

complaint

Mr and Mrs V's complaint concerns the level of service provided to them by TD Direct Investing (Europe) Limited over a number of months. To resolve matters they are looking to TD Direct Investing (Europe) Limited to pay £400 direct to their UK bank account.

background

Mr and Mrs V had a share dealing account with TD Direct Investing (Europe) Limited ("TD Direct").

In August 2013 TD Direct says it wrote to Mr and Mrs V asking them to provide certified copies of documents confirming their identity as part of a due diligence exercise it was undertaking. But when, in early October 2013, these documents had not been provided a block was placed on Mr and Mrs V's account. TD Direct has said that this block prevented Mr and Mrs V from placing buy trades and withdrawing stocks or cash, but it did not prevent Mr and Mrs V from placing sale trades or depositing cash. Mr and Mrs V say this letter was never received.

Mr and Mrs V say they received a letter from TD Direct in August 2013 to say that TD Direct had been unable to contact them by email. On receipt of this letter Mr V says he contacted TD Direct to advise of a new email address (he had recently changed internet provider) and to confirm that his post code had been amended slightly.

Mr V then says he received four letters from TD Direct, three dated the same day in September 2013 addressed:

- To him (containing his old postcode) confirming that his postal and email addresses had been amended.
- To him (containing his new postcode) confirming that his postal and email addresses had been amended.
- To a third party (containing his new postcode) confirming that it had been unable to contact him my email.

And one dated the following day addressed:

- To him (containing his new postcode) confirming that it had been unable to contact him by email.

None of these letters made reference to TD Direct's earlier request; made in August 2013, for documents, notwithstanding that at this stage TD Direct had not received them.

The above, together with Mr and Mrs V's general dissatisfaction of having to provide documents and the reasons given for having to do so, was investigated by TD Direct.

In early December 2013 TD Direct wrote to Mr V saying the account block had been applied correctly but it would be removed on receipt of the documents requested under cover of its letter dated August 2013. However it acknowledged there had been some service failures on its part for which it was prepared (as previously advised to Mr V) to pay £30.

Dissatisfied with TD Direct's response to their complaint Mr and Mrs V referred the matter to our service, adding that TD Direct had also charged them an inactivity fee which they felt was unfair.

Whilst the matter was being considered by one of our adjudicators, TD Direct, in February 2014, advised our service that it was prepared to increase its offer of compensation, payable to Mr and Mrs V, to £100. It further confirmed that Mr and Mrs V had not been charged an account inactivity fee.

Our adjudicator considered TD Direct's increased offer and concluded that it was, in all the circumstances, fair and reasonable.

Mr and Mrs V did not agree and raised the following points in response:

- TD Direct had a moral obligation and a duty of care to send more than one notification of its requirement for documents.
- TD Direct should have reminded them of its requirement for documents in correspondence it sent in September 2013, or during the telephone calls that were made in the same month.
- It is unfair that TD Direct should be able to accept cash deposits to their account whilst at the same time preventing, amongst other things, the purchase of 'new' stock.
- TD Direct had provided incorrect and contradictory information for its reasons for requesting documents.

The adjudicator considered Mr and Mrs V's response to his view that £100 was insufficient compensation but he was not persuaded to change his mind. As a result he advised both TD Direct and Mr and Mrs V that the matter was to be referred to an ombudsman.

Whilst the case was awaiting allocation to an ombudsman Mr and Mrs V were able to transfer their holdings to a new broker, notwithstanding they had not provided TD Direct with the documentation it had requested.

TD Direct advised the adjudicator of the above and stated that it had also waived the transfer fee of £150 that, under normal circumstances, should have been paid by Mr and Mrs V. Therefore it would like to withdraw its February 2014 offer to pay Mr and Mrs V £100.

The adjudicator agreed that it would not be reasonable for TD Direct, having in effect already 'paid' Mr and Mrs V £150, to also have to pay the £100 offered under cover of its letter to our service dated February 2014. The adjudicator's revised view in this respect was then relayed to Mr and Mrs V.

However Mr and Mrs V did not agree this was fair or reasonable given that the £150 transfer fee was waived by TD Direct as a gesture of goodwill with no conditions attached and was a completely unrelated matter to the one that they had originally complained about.

It then transpired that as well as waiving the £150 transfer fee TD Direct sent Mr and Mrs V a cheque for the same sum. But rather than advising Mr and Mrs V of its mistake it simply cancelled the cheque. Mr V says, unaware that he and Mrs V had had the benefit of the refund by way of an account adjustment, proceeded to present the cheque for payment which was then returned unpaid marked "payment stopped".

The adjudicator considered the above matter and concluded that TD Direct should pay Mr and Mrs V £100 in respect of it, but it needed to pay nothing in respect of the original complaint as submitted by Mr and Mrs V given the transfer fee of £150 had been waived. TD Direct agreed.

Mr and Mrs V said they were prepared to accept the £100 for TD Direct's failure to advise them that the cheque for £150 had been sent in error and had been cancelled. But they still disagreed that it was fair or reasonable that TD Direct should not have to pay anything in respect of their original complaint simply because it had waived the £150 transfer fee.

The adjudicator considered the complaint again and concluded that in fact it would not be fair for TD Direct to not have to pay anything in respect of Mr and Mrs V's original complaint simply because it had waived the £150 transfer fee. TD Direct agreed with the adjudicator's revised view and confirmed that it was prepared to reinstate its February 2014 offer to pay £100, bringing the total payable to Mr and Mrs V to £200.

Mr and Mrs V said they were prepared to accept this in full and final settlement of their complaint

The adjudicator wrote to TD Direct asking it to contact Mr and Mrs V within four weeks of receiving Mr and Mrs V's settlement letter. However a cheque was not issued until shortly after the four weeks given to TD Direct had passed. It is not clear whether the cheque has ever been received by Mr and Mrs V.

Due to the delay in the settlement cheque being sent out by TD Direct, Mr and Mrs V advised the adjudicator that their acceptance of the £200 offered by TD Direct had now been withdrawn and they required payment of £400, to be paid direct to their UK bank account.

The adjudicator considered Mr and Mrs V's further submissions but was not persuaded that further compensation should be paid. As a result the matter has been passed to me for review and decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have reached the same overall conclusions as the adjudicator and for broadly the same reasons.

TD Direct has clarified that the request for documentation was to ensure that the information it currently held for Mr and Mrs V was sufficient and up-to-date. In the circumstances I am satisfied that its request was reasonable in light of its obligations to comply with the Anti-Money Laundering regulations. I am also satisfied that it was not unreasonable, in the particular circumstances of this case, for TD Direct to block Mr and Mrs V's account in the manner it did when it did.

I note that Mr and Mrs V say they never received TD Direct's letter dated August 2013 requesting they provide documents and the consequences of not doing so. But having considered records provided by TD Direct I find that on the balance of probabilities it is more likely than not that such a letter was produced and sent to Mr and Mrs V and it would, in the particular circumstances of this case, be unfair to hold TD Direct responsible for failures in the postal system.

Mr and Mrs V consider that greater effort ought to have been made by TD Direct to ensure they understood certain documents needed to be provided and that the reasons they were initially given for such a request – when they first complained – were incorrect. I do not disagree, but having considered both parties' submissions very carefully I am satisfied that TD Direct's offer to pay £100 in this respect is fair and reasonable.

I also accept that TD Direct's failure to notify Mr and Mrs V that a cheque it had issued for £150 should not be presented for payment because it had been issued in error and cancelled would have caused Mr and Mrs V a degree of distress and inconvenience for which they should be fairly compensated. But again having considered both parties' submissions very carefully I am satisfied that TD Direct's offer to pay £100 in this respect is fair and reasonable.

I will now turn to TD Direct's delay in issuing Mr and Mrs V a cheque for £200 following their acceptance of its offer to do so in respect of the above. I appreciate this would have been frustrating for Mr and Mrs V, but I am not persuaded that the length of the delay was such that TD Direct should have to pay anything further.

Therefore I find that TD Direct should, for the distress and inconvenience caused, pay Mr and Mrs V £200 as previously offered and accepted.

If Mr and Mrs V accept my decision then on receipt of the same TD Direct should contact Mr and Mrs V to establish whether the cheque it previously issued for £200 has been received and if it has, whether it has been presented for payment. In the event that the cheque has been received by Mr and Mrs V and presented for payment (and it has not been cancelled by TD Direct) TD Direct need do nothing further.

In the event the cheque has not been received by Mr and Mrs V, or it has been received but not presented for payment, then TD Direct should cancel it. TD Direct should then arrange for the payment of £200 to be made directly to Mr and Mrs V's UK bank account. In these circumstances Mr and Mrs V, on their part, should undertake not to present the cheque for payment and to provide TD Direct with the appropriate account details for payment to be made direct to their UK bank account.

my final decision

For the reasons I have given, I uphold this complaint in part and I order TD Direct Investing (Europe) Limited to pay Mr and Mrs V compensation as outlined above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs V to accept or reject my decision before 16 February 2015.

Peter Cook
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