

complaint

Ms K complains ITI Capital Limited failed to action her redemption request as it should have done so she received payment from the fund she invested in and has provided misinformation and has mismanaged the fund. She wants her capital back plus profit over the past 10 years.

background

In 2007, Ms K transferred £50,000 to ODL Securities (which later became known as FXCM, then Walbrook Capital Markets Limited, and as of 10 November 2017 ITI Capital Limited (ITI) based on advice she had received. This was invested in three funds one of which was the Assured fund (the fund) which Ms K invested £20,000 in to.

The fund, which specialised in investing in American life insurance policies, ran into financial difficulties and by 2011 the fund manager had applied restrictions on investors who wished to exit the fund. The fund at some point then suspended redemptions.

In 2012 Ms K completed a redemption request which her adviser forwarded to Walbrook and it told her it had passed this on to the fund's administrators. But she has not been able to get her money out of the fund since.

Ms K referred her complaint to us and one of our adjudicator's considered it but didn't uphold it. In short he said:

- ITI hadn't been responsible for giving her investment advice and there was no evidence of a formal link between it and the advising firm.
- ITI had carried out its limited responsibilities by forwarding her redemption request to the fund manager.
- The fact that Ms K's investment was held in a nominee account didn't mean that ITI was holding on to money which she'd otherwise be able to access. And there was a procedure for arranging for the investment to be put into her name, if this is what she wanted.

Ms K didn't agree. She said she'd been unsuccessfully trying to speak to people at ITI with a view to recovering her money since 2008. She noted that ITI had previously received a Final Notice from the Financial Conduct Authority, the regulator, about its practices. She also said she'd just been informed a £10 inactivity fee would be applied to her account.

As the adjudicator still didn't think the complaint should be upheld it has been referred to an ombudsman for review.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I sympathise with the position Ms K has found herself in. She has been trying to get her money out of the fund she invested in for some years without success and this is understandably frustrating. But I don't think ITI are responsible for the delay she has suffered. I think it's reasonably clear from the information I have seen that the reason she

has not managed to redeem her shares is because the fund suspended redemptions, which is something ITI has no control over.

Ms K initially invested in three funds in 2007 based on advice she received from her independent financial adviser (IFA). Ms K appears to suggest a link between ITI and the IFA but I have seen no evidence he was either employed by, or had any other relationship with, it.

There is no record of the adviser on the Financial Services Register which lists all those authorised by the FCA to carry out regulated activities – this is probably explained by the fact the IFA was an offshore adviser and wasn't required to be authorised. It was for Ms K to choose who she wanted to take advice from and ITI has no responsibility for this.

Ms K had an execution only account with ITI. In short she told it what she wanted to invest in and it would carry out her instructions. It didn't advise her to invest in the fund in the first place and has no control over payments out of the fund which it doesn't manage or administer.

I note Ms K has made reference to her investment being in a nominee account so that 'she couldn't touch her money directly'. But it is quite common for brokers to use nominee accounts for customers to make buying and selling shares easier. Ms K remains the beneficial owner of the shares in the account and of any money paid into the account if the shares are redeemed. She has referred to not being able to touch her money but there is no money to touch until her shares are redeemed.

From the evidence I have seen Ms K tried to redeem her shares in 2012. I note she has suggested she tried to do this earlier – from 2008. But I have seen no evidence of this and I don't think it's consistent with the email she sent to the administrator of the fund in May 2012 when she makes no mention of earlier requests only the one she had recently made. And I also note she was actually advised in September 2009 by her IFA to retain the fund. In the circumstances I'm not satisfied, on the evidence I have seen, that it's more likely than not there was an earlier redemption request which ITI failed to do anything about.

ITI has said the fund has been suspended since 2012 when the request for redemption was made. But I note the fund manager wrote to shareholders in May 2012 -around the time of the request - offering options for redemption because of liquidity problems. The fund manager explained that if shareholders wanted to redeem at the Net Asset Value (NAV) it could be three or four years until money was received. The option of redeeming at Net Realisable Value (NRV) was suggested as an alternative. The fund manager stated this was typically at a 22% discount to the current share price although warned it could be more. So whilst it seems clear Ms K was unable to get her money from the fund if she wanted NAV it isn't clear why no payment out was made at NRV given the communication from the fund manager. Also, given this was around the time Ms K made her request it seems to me more likely than not her request for redemption at NRV was based on the letter from the fund manager.

ITI has previously said it couldn't provide a copy of the redemption request sent to the fund because it contained information relating to other customers. But it has now provided this at my request with the other information removed. So I have seen a request made on 23 May 2012 which is for the number of units held by Ms K. The request appears to have been a copy provided by the fund as it has a received date stamp of 21 June 2012 with the fund administrator's signature also on the request.

So on the evidence I have seen it is more likely than not a request was made by ITI at the time Ms K asked it to redeem her shares, so it did what she asked it to do. As the request was for redemption at NRV I don't know why the fund administrator didn't pay out given this is what was suggested by the fund manager if customers wanted to get their money.

ITI has said that from when the request was made until now it has been communicating with the manager and the administrator of the fund and intermittently reporting back to Ms K. I would expect ITI to follow up redemption requests as it says it did do. I think this was particularly important when it was aware there was already a liquidity problem, so the possibility that at some point it wouldn't be possible to get anything out of the fund even at NRV.

I have seen no evidence ITI did contact the fund manager or administrator again in 2012 chasing up the request. The next document I have seen is a further redemption request dated from ITI dated August 2013. But that doesn't necessarily mean there was no follow up.

ITI has explained corporate changes and staff issues are making it difficult to identify documents between 2012 and 2014 which I acknowledge. I have made requests to the fund manager to try and obtain information about what happened once the 2012 redemption request had been made and when redemptions at NRV stopped, but this hasn't produced any further information.

In the circumstances I'm unable to say, on the limited evidence I have seen, that it's more likely than not ITI failed to follow up the redemption request in 2012 and this is why Ms K didn't receive her money at the time.

Ms K has said ITI hasn't been truthful about the fund being suspended. And I note she emailed her IFA in January 2014 asking him to find out what had been going on with redemptions as 'the fund owners have no problem redeeming it'. As I have explained above, it appears that redemptions at NRV were still possible at least in May 2012 given the fund managers communication to investors at that time. So ITI's suggestion the fund was suspended at that time doesn't appear to be right. But I have no information about when the fund did suspend redemptions at NRV.

It is clear the fund did at some point become suspended generally, as documents from 2014 indicate this. In particular in 2014 there is information from the fund manager about what it was doing to sort out the liquidity problem. There is reference to restructuring and then publicly listing the bonds in which the assets of the fund are held and then selling the bonds to 'meet current NRV redemptions'. So it seems reasonably clear that redemption requests, even at NRV, weren't being met at that time despite what Ms K suggested to her IFA.

It seems to have taken longer for the fund manager to resolve this than it had hoped but ITI isn't responsible for this delay. The current position appears to be that the bonds were listed in December 2016. And in June 2017 the manager said it was working with two potential purchasers of the bonds to get the best deal for investors, both leaving and staying in the fund. So it seems the fund is getting closer to being able to satisfy redemptions at NRV.

I note Ms K has referred to the final notice issued by the FCA in 2014. But regulatory action isn't necessarily evidence of wrongdoing in a specific complaint. And the final notice related to issues which aren't relevant to this complaint anyway.

I note Ms K raised an issue, after she referred her complaint to us, about the charges made by ITI for her account being inactive. But as it has agreed to waive these charges I make no further comment about this.

my final decision

I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms K to accept or reject my decision before 5 February 2018.

Philip Gibbons
ombudsman