

complaint

Mr R complains that Coutts & Company did not properly carry out his instruction to sell some shares. He says Coutts didn't tell him what he needed to do to sell the shares and took far too long to take any action. He thinks he has lost out as a result, as the price of the shares fell before they were eventually sold.

background

Mr R asked Coutts if it could sell his shares, which were listed in Australia. Coutts said it could. Mr R then asked it to sell the shares. However, the shares were not sold until several months later.

Mr R complained to Coutts about the delays. Coutts placed blame for some of the delay on Mr R, and accepted responsibility for some. It did not however think it had caused Mr R any financial loss. It said the price had already fallen by the time it had sufficient information to allow it to sell the shares.

Our adjudicator said the complaint should be upheld. He said:

- It was reasonable for Mr R to assume that if Coutts accepted his instructions it would act promptly.
- Coutts had carried out a similar exercise for Mr R with Australian shares some time earlier and should have been aware of any requirements.
- Incorrect forms had been requested from Mr R by Coutts, which showed its unfamiliarity with the requirements.
- The Australian company with which the shares were held had invited Coutts to contact it, but Coutts had not followed this up.

He said Coutts should have been in a position to sell the shares 14 days after the Australian company which held the shares offered to help Coutts. He recommended Coutts assess the price of the shares at this point and compare it with the sale price actually received. Any loss should then be paid to Mr R.

The adjudicator also said that Coutts should pay Mr R £250 for the inconvenience caused.

Coutts did not respond to the adjudicator, despite reminders.

I issued a provisional decision in April 2015. My provisional findings were:

- Coutts held itself out as being capable of selling Mr R's shares. So it should have known what was required to achieve this. If it didn't know what to do, it should not have said it could arrange the sale of the shares. And, once it accepted an instruction to sell, it was its responsibility to ensure it was executed within a reasonable timescale.

- Coutts knew at the outset that the shares were listed in Australia, and had the details of the company in whose nominee they were held. That should have been enough for Coutts to go ahead and do what needed to be done to get the shares sold. When the transfer was eventually completed, Coutts had no more information that it had to begin with. So there is no reason why it could not have promptly completed the transfer to its nominee immediately after it was asked to sell the shares.
- It is clear that Coutts did not, in fact, know how to go about selling the shares. It is also clear that it did not treat Mr R's instructions with anything like an appropriate degree of urgency. For example, in March 2013, it asked for the contact details of the Australian company which held the shares, when it had been given these months earlier.
- The Australian company which held the shares has confirmed that if it had been contacted by Coutts (as it eventually was), it would have provided Coutts with the information it needed, had it given Mr R's name and address.
- So I think when Coutts was asked to sell the shares and accepted the instruction it had enough information to go ahead and take the required action to ensure the sale was quickly completed. And, had it done so, I think the sale of all the shares would have gone ahead, at a much higher price than Mr R eventually received.

I asked Coutts to compare the difference between the price Mr R received when he eventually sold the shares and the price he would have received had Coutts done what it ought to have done.

I also said I thought Mr R had been caused significant trouble and upset by Coutts' actions, and that £750 was fair compensation for this.

Mr R accepted my provisional findings, but queried what exchange rate would apply when compensation was calculated.

Coutts did not accept my provisional findings. It said, in summary:

- Mr R did ask about the sale of the shares in October 2012. It was confirmed to him that this would be possible, however, this would of course have been dependent on the shares being correctly registered (to enable sale for certificated stock, or transfer to nominee if uncertificated).
- Mr R offered to take this point forward directly as further personal details and confirmations would be required first.
- The main delays in being able to progress related to the need for the shares to be registered correctly in Mr R's name at his new address.
- The provisional decision says the Australian company which held the shares advised that the sale could have been arranged quickly had it been contacted, as shown by the quick turnaround when contacting them in March 2013. However, this was at a point when Coutts had received the required statement and all the details relating to the holding and Mr R were correct; until then it would not have been possible to arrange this.

- The statements which Mr R ordered from the Australian company which held the shares continued to go astray. Mr R had continuing difficulties he had up until March 2013. This shows that despite the assurances he was given in December, the registration details remained incorrect. It was not possible for any transfers to be made until this position could be resolved.
- It accepts that the request for an incorrect form would potentially have caused delays once the file details were confirmed as correct. But this related to a period where the shares were not possible to trade.
- When it advised Mr R that it was possible to sell the shares, the decision to keep the shares from that point on was his alone. For any price comparison purposes, it was Mr R's decision to retain the holding at this stage, which resulted in him receiving a lower price on some of the sales later in the year.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have not been persuaded to depart from my provisional findings.

The main point Coutts has made is that things were delayed because there was a problem with the address to which the shares were registered. It says that the sale could not be made until this was resolved and Mr R had a statement of his holding.

It appears there was an error in Mr R's address (the shares were registered to number 21 of his street rather than number 23, which was his correct address). The available evidence shows that the address was changed on 3 December 2012, after Mr R contacted the Australian company holding the shares directly.

However, I remain of the view that the main cause of the delay was Coutts' being unaware of what action to take after it had been asked to sell the shares, and its failure to contact the Australian company with which the shares were held until some five months after the sale was instructed.

I see no reason why Coutts could not have immediately contacted the Australian company with which the shares were held and asked it to transfer the shares, which were held electronically, to it. The error in Mr R's address might have meant the transfer could not complete until that error was corrected. But I see no reason why that could not have been dealt with promptly, and as part of the transfer process.

Coutts says it did not receive a statement of the shareholding until March 2013. But I have not seen any evidence that Coutts needed a statement of the shares before it was able to complete the transfer. It only needed to contact the Australian company with which the shares were held.

So I remain of the view that, had Coutts known what action it needed to take, and treated Mr R's request with an appropriate degree of urgency, the shares would have been sold soon after Mr R gave the instruction to sell.

Coutts says that, once the shares were in its nominee, it was Mr R's decision not to sell immediately, so it should not be held responsible for any fall in price after that time. I do not agree. By the time the transfer had completed, the share price had fallen significantly. So it was understandable that Mr R did not want to sell the shares at that time, and instead hold onto them in the hope of a price rise. I do not think, in these circumstances, it would be fair to say Coutts was not responsible for the fall in value after the transfer had completed. If Coutts had dealt appropriately with the sale instruction, Mr R would not have been in the position of having to decide whether he should sell his shares at a significantly lower price than could have been achieved had his instructions been executed promptly. So the fair thing to do is to put him in the position he would be, had the sale been completed when it ought to have been.

To work out what the loss to Mr R is I think the average price for the shares over the ten working days following Mr R giving the instruction to sell the shares should be used. The shares could not be sold immediately – there was some work to do. But that work could have been completed quickly – the Australian company which held the shares completed the transfer to Coutts' nominee within a day once the correct forms were given to it. And I don't think the error in the address would have significantly delayed things. So I think an average over the ten days following the instruction is a fair way of getting an indication of what price might have been achieved.

The average price should be converted to Sterling, using the average exchange rate over the same period. A comparison should then be made between that price and the Sterling prices eventually received by Mr R. Interest should be added on the loss amount, at the rate of 8% simple, from the time that the shares ought to have been sold, to date. The amount on which the interest is payable should be reduced by the sums Mr R received from the eventual sale of the shares, from the date those sales were made.

I also remain of the view that Mr R has been caused significant trouble and upset by Coutts' actions. He suffered a significant loss, and it has not handled his enquiries or his complaint well, which has compounded matters. I think £750 is fair compensation for this.

my final decision

For the reasons given, I uphold the complaint. Coutts & Company should calculate and pay compensation as described above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr R to accept or reject my decision before 8 July 2015.

John Pattinson
ombudsman