract of which it provided, and said they are the rules agreed by all participant firms. It said the relevant section says that all instructions and correspondence related to the transfer must be sent electronically unless otherwise agreed between the counterparties. It said these rules also say that, while participants can communicate using a non-electronic method, this is for exceptional circumstances. It said it was therefore wrong to say it acted incorrectly by asking the new provider to process the transfer electronically.

It said had the new provider promptly and correctly placed the electronic transfer request, the delay wouldn't have happened. It said the new provider was well aware of the correct process to use and it maintained the responsibility for the delay sat with the new provider.

The investigator wasn't persuaded to change their opinion. They said they didn't think it was fair and reasonable that Mr M suffered a delay in his transfer because of the agreement

between the two parties when BD had the information to initiate the transfer, and given BD could override the agreement. For this reason they said BD was responsible for the entire delay.

BD repeated its point that the new provider was aware of the process they had both signed up to which is an industry standard. It said the new provider as the receiving party was in control of the transfer, and that it is unreasonable to conclude BD is at fault given the circumstances.

Mr M replied and while broadly agreeing with the investigator's conclusions, he questioned whether the redress went far enough. He expressed concern about missing out on tax-free income and growth on the shortfall, how the redress amount would impact on this year's ISA allowance and whether given he already had sufficient money to make full use of the next two years' ISA allowance, whether this meant he'd have to pay tax on the redress sum.

The investigator said they had recommended BD pays the redress into Mr M's ISA without impacting his allowance. And because it would be paid into his ISA, it would be free from capital gains tax. They also said that by telling BD to pay an amount to allow Mr M to purchase the missing units as at the settlement date, this would cater for any lost growth incurred.

Because things couldn't be resolved informally, the complaint was referred for a final decision.

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.

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

Having done so, I've decided to uphold this complaint for broadly the same reasons as the investigator gave. My reasons are set out below.

It is not disputed that BD received Mr M's paper-based ISA transfer instruction from his new provider on 24 February 2023. It appears also not to be disputed that this instruction, along with the details provided in the covering letter from the new provider, contained all of the necessary information to enable a transfer to take place. What is disputed here is whether BD should have acted on this paper-based request rather than insist the new provider request the transfer electronically.

BD says that it was right to insist the new provider request the transfer electronically because this was the agreement both businesses had signed up to. BD has referred to the TeX terms and conditions which relate to this and has quoted from them as I have set out above in support of its position.

I don't disagree that it was industry standard practice for businesses like BD and Mr M's new provider to carry out ISA transfer requests electronically where they had signed up to it and that Mr M's new provider was aware of this. But I'm mindful of two key things here – the TeX terms and conditions BD has referred to don't preclude matters from being handled manually or outside the electronic process, and that more broadly BD was under a duty to have regard

to Mr M's interests and treat him fairly. So, with this in mind, given on 24 February 2023 BD was in receipt of an instruction from Mr M that he wished to transfer his ISA to his new provider, and this contained all of the necessary correct information and details for this to be carried out – albeit it was in paper format – I see no reason why BD could not fairly and reasonably have acted on it at this time. There was no missing information BD needed or anything it needed to clarify with the new provider or Mr M.

I think BD could have reminded Mr M's new provider that requests should normally take place electronically, but in the circumstances, sought agreement with the new provider to effect the transfer using the paper instruction i.e. non-electronically. I see no reason why the new provider would not have agreed to this.

Furthermore, it appears that upon receipt of the copy of the paper transfer instruction Mr M's financial adviser emailed on 16 March 2023 after they were notified by the new provider that its electronic request had failed, BD chose to use this instruction to liquidate Mr M's investments a few days later on 20 March 2023. And this is despite it not doing so upon first receipt of the instruction a few weeks earlier, and despite it requesting the instruction be carried out electronically.

It strikes me as odd, and in my view unfair, that BD would take the first step of liquidating Mr M's existing investments as he'd instructed on the paper transfer form, but then not take the second step in the process and use the same authority to transfer the proceeds to his new provider as also instructed. The liquidation of his investments was all part and parcel of the transfer process and him wanting to move his money from BD. They were not in my view separate instructions such that it was fair and reasonable for BD to act and liquidate his investments but then insist on another process and communication channel to transfer Mr M's funds. I don't think BD acted fairly and reasonably towards Mr M here

I think in this particular case, BD's continued insistence that it wanted things to be carried out electronically was unreasonable, and in doing so it did not have regard for Mr M's interests. In my view, BD's actions here delayed the process unnecessarily. I accept that Mr M's new provider might have failed to use the correct provider code when it made the electronic requests at BD's insistence. But this wouldn't have happened if BD had acted promptly and fairly and reasonably actioned Mr M's paper based transfer request upon receipt of it in February 2023.

So, for these reasons, I think BD was at fault here and it caused an unnecessary delay to Mr M's ISA transfer.

The investigator set out a timeline for when they thought BD ought reasonably to have actioned things based on what actually happened. I note BD did not comment on this timeline. And based on what I have seen, including an email to Mr M's adviser from BD which said that on 23 March 2023 – so two days after the completion the liquidation of his investments – it was ready to remit the funds, I think that timeline was achievable and so fair and reasonable in the circumstances. I think the two key events would more likely than not have happened as follows:

- 27 February 2023 – BD actions request and liquidates Mr M's existing investments holdings ready for transfer.

- 6 March 2023 – Mr M's new provider is in receipt of all of the monies, and the first date Mr M would have been able to purchase units in the new investment funds.

I can also see the investigator recommended an award of £100 for the distress and inconvenience this matter has caused. And I think this is fair in all the circumstances. Like

the investigator, I think the inconvenience caused to Mr M was limited here given his financial adviser was primarily involved with chasing up and communicating with BD during the transfer process. But I think Mr M would have experienced a degree of distress due to the delay, and it is clear he was worried about the losses he might incur as a result of the delay. So, taking all of this into account, I think £100 is a fair award £100 to reflect the distress caused here.

I've therefore decided to uphold this complaint and BD needs to do something to put things right.

Putting things right

A fair and reasonable outcome would be for the business to put Mr M**,** as far as possible, into the position he would now be in but for the delay caused to the transfer of his ISA. I think, if things had happened as they should have, Mr M would, more likely than not, have invested his monies in the same investments (and in the same proportions) he ultimately did when his ISA transfer completed. While I've set out the redress differently from how the investigator set it out, the redress principle is fundamentally the same.

To put things right, BD should do the following:

- Compare the current value of Mr M's investment holding (the 'actual value') with the current notional value of his holdings had BD completed the sale of his units in his existing funds on 27 February 2023 and on 6 March 2023 Mr M applied the entirety of the sale proceeds towards purchasing units in the same investments and in the same proportions that he did buy on 20/21 April 2023 (the 'fair value')

- If the fair value is greater than the actual value – that is Mr M's investment is worth less than it would have been had BD completed the transfer when it should have done – then the difference represents the loss, which BD should pay to Mr M[1]

- BD should provide Mr M with a copy of its calculations in a clear and understandable format so he can see how the amounts have been worked out.

- Pay Mr M £100 for the distress and inconvenience caused.

My final decision

I've decided to uphold this complaint and I direct Brewin Dolphin Limited to put things right as I've set out in the section above. I make no other award.

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[1] Because any loss payable would have remained within Mr M's ISA wrapper, if possible BD should pay this sum into his stocks and shares ISA ensuring this has no impact on his ISA allowance. BD should liaise with HMRC as appropriate. If this is not possible, it should pay the sum to Mr M direct. HMRC guidelines allow Mr M to make a single payment, not exceeding the amount of the compensation, into his stocks and shares ISA. The payment will not count towards his annual ISA subscription limit so long as he makes this payment within 180 days of receiving the compensation. Mr M should liaise with his ISA provider before he makes any payment to understand its requirements.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 July 2024.
Paul Featherstone
Ombudsman