

## **The complaint**

Mr W complained about Interactive Investor Services Limited (Interactive). He said Interactive failed to carry out his trading instructions in time and he has incurred investment losses because of this. He would like Interactive to compensate him.

## **What happened**

Mr W held a trading account with Interactive. He was not happy with the service he received from it, in particular about a bed and ISA instruction he sent to it. He made a complaint about this along with other issues.

Mr W said:

- He regretted revealing an email address to Interactive. He said he received many unsolicited emails from it. He said much of this was marketing material. He said he wanted Interactive to ensure he was not emailed such material again.
- He was not happy with how Interactive handled share certificates that he sent in. He made comments about when it received and deposited them, when they were settled and when they could be traded.
- It's clear from what Interactive has said that it was possible on 5 April 2023 to bed and ISA his Rio Tinto shares as he had instructed, but it failed to do so. He said Interactive's standard practice was not founded upon its 'best endeavours' that it had alluded to in its letters to him.
- Interactive's stance on not accepting written instructions for security reasons was a nonsense. He said it had hand signed instructions for it to bed and ISA shares in his name, into an account in his name. He said he didn't understand in what way a telephone call would improve security over what he had described. He also referred to an email he received on 5 April 2023 where he said Interactive acknowledged it had his shares certificates and his instruction. He said calling Interactive at this stage served no practical purpose and, as it mentioned, it was too late for him to send an instruction online.
- He has lost the tax efficiency of the dividend payment on his Rio Tinto shares and asked Interactive to consider the impact of this, in consideration of any compensation it makes to put things right.

Interactive said in response that it appreciated Mr W was unhappy with the volume of emails it sent to him and had amended his contact permissions so he would receive less. It said as he had been provided with information on how to amend his contact preferences, it didn't think it had done anything wrong in this regard.

Interactive said regarding his bed and ISA instruction, that it didn't process written trade instructions. It referenced its terms that stated how Mr W could place orders. It said as he had been advised that it did not offer trading through written instruction, it did not do anything wrong here either.

Interactive explained that when it was in receipt of a physical share certificate it did not mean it was in receipt of the shares. It said it needed to send the certificates to the registrar, who

then issued it with electronic shares. It normally takes around 10 working days to arrange this.

Interactive explained it received the physical certificates from Mr W on 29 March 2023 and didn't receive the electronic shares until 4 April 2023. It said this was past its deadline for a bed and ISA.

Interactive said it made an error in its secure message sent to him on 5 April 2023. It said its settlements team was simply trying to support him by advising him how to set up the bed and ISA, but this was outside its usual procedures. It said considering this error, it would credit him with £40.

Interactive said a bed and ISA request would need a 2-day working day settlement period so would not have been possible after 3 April 2023, so Mr W's request was too late.

Mr W was not happy with Interactive's response and referred his complaint to our service. He said the central issue of his complaint was that Interactive had his signed written instructions and failed to act upon them in good time. He said he was an established client, Interactive had all the supporting documentation required, it knew his instructions were time critical and that he would suffer financial loss if they weren't carried out immediately.

Interactive said it could see on its system that the shares actually settled on 4 April 2024. It said it would make another offer to Mr W of £30 for the delay it took to respond to his letter. It said however, it still was of the view that Mr W did not provide it with enough time to deposit the shares into his account, for him to then process his bed and ISA request.

An investigator looked into Mr W's complaint. He said in terms of acting on Mr W's instruction in his letter, he was not persuaded Interactive had done anything wrong. He said the terms of the service it provided confirmed that it could only accept orders by website, phone or on a trading app.

The investigator said to transfer shares from Mr W's trading account to his ISA, the shares would need to have been settled. He said considering it was 4 April 2023 by the time the shares had been settled, it was reasonable that Mr W would have needed to have called it to process the transaction.

The investigator said current preferences for marketing had been set to no marketing preference, and he hadn't seen any evidence that further marketing emails had been sent beyond when this was changed.

The investigator said he could see Interactive had offered £40 for an error it made in a letter. He said he could see Interactive also offered £30 for a delay it made in responding to Mr W. He said the offers were fair and reasonable and had no impact on his substantive complaint. He didn't uphold Mr W's complaint.

Mr W was not in agreement with the investigator's view. He said his repeated requests to Interactive to refrain from sending him marketing emails had been ignored and he continued to receive them regularly.

Mr W described his past dealings and said that his ISA account had been established through postal communications. He asked if a long-standing client is entitled to rely on an established course of dealing.

Mr W said Interactive hadn't explained to him why it refused to act on his instructions. He said its staff put process before compliance in the knowledge that their failure to act, meant he would suffer financial loss.

Mr W said the investigator's view dwelt on the minutiae of Interactive's internal process rather than its inaction. He said Interactive had a contractual relationship towards him and had a routine instruction to deal with it, which it failed to deliver on.

There was also some confusion at this point regarding the status of the certificated shares. Mr W said he had not received the share certificates back and also had not had any contact from Rio Tinto directly about them. He said it would suggest they are either not in his name or they are in his ISA. He said he was unsure as to the shares current status.

The investigator responded to Mr W. He said the terms and conditions state how Interactive accept instructions, it doesn't have to describe how it doesn't accept orders. He said it was reasonable to say anything outside of its specified process, wasn't its process. He said Mr W's certificated shares were settled in his account on 4 April 2023. He said the certificates were then dematerialised and the shares were held electronically from this point.

The investigator said the shares settled in Mr W's trading account, but they weren't then applied to his ISA. He said he didn't think a new complaint was needed because it was essentially the same complaint, and the outcome would be the same. This being that Interactive didn't accept written instructions to carry out a bed and ISA, something the investigator had concluded was not unfair.

Mr W was not in agreement with what the investigator said, He said he would like his complaint and additional complaint of his instructions still not being dealt with regarding the bed and ISA instruction in the current tax year, referred to an ombudsman for a decision.

Mr W referred to one of the terms in the terms and conditions document used by the investigator. The term he referred to was:

*"if contrary to the requirements of good faith, it causes a significant imbalance to the parties rights and obligations arising under the contract to the detriment of the consumer."*

Mr W said there was no doubt that Interactive's failure to act had been to his detriment, no doubt that he was in existing contractual relations with it and no doubt as to an imbalance between the parties.

Mr W repeated his arguments about Interactive not carrying out his instructions even though they were to hand and that it caused him detriment by it not doing so. He said by not doing so, Interactive were in breach of its own terms and also in breach of acting in good faith.

Mr W then said whether the applicable terms that he was provided a copy of, regarding how to place an order, applied in March 2023, and that he didn't know. He then gave views about what he felt the term could be interpreted as, and how this would fit in with a written instruction. He questioned whether a bed and ISA was an order, as well as the wording of the term and ambiguities around this.

Mr W said in relation to his share certificates, he had neither the certificates nor a dividend from the shares.

He reiterated again, that he should be able to rely on an established course of dealing, in the absence of any notification to say otherwise. He concluded by saying he disagreed with the investigator.

Because the parties are not in agreement, Mr W's complaint has been passed to me, an ombudsman, to look into.

### **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 W that I have carefully read his submissions and considered all the points made. But I'm not going to respond to every issue he has raised, in particular if it is not material to the outcome of the complaint.

Instead, I'm going to focus my decision on what I see as the central issues to Mr W's complaint. I don't intend this as a discourtesy, rather it reflects the informal nature of our service and my role in it.

I think the crux of Mr W's complaint is about his written instruction sent in on 28 March 2023 to Interactive. Mr W said interactive should have carried out his instruction in a timely manner, and within that tax year. Interactive on the other hand said Mr W was too late with regards to when he submitted his certificates and in addition, did not give his instruction in a way that it was prepared to accept. I have looked into this further.

Interactive has told our service it received Mr W's share certificates on 29 March 2023 and didn't receive the converted electronic shares until 4 April 2023. It said to carry out a bed and ISA it needed a 2 working day settlement period, so Mr W sent the certificates too late to it, to give him the time to give it an instruction to carry out the bed and ISA. It said it sent a secure message to him on 5 April 2023, as one of its staff was trying to be helpful and suggest that Mr W call it.

I have seen a screen shot provided by Interactive that shows Mr W's certificated shares were received by interactive as electronic shares on 4 April 2023. It received the certificates on 29 March 2023. I don't think the time it took to send the certificates to the registrar and then receive them back electronically to be unreasonable and it doesn't seem to me that there was any delay here.

Interactive said it needed a 2 working day settlement period to carry out a bed and ISA and that regardless of receiving an instruction from him in the format it required, he was out of time anyway.

I have looked at the terms and conditions of Mr W's account provided by Interactive dated from 13 October 2023. I appreciate these terms applied a few months after the dates in question regarding Mr W's bed and ISA request, but these are the terms that Interactive has supplied in support of its case. I acknowledge Mr W's point that the terms are not specifically from when the issues in his complaint took place, however, on balance, I think they give me an idea as to what the terms most likely would have been at the time in question. I have also looked on Interactive's website and seen what it has said about this about a time frame for it carrying out a bed and ISA, and have thought about this as well, taking on board similar considerations.

From what I have seen and been provided with, Interactive has not been explicit about how long it would need to take to carry out a bed and ISA. It has instead on its website said it would look to be as quick as possible regarding carrying out a bed and ISA. So, on balance, I don't think Mr W was necessarily too late when Interactive messaged him on 5 April 2023 about it.

I have seen the secure message sent by Interactive and after reading this, I think the position stated by its representative was the position at that time namely: Interactive had received Mr W's share certificates, they had been converted to electronic shares and that Mr W had to provide his instruction to make the bed and ISA happen, and this was time sensitive. Interactive stated that Mr W was too late to provide his instruction online, but that he could call it that day to give his instruction and make it happen. Based on what I have already concluded, if Mr W had called Interactive on 5 April 2023, I think on balance, he would have been able to make his bed and ISA within that tax year. Interactive said this would have been outside of its normal processes, but I can see from the secure message that was sent to Mr W, that in the circumstances of this complaint, if Mr W had called it, that more likely than not this would have happened – it would have tried to carry out any instruction by Mr W to make the bed and ISA happen.

This leads me onto what I think is the complaint and what is actually in dispute. Mr W didn't call Interactive on 5 April 2023 and although he would still like to carry out a bed and ISA on the same shares in this tax year, he hasn't called Interactive or used its online service about this either, even though it is clear that there is a general understanding between the parties that Interactive would action his instructions if he did so. This is because, Mr W wants Interactive to act on his written instruction to carry out the bed and ISA that he made when he first sent the certificates to it. He would still like it to carry out this written instruction, but instead for this tax year.

Interactive on the other hand, has also been clear about this. It doesn't accept written instructions and it said it is not going to with Mr W's instruction. I can see that this is stated in its terms and conditions that it has provided. I think on balance, this would have been the case when Mr W sent his written instruction in regarding his share certificates and bed and ISA. I also think it has been the case all along, since Mr W's account was migrated over from The Share Centre. I think Interactive has been clear about how it receives orders from its clients, either through a trading app online or alternatively on the phone. I think it was clear with Mr W about what he needed to do in its message on 5 April 2023 and has been clear since then about what its terms are in receiving an instruction from him to carry out the bed and ISA.

Mr W has referred to a specific term within Interactive's terms and condition: *"if contrary to the requirements of good faith, it causes a significant imbalance to the parties rights and obligations arising under the contract to the detriment of the consumer."* He said it was clear Interactive by its actions or lack of action led to him being caused detriment. But I don't think this is the case. As I have explained, it gave him options to make his instruction, and he could have done so on 5 April 2023 on the phone or afterwards, in relation to this tax year, either online or on the phone. Mr W had choices and was able to do what he wanted if he used the services provided as set out in the terms. I don't think therefore that it was and is Interactive that was or is at the cause of Mr W's detriment in this regard. This is because Mr W can do something about it – he can call Interactive or give his instruction online. And he could have done something about it on 5 April 2023, if he had called Interactive.

I can see Interactive has, on balance, administered Mr W's request according to the terms and conditions of his account and the services it has and continues to provide him. By doing so, I don't think it has done anything wrong or has been unfair to him. So, I won't be asking it to do anything further.

In conclusion, I don't think Interactive did anything wrong when it didn't act on his written instruction as it didn't provide this service. I can see that Interactive was prepared to accept an instruction by Mr W on the phone on 5 April 2023, after his shares had been converted electronically, so it did give Mr W an opportunity to provide his instruction to it before the

deadline. Interactive is prepared to carry out a bed and ISA instruction in this tax year, if Mr W follows the terms of his account and provides an instruction to it online or on the phone. Mr W has options available to him to make his bed and ISA for this tax year.

Finally, Mr W said he did not receive his share certificates back, and he hasn't received his dividend. I can see that the shares were converted electronically, as has already been mentioned. So, the share certificates don't exist. I have also seen a screenshot of his shares that are currently in a trading account with Interactive. If he has any concerns about his shares or any dividends in relation to these, he will need to contact Interactive and discuss this in the first instance.

Interactive has paid £40 compensation to Mr W as I understand it by crediting his trading account. It has done this, because it said it made an error in one of its responses to him. It has also told our service that it is prepared to pay an additional £30 to Mr W as it delayed responding to him at one point too. I have looked at both of these offers and considered the reasons why it made them. In doing so I think the offers made by Interactive are fair and reasonable. I can see the mistakes that it has made in how it has dealt with Mr W's complaint that it has identified and can see that the amounts it has offered are in line with the sort of award I would have made. So, I think Interactive should pay Mr W £70 minus anything it has paid to him already.

I appreciate that my decision will be disappointing for Mr W, and I acknowledge the strength of his feelings in the submissions provided. But based on everything I have read and the findings I have given, I don't think Interactive needs to do anything further, other than what it has already offered for the distress and inconvenience it caused when dealing with Mr W's requests and his complaint.

### **My final decision**

My final decision is that Interactive Investor Services Limited should pay Mr W £70 compensation for the distress and inconvenience it has caused, minus any payment it has already paid to him for this.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 27 January 2025.

Mark Richardson  
**Ombudsman**