

## The complaint

Mr H complains that Trading 212 UK Limited trading as Trading 212 sold shares in his Individual Savings Account ('ISA') that were no longer eligible to be held in an ISA. Mr H says this caused him a monetary loss.

## What happened

Mr H held shares in a business I will call company P, and these were held in an ISA with Trading 212. In June 2023, Trading 212 issued a notice to Mr H telling him it believed the shares in company P no longer satisfied HMRC ISA eligibility criteria. Trading 212 told Mr H he could sell the shares before 5 July, but if he chose not to it would sell them in line with the terms and conditions of the account. Mr H didn't instructions to Trading 212 and it sold the holdings. Mr H complained to Trading 212 that the forced sale had caused him a monetary loss. Trading 212 didn't uphold the complaint and said that it acted in line with the terms and conditions of his ISA account when Mr H failed to provide instructions.

Mr H brought the complaint to the Financial Ombudsman Service and one of our Investigators looked into things. The Investigator thought that Trading 212 should have told Mr H earlier than it did that the holdings in company P were no longer eligible to be held in an ISA, and that if it had, Mr H would have sold them in 2022. The Investigator thought Trading 212 should compensate Mr H for the loss he made when it sold the holdings and pay Mr H £150 for the distress and inconvenience it had caused him.

Trading 212 asked that an Ombudsman decides the complaint. As I reached a significantly different outcome to the Investigator, I issued a provisional decision and asked for comments from Mr H and Trading 212. In my provisional decision I said:

*"As a result of a merger, Mr H's shares in company P underwent a reclass in June 2022. The shares became tradeable in June 2022, but the parent company of company P isn't listed on a recognised exchange. Trading 212 believed the holdings in company P were not eligible for an ISA and notified Mr H of this in June 2023. Trading 212 told Mr H he could:*

*Sell the shares held in company P within his ISA;*

*Sell the holding and re-invest the proceeds into an investment account that was not an ISA; or,*

*Do nothing and Trading 212 would sell the holding in line with its terms and conditions.*

*Mr H felt that he couldn't suffer any losses to his investment and provided no instructions to Trading 212 and Trading 212 sold the shares Mr H held in company P. As this is the crux of Mr H's complaint, I will focus on whether Trading 212 treated Mr H fairly in the circumstances of this case.*

*Notification of ineligibility of company P*

*I asked Trading 212 when it became aware that the shares in company P were ineligible to be held in an ISA. This is relevant as Mr H says that he was already aware company P holdings were no longer eligible to be held in an ISA. Mr H says his wife – who had shares in company P with another ISA provider – had been notified months earlier.*

*Trading 212 has a responsibility to regularly assess the eligibility of an asset to be held in an ISA taking into account the guidelines provided by HMRC. Trading 212 says that it doesn't have evidence of when it became aware the holdings in company P were ineligible to be held in an ISA. Instead, Trading 212 said it relied on the assessment of a third-party as there can be many factors that need to be considered. Regardless of this, on 19 June 2023, Trading 212 issued a notification to Mr H – and other consumers who held shares in company P within an ISA - advising that shares held in company P were no longer eligible to be held in an ISA.*

*Mr H held an execution only account with Trading 212, so he also had a responsibility to make sure that he only held investments that were eligible for his ISA. Mr H told us that he had been aware through his wife's investments that another ISA provider had decided in June 2022 that the shares in company P were no longer eligible for an ISA. So, I don't think it would have come as a complete surprise to Mr H that this was likely to be the case for his holdings too – albeit Trading 212 could have communicated this to him sooner that it did. So, I intend saying it wasn't fair and reasonable that Trading 212 delayed telling Mr H when the shares in company P had become intelligible to be held in an ISA. I acknowledge Trading 212 may have relied on a third-party to establish this, but this feels too long for Mr H to have to wait. Even though Mr H may not have been shocked when Trading 212 told him, it did cause him upset. Therefore, I intend saying Trading 212 should pay Mr H £100 to reflect the upset it caused him in this regard.*

*Selling Mr H's holding in company P*

*The terms and conditions of Mr H's account explain that Trading 212 is permitted to sell the shares in company P without instructions from Mr H. However, I've considered whether it was fair and reasonable for Trading 212 to do this in the circumstances of this case.*

*The emails between Mr H and Trading 212, after the notification had been issued, highlight that Mr H was concerned he would make a monetary loss on the shares, and that he would lose a part of his ISA allowance. I understand Mr H's concerns, but the options provided by Trading 212 were fair and reasonable as the reclassification of the shares in June 2022 wasn't the fault of Trading 212.*

*Mr H could have sold his holdings in company P and retain his ISA allowance by leaving the cash within the account or re-investing it. I appreciate this would leave Mr H having to crystallise a loss in the value of his holdings in company P, but any loss was down to market conditions and not the actions of Trading 212.*

*Mr H could have sold his holdings in company P and re-invested the proceeds the same day into an Invest account and Trading 212 clearly communicated this option to Mr H. If Mr H had chosen this option, he would have been able to retain his holdings in company P and the impact on his trading position would have been neutralised. This would have mitigated the need to crystallise any trading losses. Although this would mean Mr H would lose a part of his ISA allowance, this wouldn't have been the fault of Trading 212 as whatever happened, the shares in company P were no longer ISA eligible.*

*Mr H complains that Trading 212 forcibly sold his holding in company P on 5 July. This isn't disputed. However, despite Trading 212 providing fair and reasonable options to Mr H*

*– and reminding him of these options up until 5 July – Mr H didn't provide Trading 212 with any instructions. As Trading 212 received no instructions from Mr H, it intend saying it acted reasonably when it sold Mr H's shares in company P.*

#### *My provisional decision*

*For the reasons above, I've provisionally decided that Trading 212 UK Limited trading as Trading 212, should pay Mr H £100 for the upset it caused by delaying the notification the shares in company P were no longer eligible to be held in an ISA. I've also provisionally decided that Trading 212 UK Limited trading as Trading 212 isn't responsible for the losses Mr H experienced when it sold the shares."*

Trading 212 accepted my provisional decision without further comment. Mr H said that my provisional decision hadn't taken into account that Trading 212 was careless and negligent when it failed to tell him in good time that the shares were no longer eligible to be held in an ISA. Mr H says that Trading 212 didn't act in his best interest to protect his wealth and didn't automatically move the shares he held to another account, and that the notice period Trading 212 gave to transfer the shares was too short.

#### **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.

Although I may not address all the comments made by Mr H, I have considered them. I will address the comments I consider relevant to the complaint, but I've decided to adopt my provisional decision as my final decision.

When Trading 212 was satisfied the shares in Company P were no longer able to be held in an ISA, it informed Mr H. Trading 212 provided Mr H with two options and clearly explained what would happen if Mr H didn't exercise either of these two options. When Mr H failed to provide instructions, Trading 212 sold the shares as it said it would - which is what it is permitted to do under the terms and conditions of the account. Regardless of the actions other business may have taken, I'm satisfied the options Trading 212 provided were fair and reasonable in the circumstances of this case. The notice was clear about what actions Mr H could take, and what Trading 212 would do if he didn't provide instructions.

Mr H says he "*was extremely positive*" that Trading 121 would transfer his shares to another investment account. That may be the case, but the notice Trading 212 provided explained it needed instructions from Mr H to do this. Unfortunately, Mr H didn't provide an instruction, so the shares were sold in accordance with the terms and conditions of the account. I've decided that Trading 212 didn't do anything wrong in this regard and isn't responsible for the crystallised loss Mr H made when it sold the shares in Company P.

I don't think it would have come as a complete surprise to Mr H that shares in Company P were unlikely to remain ISA eligible but Trading 212 could have communicated this to Mr H sooner than it did. I don't think this delay was fair and reasonable and it's clear from the communications Mr H had with Trading 212 that this issue caused him upset. So, I think Trading 212 should pay Mr H £100 to reflect the upset it caused him in this regard.

#### **My final decision**

For the reasons detailed above, I've decided that Trading 212 UK Limited trading as Trading 212 should pay Mr H £100 to resolve this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 11 June 2024.

Paul Lawton  
**Ombudsman**