

complaint

Mr D complains that Talos Securities Limited, trading as Selftrade, didn't act upon his written instruction to purchase the bond he instructed it to.

background

Mr D opened a Selftrade self-invested personal pension scheme (SIPP) account in July 2012 and transferred £50,000 from another SIPP into it. He said he wrote to Selftrade instructing it to use this money to purchase a particular bond, which it didn't do.

Talos didn't uphold Mr D's complaint, it said, in summary:

- It could find no record of having received Mr D's written instruction telling it to buy the named bond.
- Its terms and conditions made it clear it did not accept trading instructions by post.
- Mr D's online account had been logged into on several occasions after it was opened and he had received annual statements. So, he should have known the bond had not been bought.

Dis-satisfied with Talos' response Mr D complained to this service. He added, in summary:

- He knew Selftrade had received his written instruction because it had talked to the provider about the bond.
- The onus was on Selftrade to tell him if the purchase didn't go through.
- He hadn't logged onto his account or received annual statements. Had he done so he would have known about this sooner, and complained earlier. He had no reason to open an account and transfer £50,000 into it, for it to be held in cash.

According to Selftrade:

- Its records show that Mr D's Selftrade account was opened on 17 July 2012, after he applied to open it on 13 July 2012. The letter Mr D said he sent was dated 12 July 2012, so it would have preceded him having an account with Selftrade.
- On 19th July 2012 and 26th July 2012 it received calls from an IFA who said it was acting for Mr D. The IFA said it was trying to buy the named product for him. Selftrade told the IFA it was unable to trade the product in question, because it did not have a relationship with the bond provider.
- Its records showed that Mr D's account was logged into on 14 occasions between 27th July 2012 and 11th March 2013. It showed a cash balance and the securities total shows "GBP 0.00."
- It issued an annual statement pack on 4th May 2013 which would've showed his SIPP was held in cash.
- It did not have a record of Mr D raising this issue until March 2014.
- It still didn't have a relationship with the product provider to trade this bond.

One of our adjudicators looked into Mr D's complaint and didn't uphold it.

Mr D, represented by the same IFA who contacted Selftrade in 2012, disagreed with our adjudicator's view. The IFA said, on Mr D's behalf:

- It had contact with Selftrade before the paperwork was submitted to open Mr D's account, to check the trade was available via it. In some initial calls it was told that the trade was not available, but in subsequent calls when quoting the ISIN number it was told that it was. It knew from the product provider that Selftrade had spoken to it about the trade.
- It produced a "How to Buy" document which it said showed Selftrade as a preferred Stockbroker for this particular product.

Selftrade sent in four recordings of telephone calls, between it and Mr D, or his IFA.

- The first call was from Mr D to Selftrade, during which he said *"I am undertaking a trade today as part of my SIPP and to do that I have asked my IFA to actually affect the trade. I received from you yesterday the new account number and the new password and I have to admit that I have just given that to my IFA."* He went on to say that £50,000 cash was to be invested in the named bond and did Selftrade need to know the ISIN number? Selftrade said that it didn't because his IFA was affecting the trade.
- During the second call Selftrade told the IFA that it couldn't trade the investment in question as it did not have a relationship with the product provider to do so.
- During the third call, the IFA told Selftrade that it had tried to make a purchase on-line with its client. But, was having problems, going back a week or so, because there was no market maker. Selftrade said that its relationship with the product provider was still in the process of being set up. It therefore suggested the IFA should keep checking on-line to see if the purchase could be made.
- As the person the IFA wanted to speak to was not available the fourth call ended with Selftrade agreeing to call the IFA back.

Mr D's IFA said, on his behalf:

- It did not have the authority to deal on Mr D's account. Its involvement was to ensure that the product in question could be purchased and to forward the client's written request. The contract was between Selftrade and Mr D.
- Selftrade had been selective in sending in the call recordings it had.

Selftrade said it clearly explained to the IFA that it could not make the trade because it didn't have a relationship with the product provider. So, the IFA should've been aware that the trade wasn't completed.

The IFA said it was led to believe the trade went ahead and no one came back to the client to say it hadn't been.

As agreement couldn't be reached Mr D's complaint has been passed to me to consider.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Even if Mr D did write to Selftrade when he said he did instructing it to make the trade I don't think it was under any obligation to do so. Firstly, because at that time Mr D didn't have an account with it from which it could make the trade. But, secondly, because it had made it clear in its terms and conditions that it didn't accept postal instructions.

But, having listened to the call between Mr D and Selftrade made very shortly after his account was opened; he clearly said that his IFA was affecting the trade. He didn't say anything about having written to Selftrade about a week earlier instructing it to make the trade for him. I think, more likely than not, he would have mentioned this if he had changed his mind about who should make the trade.

Mr D said that Selftrade must have received his written instruction because it was in contact with the product provider about the product in question. But, even if Selftrade and the bond provider did discuss Mr D's potential purchase, I haven't seen anything that persuades me that Selftrade failed to act upon instructions given by Mr D, or an authorised adviser, to make the trade.

The IFA sent through a document it said showed that Selftrade is a preferred stockbroker for the bond Mr D wanted to buy. But the investment referred to in that doesn't have exactly the same name as the one Mr D wanted to buy. So, I don't know if it is the same product. Also, I think it unlikely that Selftrade would have repeatedly told the IFA that it didn't have the necessary relationship with the product provider, if it did. Nor, do I think the IFA would have experienced the problems it did trying to arrange for Mr D to buy the bond if Selftrade was set up as a preferred stockbroker.

Mr D disputes logging onto his on-line account. However, Selftrade said that its records showed that Mr D (or his representative) logged on to the account numerous times in 2012 and 2013. I haven't seen the logging on records, so I don't know. But, this doesn't change my decision because I have decided that Selftrade didn't fail, as instructed, to make the trade. So, I can't reasonably hold Selftrade responsible for Mr D not becoming aware of this sooner.

my final decision

For the reasons given above I don't uphold Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 13 November 2015.

Kim Parsons
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