

complaint

Mr H's complaint is about TD Direct Investing (Europe) Limited (TD). He says it was late to tell him about a corporate action that affected his shares and that it stopped him from voting in that action.

background

Mr H held his shares in an Individual Savings Account (ISA) with TD.

TD received preliminary notice of the corporate event (a merger) in early December 2015. Mr H held shares in the company that, at the time, would potentially be taken over. By 4 January the merger was completed and on 5 January TD told Mr H about it.

Due to the merger, the company's shares were delisted from the London Stock Exchange (to be listed on Nasdaq). Before that, trading in its shares had been suspended around late December.

Mr H wasn't happy about the consequences of being told *after the event*. He complained about this and blamed TD's late notice for depriving him of a vote on the corporate action and of a chance to make investments decisions before the merger concluded.

TD partially upheld Mr H's complaint only in relation to the vote he was deprived of. It accepted that notice was due to him in this respect, that the notice wasn't sent and that a third party was responsible for that. For this reason it offered Mr H £50 compensation by way of an apology.

In terms of sharing information about the merger, TD didn't uphold this part of the complaint. It said it couldn't share this news until it had confirmation that it could hold the shares of the other company involved in the merger. It said it received this confirmation on 4 January and shared the news with Mr H the following day. It didn't think it had done anything wrong in this respect and said Mr H could've learnt about the merger through news in the public domain.

Mr H referred his complaint to this service and one of our adjudicators agreed with TD. He took the view that, as a retail investor receiving an execution only service, Mr H wasn't entitled to market advice or research from TD, that TD shared news of the merger as soon as it could, that such news was in the public domain and that he couldn't see a financial loss to Mr H. He also considered the offer of £50 reasonable to cover the voting related issue.

Mr H disagreed with these views. He replied with references to his contractual entitlements and a calculation of his losses. TD said his references were confused. It also said that a separate complaint, which featured the same merger issue, had been recently decided by this service and that the decision said it hadn't failed in its handling of communication about the merger.

The matter was then passed to an ombudsman.

my findings

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

It is worth noting that I am the ombudsman who decided the complaint TD has referred to and that I did find some fault on its part in the context of general information sharing. I bear that complaint, and my decision, in mind as I consider Mr H's complaint.

Unlike the facts in the complaint TD has referred to, Mr H's case involves shares held in an ISA and therefore involves an additional set of terms related to the ISA. Whilst TD's terms of service gives it general discretion not to share corporate news where it is "impracticable to do so", the ISA terms are more specific. Where a customer has requested information, the ISA terms say TD "will" share the following:

"... a copy of annual report and accounts and any other information issued to shareholders ... by every company ... in respect of shares ... which are held directly in your ISA" [my emphasis]

Mr H has provided us with evidence, which I accept, that he had requested such information. I note that TD also appears to accept this evidence. There wasn't a similar contractual obligation in the complaint TD has referred to. TD says the ISA term doesn't cover merger notices. I disagree. The wording is clear and it essentially says "all" information issued to shareholders "will" be shared with the customer.

I am persuaded that Mr H was entitled to TD's earliest possible notice of the merger. TD itself accepts that speculation was known for months. I consider that the least it should've done would've been to share with Mr H the preliminary notice it received in early December.

Having said the above, I must strike a balance between Mr H's contractual entitlement and the circumstances of his case. I'm satisfied from evidence in both his case and the case TD has referred to that news about the potential merger was in the public domain for many months before the formal merger process began.

On balance, I consider it more likely (than not) that between April and December last year Mr H would've had some awareness of the merger. I've come to this conclusion mindful of Mr H's assertion that he didn't but also mindful of the overall circumstances at the time. During the eight months (between April and December), the price of Mr H's shares reacted to the merger speculation. For a period of time the reaction was positive and the share price rose significantly.

Mr H received an execution only service, so it is reasonable to expect that he would've monitored his shares to a reasonable extent during those eight months and that he would've noticed a significant price increase (or any other price reaction). Having done so, it is equally reasonable to expect that Mr H would've looked into the reason behind any price reaction and, in so doing, he would've learnt about the potential merger.

The basis of Mr H's complaint is that he lost an opportunity to make investment decisions because he wasn't told about the merger until after the event, despite being contractually entitled to such notice. Whilst I agree that he was contractually entitled to notice, I also consider that entitlement somewhat redundant given that, on balance, it appears Mr H would've known about the potential merger through other means.

I am not persuaded that TD can be held responsible for not telling Mr H something that, on balance, he probably knew. For that reason, his complaint about losing the opportunity to make investment decisions isn't upheld.

I agree with the business' offer to pay Mr H £50 for the voting related error.

my final decision

For the reasons given above I do not uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 1 August 2016.

Roy Kuku
ombudsman