

The complaint

Mr B complains that HSBC UK Bank Plc trading as first direct (*'First Direct'*) unreasonably prevented him from responding to a rights issue for stock held in his share dealing account.

What happened

Mr B holds an online share dealing account with First Direct. Within his account, Mr B had holdings for a business I'll call 'N'.

On 23 May 2024, N issued a corporate action in which it announced a rights issue offer to its customers. At that time, Mr B held 1,055 N shares in his account.

On 28 May 2024, First Direct wrote to Mr B about the offer, setting out that N was prepared to offer Mr B 7 nil paid rights for every 24 shares he held – so 307 nil paid rights. The letter went on to give Mr B two options – he could subscribe to one ordinary share for each nil paid right at a total cost of £1,980.15) or he could let the offer option lapse. It also noted that the rights themselves were saleable on the London Stock Exchange; the value of the sale showing in the account was £663.43. If First Direct did not hear back from Mr B by midday on 5 June 2024, the second option would be chosen as a default. Thereafter, if there were lapsed rights proceeds it would pay these to Mr B once they were received from N.

Mr B currently resides in a European country. Accordingly, First Direct sent him the letter using a European postal delivery service.

On 7 June 2024, Mr B called First Direct to explain he had received the letter that day – meaning he had missed the deadline of 5 June 2024, which he felt was unfair. He also noted that his share dealing account had a link to the offer, but N gave a different closing date of 9 June 2024 for shareholders. In his view, First Direct should compensate him for the lost offer as he could have taken action before 9 June 2024.

On 12 June 2024, First Direct rejected the complaint. It said its corporate actions team received broadcast information regarding corporate action events from its custodian, detailing the terms of the event, any restrictions (if applicable) and confirmation of key dates, if they have been announced. Its standard procedure was to forward these to shareholders via post; it didn't have any plans to change its use of postal service for overseas customers.

Whilst First Direct acknowledged that N's corporate action announcement gave a deadline of 9 June 2024, its team set a deadline two and a half working days earlier – which was a standard procedure. It had done this as a commercial decision to allow time to process the options of all affected customers. Whilst it was unfortunate that Mr B had experienced a delay in receiving his letter, it had been issued by First Direct on 28 May 2024.

On 20 June 2024, First Direct sent Mr B an email confirming that though the N option was still visible on Mr B's share dealing platform, the removal of the option was purely an administrative process that had yet to be completed.

On 26 June 2024, the lapsed rights proceeds - amounting to £583.30 – were paid to Mr B.

In July 2024, Mr B lodged his complaint at this service. He said First Direct charges him a high fee for its share dealing services, yet it had failed with basic communications in relation to N's rights issue. This meant he was deprived of the opportunity to act on the share offer. He felt First Direct should reimburse the £663.43 sale value for the rights issue, as well as compensate him for its service failings. Mr B said First Direct could have emailed him, sent a text message or directed him to its website in order to ensure he was updated in a timely manner. Instead, it relied on an unreliable postal service, which meant his letter didn't arrive in time.

An investigator then reviewed the complaint, but he felt it shouldn't succeed. He said that First Direct had contacted over 6,000 customers within five days of the corporate action from N on 23 May 2024. He did not believe it had acted unfairly by using postal services to send the communication to affected shareholders. Nor did he think First Direct had been unreasonable in using the deadline of 5 June 2024, as it had set out legitimate business reasons for doing so.

Mr B said he wanted the complaint to be passed to an ombudsman. He noted two main grounds of appeal:

1. He disagrees with the investigator's contention that First Direct shouldn't be liable for its choice of postal provider. In fact, First Direct has used three postal services in the time he has lived overseas – Royal Mail, and thereafter two European providers. The first two always arrived in a timely fashion – but the most recent provider is exceptionally delayed. Since filing his complaint, First Direct has sent him two letters dated 28 June 2024 and 8 July 2024, and these arrived on 10 July 2024 and 17 July 2024 respectively. In Mr B's view, First Direct is willingly using a sub-standard postal service, as it is aware information is not received in a timely manner.
2. His account statement showed that the shares were listed as 'sellable' until 24 June 2024, despite First Direct contending they were, in effect, worthless after 5 June 2024. The investigator made no comment on this. However, he assumed that the Financial Ombudsman Service must consider that it is acceptable for financial businesses to provide false and misleading information on customer statements.

Finally, Mr B said his overall conclusion was that First Direct's customer service was unacceptable given it charges fees for a service it doesn't deliver. He said he was therefore in the process of terminating his relationship with First Direct, despite having used it for banking and investment services for almost 40 years.

First Direct confirmed it had nothing else to add.

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 thank both parties for their patience whilst this matter has awaited an ombudsman's decision.

I can see how strongly Mr B feels about what's gone on. And though I realise my decision will be a disappointment for him, having reviewed this complaint carefully I do not consider that it should be upheld.

This service's role is to investigate disputes and resolve complaints informally, whilst taking into account relevant laws, regulations and best practice. In reaching my decision, I'll focus

on the issues I believe to be central to the complaint to decide what I think is fair and reasonable in all of the circumstances. We are not a court; and though there are rules I may rely on in respect of complaint handling procedures, I am not required to comment on each point or make specific determinations on every submission put forward by the parties. It's also important for me to point out that we do not act in the capacity of a regulator. That remit falls to the Financial Conduct Authority ('FCA').

I have noted the regulator's function here because the crux of this complaint relates to how First Direct has operated; specifically in relation to its business processes following the corporate action announced by N. However, though Mr B may believe otherwise, it is not my role to determine how First Direct undertakes communications with its customers or command it to operate differently. Instead, I have looked at whether it has treated Mr B fairly with its actions regarding the rights offer. And I believe First Direct has behaved reasonably in the circumstances.

I say that noting the terms that apply to Mr B's account say:

"7.1.6 We will use reasonable endeavours to notify you of any corporate action such as rights issues, takeovers, mergers etc, attaching to Investments in your Investment Account. Although there may be some situations where this is not possible, in these scenarios, we will act on your behalf and in the best interests we see fit. Any notification will be sent as soon as possible after we have been advised by our relevant sub-custodian or Market Data Provider. We will have no liability for any losses suffered and/or expenses incurred, if after using all reasonable endeavours to contact you, we are not able to tell you about a corporate action."

*7.1.7 If you notify us, **within such period as we may specify** [my emphasis], that you wish to exercise rights in respect of your Investments, we will use reasonable endeavours to give effect to your instructions but only on such terms as we may agree from time to time. Otherwise, we will take such action, or refrain from taking any action, in respect of any corporate action, as we in our absolute discretion determine (including, without limitation, arranging the disposal of any subscription rights on your behalf in such manner as we think fit."*

Though I realise Mr B wanted First Direct to utilise an email or text message option, First Direct was able to decide how it informed shareholders of any corporate action. It says it chooses to use postal services for all corporate action notices, though Mr B's share dealing account was also updated with the rights offer as at the date of the letter.

It isn't my role to ascertain which postal service a UK-based financial institution may use when sending post to customers based overseas. What I can determine is if I believe First Direct behaved reasonably in the circumstances – taking into account its actions, inactions and what the terms of his share dealing account say. First Direct sent the notification to Mr B within three working days of receipt, and I believe this is an acceptable timescale.

The terms also expressly permit First Direct to provide a deadline of its choosing. It has sought to explain why it did this. It said that it imposed the date of 5 June 2024 because it has more than 6,000 customers holding shares in N and the corporate action had provided its own short timescale. I find that to be fair. First Direct has a custodian which holds N shares in a pooled account, so it required reconciliation of the position with the custodian before it could confirm the election on behalf of the shareholders. It therefore determined a response date of 5 June 2024 to allow it appropriate time to process customer instructions and meet N's deadline. Though Mr B had asked it to do so, First Direct did not have any capacity to accept instructions after the deadline had expired.

I realise Mr B's preferred choice was to sell his share options on the LSE for the listed £663.43 price that he noted on his share dealing account on 7 June 2024. Instead, he received the lapsed rights proceeds of £583.30 three weeks later. However, given the framework of the terms and conditions above, I cannot agree that First Direct has made any mistake or omission that means Mr B should be compensated for the full listed price.

The terms don't compel First Direct to use an alternative means of communication. And though the option was showing on Mr B's account beyond the deadline date, First Direct explained that this was a case of a system update which was removed after the event – because meeting the corporate action deadline for affected customers took a priority. I don't believe that approach misled Mr B; he didn't take any action with the rights issue before 7 June 2024 in any event. Whilst it is frustrating that Mr B's post was delayed, First Direct did use its reasonable endeavours to contact Mr B and its terms are clear how – on that basis – it would not be liable for any losses occurring as a result of a missed corporate action.

My final decision

Despite my sympathy for Mr B, I cannot uphold this complaint, for the reasons set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 21 April 2025.

Jo Storey
Ombudsman