

complaint

Mr C complains about Capita IRG Trustees Limited's execution of share options he received under his employer's Save As You Earn (SAYE) scheme. He says that he placed a limit on the sale price of the shares, but Capita did not apply a limit to the sale.

background

Mr C's complaint was considered by one of our adjudicators, who concluded that it should not be upheld. She said, in summary:

- The confirmation Mr C received after giving his instructions would have made reference to a limit order, had one been placed.
- Had a limit had been placed but not reached the shares would not have been sold, and a certificate would have been sent to Mr C.
- There was therefore insufficient evidence to conclude that a limit order had been placed.

Mr C did not accept with the adjudicator's conclusions. He said, in summary:

- He had not received any evidence to show that a limit order had *not* been placed.
- The onus was on Capita to prove that he had not placed a limit order.
- It was no use his being provided an example of an email he would have received had a limit order been placed – he can only rely on what he actually received.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I appreciate that Mr C feels strongly that Capita should be able to prove, by way of an audit trail, that he did not place a limit on the sale price of his shares. But I do not think it is reasonable to expect Capita to be able to specifically demonstrate that something did *not* happen. It should however be able to provide evidence to show that it executed Mr C's options as he instructed it to.

Capita has provided evidence – a screen print from its system showing the details of the instructions it received and a copy of the email confirmation sent to Mr C – which shows that no limit was placed on Mr C's sale instruction. This, in my view, is sufficient evidence to show that the instruction it received did not have a limit on the sale price of the shares associated with it.

So I consider that it is reasonable to conclude that it is more likely than not Mr C did *not* place a limit on the sale price of the shares, and that Capita therefore correctly followed the instruction given to it by Mr C. Had Mr C placed a limit I consider that Capita would have a record of it.

I accept Mr C's point that he would not necessarily have known that the email confirmation he received would have referred to a limit on the sale price, had he placed one. But Capita was offering an execution only service and it was therefore for Mr C to ensure that his instructions reflected his wishes and, for the reasons given, I consider it likely that he did *not* place a limit, as he wished to.

my final decision

For the reasons given, I do not uphold Mr C's complaint.

John Pattinson
ombudsman