

The complaint

Mr R complains that Bank of Scotland plc trading as Halifax delayed the transfer of an ISA from another provider.

What happened

The background to this complaint is well known to the parties, so I won't repeat it in detail here. In summary, in April 2021 Mr R instigated a transfer of an existing stock and shares ISA from another provider (that I'll refer to as 'Company A') to Halifax, where he'd opened and funded a new ISA with his current year's allowance.

There was a significant delay in processing the transfer. It appears that initially there was a problem because Mr R updated his address (to a non-UK address) shortly after completing the transfer form, so there appeared to be a mismatch in the information held by Halifax.

But the majority of the delay stemmed from Halifax subsequently telling Mr R that the transfer couldn't be completed as he lived outside the UK. That was incorrect. After many months of correspondence, and continued problems the transfer still hadn't completed by December 2021, at which point Mr R decided to withdraw the money held in his ISA with Company A. As such, the intended transfer never completed.

Mr R had complained to Halifax about the delay early in the process and it had issued a final response to him in June 2021. At that point it offered him £100 to acknowledge the incorrect information provided.

In December 2021 Mr R referred the matter to this service. Our investigator concluded that Halifax's offer to Mr R should be increased. She said it should pay him an increased amount of £500 for the distress and inconvenience its mistakes had caused. And she also felt compensation should be paid for investment loss on the amount that should've been transferred.

The investigator felt it was likely there'd have been a short initial delay in the transfer because of the change of address issue. So, she considered it would be fair for Halifax to compensate Mr R for investment loss from 2 July 2021 (the point at which she felt the transfer should have completed) and 21 December 2021 (the date on which Mr R withdrew his money from his ISA with Company A).

The investigator noted that Mr R had highlighted an investment he'd said he'd intended to make once the transfer was complete – investing all the money that should've been transferred, plus that year's ISA allowance, into a specific US Growth fund between May 2021 and November 2021. But she didn't think there was sufficient evidence to support this being more likely than not what Mr R would've done if the transfer had completed correctly. As such, she recommended the calculation of investment loss be based upon this service's usual benchmark for a consumer willing to have taken some risk with their money - the FTSE UK Private Investors Income total return index.

Halifax accepted the investigator's view and the recommended compensation. But Mr R

didn't. He felt there should be no delay attributed to the initial address issue as he felt the address provided on the transfer forms had been correct. But he was primarily concerned about the use of the Private Investors index as a benchmark to calculate any loss. He didn't feel this represented his usual investment strategy and he maintained that the US Growth fund was where he would've invested, and for a very specific period. He also felt that the level of compensation for distress and inconvenience recommended by the investigator was insufficient as he'd spent many hours responding to the complaint and working out his losses.

The investigator wasn't persuaded to change her mind and reiterated why she felt her initial view was fair and reasonable. As no agreement could be reached, the matter was referred to me to 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.

I want to assure Mr R I've read and considered everything on the file. But that said, I'm satisfied I don't need to comment on every point raised to reach what I consider to be a fair and reasonable decision. Where I've chosen not to comment on something, it's not because I haven't considered it. It's because I've focused on what I think are the key issues. That approach is in line with the rules we operate under.

Further, where the evidence is incomplete or inconclusive, I've reached my decision based on the balance of probabilities. That is, what I think is more likely than not to have happened in light of the available evidence and a consideration of the wider circumstances.

It isn't in dispute that Halifax caused a delay in the transfer. It has accepted responsibility and agreed to compensate Mr R, both in terms of the distress and inconvenience caused to him by the matter and also the lost opportunity to invest the money held in his ISA with Company A while the transfer was delayed.

This being so, it only remains for me to decide whether the offer now made, as recommended by the investigator, is fair and reasonable.

Turning first to the period over which the compensation should be calculated, as noted, the investigator suggested this should be from 2 July 2021 to 21 December 2021. She selected the former date on the basis that there was initially an issue with the address on the transfer form not being the same as on Halifax's system as Mr R had changed his address with Halifax on 18 May 2021, after submitting the transfer form. She felt it was reasonable for this to be queried.

Once this issue was clarified it was on 2 June 2021 that Halifax made its primary mistake in rejecting the transfer because Mr R's address was outside the UK. The investigator felt that it was reasonable to conclude that if that mistake hadn't occurred the transfer would likely have proceeded and completed by 2 July 2021 at the latest, the date from which she felt the investment loss should be calculated.

I appreciate Mr R doesn't agree with this and feels that the address issue shouldn't have impacted matters at all. Further, he thinks the transfer should've been completed in less than thirty days. But I don't think it was unreasonable for the transfer to be paused while the address issue was sorted out. And in respect of the length of time the transfer should've then taken, I accept it *could* have completed in less than 30 days, but as there's no way of knowing with any certainty what would've happened – there could've been further issues that

arose – I think, on balance, using the 30-day period is a reasonable approach.

Turning then to the issue of how the investment loss should be calculated, I've noted carefully all that Mr R has submitted to support his argument that he would've invested all the money transferred, plus that year's ISA allowance that he'd already paid to Halifax (so around £214,000 in total) into the specific US Growth fund he's identified.

I accept Mr R may have invested previously in this type of area. But in the absence of clear, contemporaneous evidence that this was what he planned to do – for instance, him communicating to Halifax his intention and that it was this very specific investment that the delay was preventing him from making – I don't think I can reasonably conclude, on balance, that this is more likely than not what Mr R would've done. Aside from anything else, this would've been a very high-risk, un-diversified investment for Mr R to commit this amount of money to. I appreciate the fund performed well during the period in question. But this can only be known with hindsight.

As such, I think the use of the benchmark suggested by the investigator is a reasonable means by which to determine the investment loss. I note what Mr R has said about it not reflecting the way in which he's previously invested. But by using the benchmark I'm not saying he would've invested into a fund or funds that precisely reflected the way in which the index is made up. Rather, I'm saying this is the sort of return he'd have likely obtained by taking some degree of risk with his money, as he'd done previously.

I note that Mr R has also raised the issue of the loss of tax benefits resulting from him withdrawing the money from his ISA with company A. I can understand his frustration with the situation, as by December 2021 it had been eight months since he'd instigated the transfer. But it was ultimately his decision to remove the money from the ISA held with Company A and in doing so, lose the tax benefits. While it may not have seemed so at the time, I think ultimately the transfer would've completed. This being so, I don't think it would be reasonable to also hold Halifax responsible for the loss of the tax benefits.

In respect of the compensation for distress and inconvenience, I'm satisfied that the £500 (in total, to include the £100 Halifax offered in June 2021) is fair and reasonable in all the circumstances. I recognise that Mr R has spent a great deal of time and effort in bringing his complaint. But we wouldn't generally award compensation based on an hourly rate as Mr R has suggested. Rather, we focus on the impact the matter has likely had upon the complainant.

I note the comments made by Mr R regarding the affect the matter had on his health and appreciate this was a significant amount of money. But bearing these points in mind, I think that £500 represents fair compensation for the distress and inconvenience caused. I say that conscious that Mr R has also received an offer of compensation in respect of the matter from Company A.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr R as close to the position he would probably now be if the transfer had proceeded without unreasonable delay.

I take the view that Mr R would have invested the money in question. As noted, I don't think it's possible to say *precisely* what he would have done. But I am satisfied that what I have set out below is fair and reasonable given Mr R's circumstances and objectives

when he instigated the transfer.

What must Halifax do?

To compensate Mr R fairly, Halifax must:

- Compare the value of the money held in Mr R's ISA with Company A with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.
- Halifax should also add any interest set out below to the compensation payable.
- Pay to Mr R a total of £500 for the distress and inconvenience caused by the delay.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
ISA	No longer in force	FTSE UK Private Investors Income Total Return Index	2 July 2021	21 December 2021	8% simple per year on any loss from the end date to the date of settlement

Actual value

This means the actual amount paid from the ISA at the end date.

Fair value

This is what the amount would've been worth at the end date had it produced a return using the benchmark.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr R wanted Capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income **Total Return** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr R's circumstances and risk attitude.

My final decision

For the reasons given, my final decision is that I uphold the complaint and direct Bank of

Scotland plc trading as Halifax to pay compensation to Mr R as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 16 August 2024.

James Harris
Ombudsman