

## complaint

Mr and Mrs R say Witan Investment Services Limited ('Witan') mishandled the transfer of their shares to the Witan/Witan Pacific share register ('the share register').

## background

Events began with a letter from Witan to Mr and Mrs R dated 14 January 2019. The letter explained that it had reviewed its savings scheme service and had decided to transfer it to a specialist investment platform provided by a third party firm. It confirmed that it would no longer be offering the 'Witan Wisdom and Jump Savings Schemes' and it offered them a choice between four options (with different reply deadlines applicable to the options).

The options were – to transfer their account to the new provider, to transfer their account to another provider of their choice, to request a transfer to the share register or to liquidate their investment and withdraw the proceeds.

On 31 January Mr and Mrs R responded in writing to Witan. They say they were informed prior to that, over the telephone, that their instruction had to be in writing. They say they confirmed, in the telephone conversation, that they would opt for the third option (transfer of their shares to the share register) but would like this to happen after maturity of the savings scheme.

Their letter of 31 January said, in the main, as follows:

- That they wish to use the third option and have their account transferred to the share register.
- That Witan should confirm that their instruction "... *has been actioned at [Witan's] earliest convenience.*"
- That their perception was that Witan's letter was leading them towards the new provider.
- That they were unhappy with poor telephone service they received at the time.

Witan executed Mr and Mrs R's instruction in February. They then complained about that because the transfer had taken place without waiting for maturity of the savings scheme, as they wanted. Witan disputes the complaint. It says it executed their instruction as presented by them and that it could not reinstate their account because the scheme had closed.

The matter was referred to this service. One of our investigators looked into it and agreed that Witan had executed Mr and Mrs R's instruction as they had presented it. She noted their unhappiness about the telephone service they received at the time but concluded that their calls had to be escalated due to the subject(s) raised and whilst that consumed more time it was not unreasonable for Witan to have done so.

Mr R disagreed with this outcome and made the following points:

- The process Witan applied to the event was fundamentally flawed as it put clients to unnecessary work, lacked a standard nature and, because of the existence of a default option, put pressure upon clients.
- The poor telephone service and lack of information about what, precisely, to put in their instruction compounded the problem.
- The irrevocable nature of Witan's action also compounds the problem.

- He accepts that their instruction letter could have been clearer but that was impacted by the issues mentioned above.
- Witan should have sought clarification of their instruction letter.
- Witan should be able to redress the matter by obtaining the shares in the secondary market.

The matter was referred to an ombudsman.

### **my findings**

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 do not uphold the complaint.

Available documentary evidence provides the following:

- Witan's letter of 14 January included an explanation about the third option. It said the deadline to select this option was 15 March and it said upon receipt of Mr and Mrs R's instruction it "*... will arrange for the re-registration to take place ... and the Registrar of the trusts ... will send a share certificate to [their] account address.*"
- Mr and Mrs R's instruction letter confirmed their wish for the third option and asked Witan for confirmation of its execution of the instruction at its earliest convenience. The letter makes no mention of a desire or instruction to await maturity of the scheme before executing the transfer.

In straightforward terms, Witan executed the instruction given by Mr and Mrs R and I do not consider that there is evidence to suggest that it did otherwise. There appears to be nothing within the instruction for which Witan ought to have sought clarification and I am not persuaded that the process was fundamentally flawed as alleged – or that this allegation is relevant to the complaint. It is not uncommon for transfer exercises to have a default option in the event that a client does not respond by a relevant deadline. Furthermore, I do not consider that a client exercising the right to select an option in such an exercise (and doing so in writing) amounts to *unnecessary work*.

In their complaint submissions Mr and Mrs R conceded that their letter "*... could have been clearer ...*" and that their letter could have been "*... misinterpreted as "action instructions immediately" rather than "confirm the instructions have been lodged so that is what will happen when the scheme ends" ...*" Based on their present assertion, their letter could indeed have been clearer.

However, I do not accept that there was a misunderstanding on Witan's part. I have not identified anything in the letter that suggested Mr and Mrs R wanted, only, confirmation that the instruction had been lodged and that the transfer will happen when the scheme ends. There was no basis, within the instruction letter, for Witan to know or even assume this. Reference to the explanation of the third option in Witan's letter also defeats the argument that this could reasonably have been expected. That explanation said execution of the third option, if selected, will take place following receipt of the instruction.

Mr and Mrs R appear to argue that this expectation was mentioned in the telephone conversation with Witan prior to their instruction letter. However, they accept that they were told in that conversation to confirm their instruction in writing, so it follows that if their

instruction was to execute the transfer after maturity of the scheme that is precisely what they should have said in the instruction letter – but they did not.

Overall and on balance, I am not persuaded that Witan did anything wrong in executing Mr and Mrs R's instruction, the instruction was executed as they requested and I note that their request even asked for confirmation of execution, essentially, as soon as possible – which conflicts with the notion of suspending execution until after maturity of the scheme. As Mr and Mrs R appear to concede, this conveyed a message to *action instructions immediately*. In the absence of any wrongdoing by Witan in this matter, the issue of redress is redundant.

With regards to the telephone service issue, I agree with the investigator's conclusion. I have listened to the telephone calls and I understand the strength of feeling and frustration that was expressed by Mr R during those calls, but it is equally evident that Witan sought to give the issues he raised due attention and had to escalate the calls for that reason. I am not persuaded that there is a ground to award compensation in this respect.

### **my final decision**

For the reasons given above, I do not uphold Mr and Mrs R's complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs R to accept or reject my decision before 16 January 2020.

Roy Kuku  
**ombudsman**