

The complaint

Mr W complains that Embark Investment Services Limited, trading as Stocktrade, failed to inform him about a Rights Issue in respect of shares he held, meaning he lost out on the opportunity to purchase extra shares, and their subsequent increase in value.

What happened

The facts here, and exchanges that have taken place, are well known to both parties, and are essentially not in dispute. As such, I won't go into detail here, and will instead briefly summarise the key points.

Mr W held a Self-Invested Personal Pension ("SIPP") with Novia Financial plc. In 2020, he registered for a Stocktrade account ("the account"), which was to be held within his SIPP, and which allowed him to trade a variety of specific investments.

One of the assets held within the account was a shareholding in a company I'll refer to here as 'TAG'. In March 2023, TAG published a Share Rights Issue. Notification was sent to Stocktrade. However, instead of notifying Mr W about the offer, they contacted Novia. And by the time Mr W had been made aware of the offer, it had expired, meaning he was unable to take advantage of it.

Mr W complained to Stocktrade about this, and they accepted they'd made a mistake. At the time of the offer, he held 323 shares in TAG. The offer was to be able to purchase an extra eight shares for every three already held. This meant Mr W would have been able to purchase an extra 861.33 shares, at the offer price of €5.50. By not advising him in time, he'd missed out on the opportunity to do this.

Stocktrade offered to undertake a loss calculation, based on Mr W having taken advantage of the Rights Issue, up to the date he encashed his account on 16 May 2024. They also offered to pay 8% interest on any loss, plus a further £300 compensation for the distress and inconvenience (D&I) their actions had caused him.

Mr W was unhappy with this offer and brought his complaint to this Service. He was unwilling to accept an offer without knowing more about what his losses amounted to. He also said he would prefer his loss calculation to be based on the highest possible share offer/unit price, rather than it be calculated on a specific defined date.

Our Investigator explained that it's usually appropriate to calculate loss based on specific dates, as the purpose is to put Mr W back into the financial position he would have been in, but for Stocktrade's mistake, rather than what he *might* have been in at any random point in time – we wouldn't use hindsight for redress calculation purposes.

However, our Investigator did ask Stocktrade, at Mr W's request, to provide details of the value of Mr W's shareholding in TAG, together with corresponding figures showing the value had he purchased the extra shares, at the point their value was at their highest (during the period he owned them), for comparison purposes.

Stocktrade responded, confirming had Mr W been able to take advantage of the Rights Issue, these extra shares *would* have increased in value by the time he finally encashed his existing shareholding on 16 May. There was a notional investment loss of £902.61. They also explained the shares reached their highest price on 9 April 2024. At this date, the notional investment loss would have been £1,853 on this date.

There followed further exchanges between Mr W, our Investigator and Stocktrade. Mr W asked for the compensation to be increased to the midpoint between the above two 'loss' figures. He supported this by explaining he only encashed his account because he'd lost trust in Stocktrade – the sale date was based on nothing more than that, and he could have sold at any point had the rights issue been taken up. And he wanted the interest on loss to be calculated at BoE plus 8%, together with £600 D&I compensation.

Stocktrade agreed to increase their D&I offer to £750, but remained of the view that it was not appropriate to pay loss redress based on a speculative date. And they confirmed their interest offer was 8% in total only.

Mr W remained unhappy with this, and as no agreement could be reached, he asked for an Ombudsman to consider his complaint afresh. It's been passed to me for this purpose, and to issue a Decision accordingly.

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.

Share consolidation issue

Before considering the complaint that Mr W made to Stocktrade, and brought to us, I need to comment on another concern raised by Mr W during the course of his exchanges with our Investigator. He advised that he'd become aware there had been a TAG share consolidation in February 2023, shortly before the Rights Issue - shareholders in TAG had received one new share for every ten that had been held up to this point. Mr W had 3,237 shares, which became 323 shares after the consolidation.

Mr W initially started his complaint with Stocktrade believing he had 3,237 shares (and this entitled him to purchase an extra 5,600-odd shares in the Issue). Mr W told us it distressed him greatly to become aware that this wasn't the case. Our Investigator explained this may represent a new complaint that Mr W may wish to raise with Stocktrade, but it wasn't something that can be addressed within this complaint.

Stocktrade have provided some information to us to explain what happened, and why (which I'm happy to provide to Mr W). However, that wasn't in response to a formal complaint having been made, and was merely provision of information to us. If Mr W wishes to make a complaint about this issue, he'll either need to advise Stocktrade (or ask our Investigator to formally raise it for him), following which Stocktrade will have eight weeks to investigate and respond, as per the Financial Conduct Authority's Rules (the DISP Rules). Accordingly, I won't be making any further comment on that point here.

Stocktrade's offer to put things right

Stocktrade have accepted they didn't notify Mr W about the Rights Issue as they should, and also that he'd have taken advantage of it had he been made aware in time. That point isn't an issue here, and so isn't something that I need to, or will, address.

Instead, I'll focus on the redress offer Stocktrade has made, and whether I think it is a fair one. And having considered the evidence, and thought carefully about what both parties have said, I think their increased offer is fair in the circumstances. I'll explain why.

'Loss' calculation

When calculating 'loss' in situations such as this, it's usual to try and consider what *would* have happened, or was most likely to have happened, had a business' mistake not occurred. Here, it's accepted that Mr W would have taken advantage of the Rights Issue. He would have purchased the extra shares, which had been offered for sale at €5.50 per share.

If he still held that shareholding now, we'd ask Stocktrade to consider what they'd have been worth now, and use that figure to work out any loss. But, Mr W had sold them, when encashing his Stocktrade account, on 16 May 2024. So, there was a fixed date when Mr W took action, without prompting, to dispose of his shares. This is the latest date on which he held his original shares, and so must be the latest date that he would have held (all other things being equal) the shares he would have acquired via the Rights Issue.

Stocktrade have based their calculation on the value of the shares at that date. That calculation shows the extra shares he would have purchased would have increased in value by £902.61 (less dealing charge) at that date. I agree that is the correct method to use here, as it's based on Mr W's known actions at the time.

Mr W has asked that his loss is based on the date on which the TAG shares had reached their peak during what I'll call his ownership period. I'm afraid that is not an appropriate, nor fair, way to calculate loss here.

I do acknowledge when Mr W says he only sold his shares/encashed his account on that date because of frustration with Stocktrade. I don't doubt that. However, there was nothing to stop Mr W from selling his existing shares at any earlier date (or later one), including in the months before when they were worth considerably more than when they were sold.

I must be clear I am not criticising Mr W for not selling his existing shares earlier than he did. But the traded share price would have been clearly visible within the markets, and so Mr W would have either known, or have been able to find out, when the TAG share price rose and fell. But it was his decision to sell his existing shares on the day he did (16 May 2024), nearly six weeks after the shares hit their peak. I'm not aware of anything that prevented him from selling them earlier, and certainly not any Stocktrade communication or action that caused Mr W to sell his existing shares when he did, or prevented him from selling them earlier.

Accordingly, I agree that Stocktrade's offer of redress should be based on the day Mr W sold his existing shares, and am satisfied their loss redress offer of £902.61 represents a fair calculation in these circumstances, and is the amount I'll be directing them to pay here.

Interest

In cases where a customer has experienced a loss, we ask a business to calculate interest on that loss figure to represent the effect of the customer's loss of use of those funds. That calculation is for the period when the loss crystallised (here, the date Mr W sold his existing shares), up until the date that loss figure is paid (usually within 28 days of any Final Decision being accepted).

Mr W has asked for interest to be applied at the Bank of England base rate, plus an additional 8% on top. However, this isn't a rate our Service uses. We historically use a figure of 8% simple when calculating the interest amount, which is what Stocktrade have used in their offer. I agree that is the correct method, and interest figure, to use here, and is the amount I'll be directing Stocktrade to use in their redress calculations.

Distress and Inconvenience

I agree that Stocktrade's actions have clearly caused Mr W distress and inconvenience. And I also agree their initial offer of £300 didn't sufficiently reflect the distress he'd experienced.

However, the amounts this Service awards for D&I are fairly modest in value. Our D&I awards are not designed to punish a business, but rather to put a monetary value on the distress a business' actions have caused. Guidelines setting out our approach to such awards can be found on our website.

So, taking account of what I've said above, and having careful regard to our guidelines on this subject, I think Stocktrade's increased D&I offer of £750 is appropriate here. I think it represents a very fair offer in the circumstances, and is the amount I'll be asking them to pay to Mr W.

My final decision

I uphold Mr W's complaint against Embark Investment Services Limited, trading as Stocktrade, and require them to do the following:

- Pay Mr W the sum of £902.61 in respect of the notional investment loss described above, within 28 days of being notified of his acceptance of this Final Decision.
- Pay him interest on that sum, at 8% simple, calculated from 16 May 2024 to the date the above amount is paid to him.
- Pay Mr W an additional £750 in respect of the distress their actions caused him, also within 28 days of being notified of his acceptance of this Final Decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 18 April 2025.

Mark Evans
Ombudsman