

## The complaint

Mrs B and Mr B complain that Brewin Dolphin Limited ('BDL') failed to transfer investments into their stocks and shares ISAs before the end of the tax year.

## What happened

Mrs B and Mr B had stocks and shares ISAs with BDL. Towards the end of the 2022-23 financial year they told BDL they wanted to transfer some investments to their ISAs from a company I'll refer to as 'V'. BDL took steps to facilitate the transfer, but it didn't happen in time for the end of the financial year. So Mrs B and Mr B say they missed out on getting funds into their ISAs for that year.

The investments Mrs B and Mr B asked to transfer were shares in a non-UCITS retail scheme. Investors in the fund could redeem their shares on demand on the first and 15<sup>th</sup> days of the month.

As part of the transfer process the following relevant events took place:

- Mrs B and Mr B began making enquiries about the transfer in December 2022. They had made withdrawals from their ISAs that year and they had the option of returning those withdrawals to the ISAs as well as using their annual allowances for that year. On 18 December 2022 BDL told Mrs B and Mr B how much they'd taken out of their ISAs that year, and what was the total they could put back in.
- On 9 and 10 January 2023 BDL looked into whether it could accept the holdings of the investment Mrs B and Mr B wanted in their ISAs. It noted the investment usually required a minimum initial amount of £200,000, but that the minimum might be waived.
- On Monday 16 January 2023 Mrs B and Mr B confirmed they wanted to transfer shares to a combined value of £124,975 into their ISAs. BDL emailed V for a valuation and reference number. V replied that day with a valuation but no reference number.
- On Friday 20 January 2023 BDL sent Mrs B and Mr B ISA subscription forms to complete and a stock transfer form to send to V. BDL said it had left the number of shares blank on the form for V because it didn't yet know how many shares would be transferred.
- On Monday 22 January 2023 Mrs B and Mr B returned their ISA transfer forms to BDL and said they'd decided to transfer an increased total of £129,975.
- BDL put transfers on hold for a time during January and February 2023 because it was introducing a new custody and settlement system.
- Throughout February and March 2023 BDL had various interactions with V.

- On 1 March 2023 V transferred Mrs B and Mr B's holdings to BDL's custodian. But it didn't tell BDL it was doing or had done that. So BDL didn't match the shares to Mrs B and Mr B's account.
- On Friday 3 March 2023 BDL contacted V to initiate the transfer.
- On 22 March 2023 BDL accepted the transfer request on its system.
- On 27 March 2023 BDL issued a transfer acceptance letter with details of its account to receive the holdings.
- BDL received the shares into its nominee account from its custodian at 11.59pm on Thursday 30 March 2023.

Mrs B and Mr B complained to BDL. Amongst other things they said the following:

- They couldn't understand why BDL didn't make the trades on 1 April 2023.
- BDL had assured them throughout the process that the transfer would be done by the end of the tax year. It wasn't until 3 April 2023 BDL told them it wouldn't happen. That left Mrs B and Mr B with insufficient time to make alternative arrangements for using their ISA allowances.

BDL didn't think it had done anything wrong. Across several responses to Mrs B and Mr B it said the following:

- It introduced a new system in January 2023 which caused a delay, but that delay was minor and not material to the transfer.
- It hadn't been necessary to make Mrs B and Mr B aware the deadline might be missed because BDL was in contact with V and wasn't aware of any problem that would mean the deadline would be missed. It expected to finalise the transfer '*well ahead of the deadline*'.
- V had transferred the holdings on 1 March 2024 in error, without being asked to and without telling BDL it had done so. And BDL didn't find out V had transferred the holdings until 29 March 2023.
- BDL couldn't facilitate the transfer by dealing before the end of the financial year because '*the stock did not land in our nominee until 23:59 on 30 March 2023. Once we placed the sales (T+4 day) the cash would not have settled until 6 April 2023 and past the deadline for ISA subscriptions*'.
- BDL could only sell the holdings on the investment's designated dealing days which were the 1<sup>st</sup> and 15<sup>th</sup> of the month (or the following business day if a dealing day fell on a non-business day).

Mrs B and Mr B weren't satisfied. They referred their complaint to this service.

One of our Investigators looked into the complaint. He thought BDL had contributed to the delay transferring the investments. And he thought that if it weren't for the delay by BDL then Mrs B and Mr B would've had the investments transferred by the end of the financial year. The investigator said the following:

- Because the end of year deadline was missed by a very short time, the avoidance of

even a small delay would've made the difference.

- Under the TRIG framework – which was standard industry practice – each step of the transfer should take a maximum of two working days. But BDL took 8 days (16 February to 3 March) to request authority, and then 7 days (20-27 March) to request the transfer.
- On 20 January 2023 BDL rejected the transfer because it was introducing a new system. It then didn't set up the transfer until 16 February 2023. That didn't cause a 27-day delay because there were numerous other variables in play, but it will have affected the speed of the process.
- On 16 February 2023 BDL set up the transfer on its systems. And on 24 February 2023 it sought confirmation that Mrs B and Mr B had given authority to transfer, even though Mrs B and Mr B had given authority on 22 January 2023. It was reasonable to expect this step to happen within two days. So this was a four-working-day delay.
- Between 9 and 20 March 2023 BDL and V each said they needed information from the other party before they could take the next step. This wasn't a case of needing to follow up requests – it was a delay caused by both businesses failing to be flexible. This was a four-working-day delay, equally attributable to BDL and V.
- BDL took five working days between 20 and 27 March 2023 to confirm the quantity of units to transfer, input the instructions and accept the transfer of shares and issue its transfer acceptance letter with details of its custodian account. The investigator didn't agree with BDL that two days for this step was unrealistic. The steps were internal processes, and this was a three-working-day delay.
- Overall, BDL had caused some of the delays that affected the transfer. Had those delays not happened, Mrs B and Mr B wouldn't have missed the ISA deadline.
- BDL should find out from HMRC whether it could add Mrs B and Mr B's funds to their ISAs under their 2022-23 subscriptions.
- BDL should pay Mrs B and Mr B £200 for distress and inconvenience because it didn't tell Mrs B and Mr B they could make the transfer more efficient by selling their shares and transferring the cash then rebuying the shares, and because it acknowledged it was responsible for some delay but didn't do anything to put right the impact of that.

BDL spoke to HMRC and found it wasn't possible to fill Mrs B and Mr B's 2022-23 ISA subscriptions. In light of that a further investigator set out that BDL should compensate Mrs B and Mr B for missing out on transferring assets to their ISA in that year. To do that BDL should pay them the amount of capital gains tax they'd incur due to missing the 2022-23 deadline, based on the following calculations:

- Investment gain = £129,975 x 7.5% compound interest x 10 years
- Capital gain = investment gain – the current capital gains tax allowance
- Capital gains tax liability = capital gain x the current rate of capital gains tax (depending on Mrs B and Mr B's rate of income tax)

Mrs B and Mr B accepted the investigator's view. BDL didn't agree. In summary it said the following:

- TRIG wasn't a regulatory requirement, and two-day timescales didn't reflect industry practice. Industry usually chased or followed up on actions between 7 and 30 days. Sending chasers every two days would cause delay because of additional email and telephone traffic and the associated workload. BDL had acted within its own SLAs.
- BDL's introduction of a new system caused an initial delay. BDL suspended transfer activity between 20 and 31 January 2023. But there was still sufficient time for this transfer to be completed within the deadlines. And during that time BDL still requested and chased information from V.
- V transferred the holdings to BDL on 1 March 2023. But BDL wasn't aware of that and was waiting to be told the number of shares to be transferred. V should've confirmed the shares were ready to be transferred and then agreed trade and settlement dates with BDL. And it should've provided the information BDL requested about the number of shares. That would've allowed sufficient time to sell the assets and repurchase them in Mrs B and Mr B's ISAs.
- B didn't receive information about the number of shares until 20 March 2023. After that it accepted the transfer on 22 March 2023.
- BDL matched the shares to the account as soon as possible, but by then the opportunity to complete the trade in the tax year had passed.
- It would've been bad advice to tell Mrs B and Mr B assets could've been sold and transferred in cash – it would've exposed them to being out of the market for an extended period of time which could've caused significant detriment if the market had moved against them. Bed and ISA was the appropriate process for clients withing to retain assets. And that what was BDL tried to facilitate.

Because no agreement could be reached, this complaint was passed to me to review afresh and make a decision.

I issued a provisional decision in which I said I was minded to uphold the complaint because BDL had the opportunity to facilitate the movement of investments into Mrs B and Mr B's ISAs before the end of the year, and it should either have done so or have told Mrs B and Mr B in good time that it wouldn't be possible so they could make alternative arrangements. I said I was minded to require BDL to compensate Mrs B and Mr B in the way recommended by the investigator.

In response to my provisional decision BDL said the amount Mrs B and Mr B had missed out on adding to their ISAs was less than I'd said it was. BDL said the correct amount was £90,905.41. That was because Mrs B and Mr B had added a combined £40,000 to their ISAs shortly before the end of the year. BDL also said the calculation of Mrs B and Mr B's future tax liability should assume they'd use their capital gains tax allowances each year to reduce their overall tax liability on the investments they'd missed out on adding to their ISAs.

Mrs B and Mr B confirmed the amount BDL said they missed out on adding to their ISAs was correct. They also commented that to transfer £40,000 to their ISAs before the end of the year they'd had to sell some investments they hadn't planned to sell, and they'd been put to considerable inconvenience. They said they also thought £200 was insufficient for the distress and inconvenience they'd suffered but they'd been prepared to accept it in order to have their complaint resolved.

## 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.

Having done so, I'm upholding the complaint. I'll explain why.

The purpose of this decision is to set out my findings on what's fair and reasonable, and explain my reasons for reaching those findings, not to offer a point-by-point response to every submission made by the parties to the complaint. And so, while I've considered all the submissions by both parties, I've focussed here on the points I believe to be key to my decision on what's fair and reasonable in the circumstances.

BDL disputed the relevance of the TRIG guidance. I acknowledge that the guidance doesn't hold the standing of regulatory rules. And I accept it's somewhat historical and that BDL says it never signed up to the guidance. However, I'm satisfied it represents a useful indicator of good industry practice. And so, while I haven't applied it as a set of rules, I've borne it in mind while coming to a view on this case.

In the particular circumstances of this complaint, chasing every 7-30 days, as suggested by BDL, wouldn't have been sufficient to facilitate the transfer and ISA subscriptions. Mrs B and Mr B clearly had a significant deadline to meet, and BDL had indicated to Mrs B and Mr B that it'd be able to meet that deadline. There were times when BDL could've acted sooner to ensure Mrs B and Mr B's transfer was done in time. For instance BDL said it accepted the transfer on 22 March 2023 but it didn't send its acceptance to V until 27 March 2023. This was close to the end of the financial year which was the deadline for Mrs B and Mr B to add the funds to their ISAs. So I think BDL ought to have acted more quickly to ensure the deadline wasn't missed.

Also – significantly – the investment Mrs B and Mr B sought to transfer could only be dealt twice a month on designated days. One of those dealing days was the first business day of the month. In this case, Monday 3 April 2023 would've been the first dealing day available after BDL had the shares in its nominee account. So, irrespective of whatever had caused delay up until that point, BDL had a window of opportunity to place the sale on that day.

BDL told Mrs B and Mr B that, once their holding landed in BDL's nominee account late on Wednesday 29 March 2023, it was too late to facilitate a bed and ISA for that year. However, I note that HMRC guidance for ISA managers says the subscription date can be '*the date on which the investor's units or shares are sold, the settlement date for the purchase or any date in between ...*'. So I think BDL ought reasonably to have sold Mrs B and Mr B's shares before the end of the tax year and treated the date of the sale as the subscription date for their ISAs.

In January 2023 BDL looked into whether it could accept the particular investment fund holdings that Mrs B and Mr B wanted to transfer to BDL and repurchase in their ISAs. I've seen that BDL noticed that the fund usually required a minimum level of investment. I haven't seen any evidence showing whether at that point BDL knew or became aware that the investment could be sold on two designated days of the month only. But I think that's something it ought reasonably to have discovered when it looked into the possibility of accepting a transfer of Mrs B and Mr B's holding. If BDL had done that and decided it couldn't accept the transfer then it would've needed to tell them that so they could've had the opportunity to make alternative arrangements to use their ISA allowances before the end of the year. Mrs B and Mr B have indicated they'd have sought to make other arrangements if they'd known the transfer couldn't happen in time. Alternatively, if BDL thought accepting the transfer and facilitating Mrs B and Mr B's ISA subscriptions was feasible then it needed to

act proactively throughout the process.

I understand what BDL says about the role of V in the transfer of the shares. But I'm considering BDL's actions in this decision. And I think that, irrespective of any failings by third parties, BDL had the opportunity to facilitate Mrs B and Mr B's ISA subscription, or else to tell them in good time that it wouldn't be able to do so. And I think it should've done one of those things. By not doing either of those things BDL caused Mrs B and Mr B to miss out on adding funds to their ISAs that year, including some funds they'd taken out of the ISAs earlier that year. That means they're likely to be liable for capital gains tax on the investments they were unable to purchase in the ISA in that year. It's also caused them distress and inconvenience. So it's fair that BDL should put things right for Mrs B and Mr B by compensating them for the capital gains tax liability they're likely to incur due to missing out on moving assets into their ISAs before the end of 2022-23 and for the associated distress and inconvenience.

I appreciate why BDL said the calculation of Mrs B and Mr B's investment gain should assume that they'll use their capital gains tax allowance each year to reduce their overall tax liability on the relevant investments. But I don't agree it's the right way to compensate Mrs B and Mr B. It's not in line with the approach this service usually takes in circumstances such as these. And I don't think it would be fair in the particular circumstances of this complaint. The calculation this service uses to compensate for future liability for capital gains tax is a broad brush estimate, based on assumptions. The assumptions include how long the customers will hold their investments – it could well be they hold them for longer and so incur a higher tax liability than I have assumed. And the calculation is based on current tax rates and allowances which might well be different in future. I must also take into account that if Mrs B and Mr B used their capital gains tax allowance each year to reduce the liability that BDL has caused them, then they'd lose the opportunity to use the allowance in relation to other investments which they would already have held outside their ISAs. So, overall, I don't think it's fair to reduce Mrs B and Mr B's compensation on the basis that they could reduce their liability by using each year's capital gains tax allowance.

Mrs B and Mr B commented on the trouble to which they were put due to the fact BDL caused them to miss out on adding investments to their ISAs in 2022-23. I've taken this into account in the award I'm making on this case. I'm requiring BDL to pay Mrs B and Mr B an amount which will make up for the financial impact of its failings on them. And I'm satisfied that in addition to that £200 is reasonable acknowledgement of the distress and inconvenience BDL caused Mrs B and Mr B. It's in line with awards this service usually makes when an error has caused more frustration and annoyance than might reasonably be expected from day-to-day life, and the impact has been more than just minimal.

### **Putting things right**

To put things right for Mrs B and Mr B, Brewin Dolphin Limited must compensate them for missing out on transferring assets to their ISA in 2022-23. To do that Brewin Dolphin Limited must pay Mrs B and Mr B the amount of capital gains tax they're likely to incur due to missing the 2022-23 deadline. This should be based on the following calculations:

- Investment gain = £90,905.41 x 7.5% compound interest x 10 years
- Capital gain = investment gain – the current capital gains tax allowance
- Capital gains tax liability = capital gain x the current rate of capital gains tax (depending on Mrs B and Mr B's rate of income tax)

Brewin Dolphin Limited must also pay Mrs B and Mr B £200 for the distress and

inconvenience it caused them.

### **My final decision**

For the reasons I've set out above, my final decision is that I uphold this complaint. Brewin Dolphin Limited must take the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 1 July 2025.

Lucinda Puls  
**Ombudsman**