

The complaint

Mr B complains that Saxo Capital Markets UK Limited ('Saxo') closed his trading account and liquidated all of his shares without his knowledge or permission. Mr B says that Saxo's actions have resulted in a large capital gains tax liability because of the profits that have now been realised on his account.

Mr B would like Saxo to pay his capital gains tax liability.

What happened

On 19 July 2023, Saxo emailed Mr B explaining that they needed to update their records and asked him to verify his information. As Saxo didn't receive a reply, a follow up email was issued to him on 23 November 2023. That subsequent message explained that if he failed to update his information by 24 January 2024 then his account would be closed.

On 25 January 2024, Saxo issued a further email to Mr B reiterating the need to verify his information on their systems. At that point, Saxo extended the deadline for providing the necessary information until 7 February 2024. Saxo's email explained that if Mr B didn't update his details by that point, they would close his account.

As Mr B didn't verify his personal details by the deadline, Saxo closed his trading account on 7 February 2024. On 19 February 2024, Saxo received a transfer request to move Mr B's shares to a business that I shall call 'Firm B'. At that point, Mr B says that he became aware that his investments had been liquidated.

Shortly afterwards, Mr B decided to formally complain to Saxo. In summary, he said that he was unhappy that they'd sold his shares without first informing him and they'd done so without his permission. Mr B went on to say that because he'd made significant profits on his purchases, the resulting sales had led to a large capital gains tax liability of c£50,000 which he wanted Saxo to recompense him for.

After reviewing Mr B's complaint, Saxo concluded they were satisfied they'd done nothing wrong. They also said, in summary, that having emailed Mr B on multiple occasions and explained the impact of failing to update his details, they didn't believe that they'd acted unreasonably in closing the account.

Mr B was unhappy with Saxo's response, so he referred his complaint to this service. In summary, he said that Saxo had closed his account without his prior knowledge, causing a significant capital gains tax liability. Mr B went on to say that despite what Saxo had said about the emails they'd sent informing him of the need to update his details, he never received any correspondence from them and if he had, they'd have gone into his junk email folder.

The complaint was then considered by one of our Investigators. He concluded that Saxo had treated Mr B fairly because from what he'd seen, the terms that governed the relationship

between themselves and Mr B explained that they'd only communicate electronically and given that Saxo had been able to demonstrate that they'd sent the messages, it wasn't their fault that they may have gone into Mr B's junk folder.

Mr B, however, disagreed with our Investigator's findings. In summary, Mr B said:

- He didn't understand why important information about his trading account wasn't put on the trading platform for him to see.
- Saxo had written to him about matters in the past (October 2020) after they'd not received a response from their emails, and they held an up to date address for him, they could have written to him or telephoned him in the circumstances.
- Having spoken to his bank manager (at Firm B), they stated that when they close an account, they typically telephone customers as well as writing letters and issuing emails.
- In light of the significant balance that he held in his trading account, he felt that Saxo could've done more to alert him to the information that they needed.
- In the case of *Felthouse V Bindley*, silence or inaction doesn't constitute acceptance.

Our Investigator was not persuaded to change his view as he didn't believe that Mr B had presented any new arguments he'd not already considered or responded to. Unhappy with that outcome, Mr B then asked the Investigator to pass the case to an Ombudsman for a 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 have summarised this complaint in less detail than Mr B has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts.

My role is to consider the evidence presented by Mr B and Saxo in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, I'm not upholding Mr B's complaint – I'll explain why below.

I think it's important to start by explaining the background to why Saxo closed Mr B's holdings. All regulated financial services firms, including Saxo, are obligated to ensure that the records that they hold about their customers' background and circumstances are up to date. They're required to do this at the start of the relationship and on an ongoing basis and it's often referred to as 'know your customer', or 'KYC'. Without an updated customer

record, Saxo isn't able to maintain compliance with its legal and regulatory requirements. And, any failure on Saxo's part to ensure it's KYC records are up to date could result in serious consequences for them such as financial penalties or in a worst case scenario, loss of license. So, given that potential impact, many firms take the decision to terminate consumer relationships when they can't either refresh or establish adequate KYC records – which is what Saxo have done in this instance.

The crux of Mr B's complaint is that when Saxo emailed him to ask him to update his personal information, he never received those messages because they likely ended up in his 'junk folder'. Having looked at the messages that Saxo sent to Mr B, I don't think there's any doubt that they were correctly addressed – Saxo sent their messages to the same email address that Mr B has been corresponding with this service on. But, just because Mr B says that he didn't receive Saxo's emails, it doesn't mean that they've done something wrong. Having looked at the content of those messages, it seems clear to me that they weren't just generic marketing or news update messages; Saxo clearly set out why they were contacting the consumer and that action was required on his part. Importantly, Saxo's messages also made clear what the consequence would be if Mr B failed to provide the information that they needed. I've also looked at the timeline of when Saxo's messages were sent, and I'm satisfied that they gave Mr B an adequate window of opportunity to take action before his trades were shuttered.

When using the services of any business, consumers will typically be provided with the terms and conditions that govern those services – those terms, amongst other things, cover how the relationship will work – so specifically what each other's obligations are and what the customer can expect in return from the firm for any fees paid. The consumer needs to read and understand those terms beforehand and satisfy themselves that what they're entering into will provide them with the result that they wish. And, when Mr B opened his account with Saxo, he agreed to be bound by their terms which are covered in their 'General Business Terms – Saxo Capital Markets UK Ltd' document that he would have been provided a copy with at the start of their relationship.

That document provides a range of information for the customer but within 'Section 6. Dealings and Communications' it says (bold text is my emphasis):

*"6.4 Other than via the Trading Platforms, we will send notices and other communications to you by e-mail, and subject to your right to opt-out at any time, via SMS or WhatsApp instant messenger. We will not share any marketing material with you via any channel unless you have opted in to receive marketing from us. We may share sensitive client information with you via email. We will never share sensitive client information with you via SMS and WhatsApp nor will you be able to reply to us and share any data that way (except to optout). The kinds of information we will share via e-mail only include legal notices alerting you to changes in our contractual documentation and other day-to-day communications like Account Statements and Settlement/Trade Confirmations. **You must provide us with an e-mail address that you can access and monitor at all times for this purpose. You must inform us immediately if you cannot access, or wish to change or update your e-mail address. If you don't notify us of any access issues with, or changes to, your e-mail address, we won't be responsible if you don't receive information or notices from us. An e-mail will be considered received by you when sent from Saxo.** A message to your Account on the Trading Platforms is considered received by you when we place it on the Trading Platforms. **We cannot be responsible for any delay, alteration, redirection or any other modification an e-mail or other message may undergo after transmission from us. Therefore you are required to make sure that your software and hardware setup does not prevent you from receiving e-mails** or accessing the Trading Platforms, as described further in Clause 9 (Use of the Trading Platforms) below."*

I'm satisfied that Mr B has accepted that once Saxo send him an email, it's viewed as having been received by him, regardless of whether it went into his junk folder or not. It's his responsibility to keep a track of any messages sent and that means checking his junk folder to ensure important updates haven't slipped in there accidentally.

In his correspondence with our Investigator, Mr B says that in light of the significant balance he held in his trading account, he felt that Saxo could've done more to alert him to the information that they needed. But, as I've already explained above, Saxo sent multiple emails to Mr B to flag the information that they needed. Mr B also says that having spoken to his bank manager (at Firm B), they stated that when they close an account, they typically telephone customers as well as write letters and issue emails. But, Mr B's trading account is with Saxo, not Firm B, and Saxo have been clear in their terms (above) that all correspondence will be undertaken by email so I can't conclude that they've treated Mr B unfairly by not using other contact methods. Equally, just because Saxo doesn't adopt a particular contact approach that another firm does, it doesn't follow that Saxo are doing something wrong.

Mr B has referred to the case of *Felthouse V Bindley* (from 1862), where he states that judgement ruled that silence or inaction doesn't constitute acceptance. Mr B says that this is relevant because he didn't respond to Saxo's emails. However, Saxo are legally required to undertake their cyclical KYC checks and in opening and running the account, Mr B has committed to provide Saxo with the necessary information that they need to maintain the account. This is covered in Saxo's 'General Business Terms – Saxo Capital Markets UK Ltd' within Section 17. So, in light of the fact that Mr B had already accepted Saxo's terms and conditions when he opened the account, I can't conclude that Saxo have treated Mr B unfairly by liquidating his portfolio following their contact attempts. So, I'm not going to instruct them to pay his capital gains tax bill and it therefore follows that I'm not upholding his complaint.

My final decision

I'm not upholding Mr B's complaint and as such, I won't be instructing Saxo Capital Markets UK Limited to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 March 2025.

Simon Fox
Ombudsman