

complaint

Mr C complains that Interactive Investor Services Limited ("IIS") delayed the transfer of an international stock to his new UK account, leaving him unable to sell the stock when he wanted to and incurring unnecessary fees for continuing to hold it.

background

I've issued two provisional decisions on Mr C's complaint. Excerpts from both are attached for reference and form part of this final decision.

My view of the complaint, at the point of issuing the second provisional decision, was that it should be upheld, and compensation paid to Mr C. In brief, I concluded that there'd been a clear failing on the part of IIS – not following up the transfer request despite having committed to doing so – and it could be reasonably demonstrated that, 'but for' that failing, the transfer would more likely than not have taken place on or around 7 March 2018 and Mr C would've sold the stock at that time.

My view on compensation had been set out in my first provisional decision. I'd said;

"In this type of situation, I would generally direct IIS to pay the difference between the amount Mr C would've received if he'd sold the stock on 7 March 2018 and the amount he received when he was actually able to sell it. But in this case...Mr C didn't sell the stock. And it's my understanding that it is now no longer trading. As such IIS will have to pay the full amount Mr C would've received for a sale on 7 March 2018..."

I'd explained earlier in the decision that Mr C hadn't sold the stock as soon as the transfer had eventually completed in August 2018 because his desire to sell the holding in the 2017/18 tax year, so pre-April 2018, had been driven by a wish to crystallise a loss for tax purposes, not price driven. So, once he was into the new 2018/19 tax year his financial circumstances had been different and he would've needed to reassess his position.

IIS' response to my second provisional decision broadly accepted that it had delayed the transfer. So, it in turn accepted that the complaint should be upheld. But it didn't accept my view on compensation. It felt that, in brief:

- Any liability for losses relating to the delay should be limited to August 2018, the point at which Mr C could have sold the stock.
- Any subsequent losses bore no relevance to the transfer delay.
- Over the period in question, seeing the price of the stock fall, Mr C should've sold it to mitigate his position.
- Expecting IIS to cover the 'post-transfer' losses offered protection to Mr C for poor management of the investment.
- The 'post-transfer' losses were excluded under its terms, along with the common law principles of remoteness of loss and the duty on a claimant to mitigate its loss.

I responded to ISS saying that I remained of the view that in the very specific circumstances of this complaint, it was reasonable for Mr C to have continued holding the stock after 24 August 2018, while he reassessed his personal and financial circumstances in light of the transfer delay moving things into the new financial year 2018/19, when it had been his intention to sell in the 2017/18 tax year.

I felt the loss was neither too remote (noting that it was quite common for stock to be traded for reasons other than straightforward price-related reasons) and I didn't think Mr C unreasonably failed in his duty to mitigate, not given the circumstances of the sale.

I didn't feel that Mr C's actions after 24 August 2018 constituted poor management of his investment. Rather, I thought they reflected the need for him to completely reassess his position as a result of the delay caused by IIS' failure to manage the transfer effectively, over a period which had already seen a very significant fall in the stock's value.

I added that I didn't think my view in any way set a precedent as I had considered the matter entirely of the basis of the specific circumstances of the complaint – which, I thought it was fair to say, were quite unusual, with very different characteristics to the more frequently encountered 'transfer delay' type complaint. As such, I remained of the view that the compensation should be as had been set out in my second provisional decision.

ISS provided its closing comments, saying, in brief:

- It strongly disagreed with my view regarding compensation.
- Although it recognised that there were tax considerations for Mr C, the decrease in value after August 2018 should nevertheless have triggered a reassessment of whether a sale should be made.
- Mr C had around eight months in which to reflect on his position. How much longer would be deemed sufficient time to do so?
- While IIS urged me to reconsider my decision, in order to bring the matter to a close it confirmed it would accept the proposed resolution.

my findings

I've considered all the available evidence and arguments, including the further submissions, to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I remain of the view that the complaint should be upheld, for the reasons given previously.

I acknowledge ISS' continued disagreement with my views on compensation. I do appreciate the points it has made and would stress that I've considered them very carefully. But, as I noted before, in the specific circumstances of Mr C's complaint, I'm satisfied that what I've proposed is fair and reasonable.

In respect of IIS' comment regarding how much longer would have been reasonable for Mr C to have continued holding the stock, I understand IIS' point. But Mr C did refer his complaint to this service within six months of the eventual transfer date and still within the same tax year, by which point the stock's price had already significantly fallen. And fairly soon after the stock was suspended from trading. So, I don't think Mr C acted unreasonably in this respect. Had the referral been made much later – for example, into a new tax year – my view may have been different.

I should also note also Mr C's recent comments. He was concerned about the time taken for the matter to progress and questioned whether the 8% simple interest to be added to any loss was sufficient to act as a deterrent to IIS for what he saw as it delaying matters. I should clarify that awards of compensation made by this service are not in any way punitive. The 8% interest is our standard approach, to represent the cost of being deprived of the money calculated as having been lost.

Further, Mr C suggested that he would like recordings of calls made between him and ISS to be obtained. While I understand his concerns, I don't feel that obtaining the calls or any data relating to them is necessary in reaching a fair resolution to the matter.

my final decision

For the reasons given, my final decision is that I uphold the complaint.

I direct Interactive Investor Services Limited to pay compensation to Mr C equivalent to the value of his holding had it been sold on 7 March 2018, minus its current value. As I understand the stock cannot currently be traded, for the purpose of the calculation it should be assumed to have a nil-value. IIS should add interest at 8% simple to any loss determined by the calculation, from 7 March 2018 to date of settlement.

If IIS wishes Mr C must provide an undertaking that any future value recouped from the stock be repaid to IIS, up to the value of the compensation paid.

IIS should also refund the account charges Mr C has incurred since March 2018 and pay £200 for the inconvenience caused, if this has not already been done.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 5 April 2021.

James Harris
ombudsman

EXCERPT FROM FIRST PROVISIONAL DECISION

background

In January 2018 Mr C opened an account with IIS and instigated the transfer of the stock in question. He received initial confirmation that the transfer had started on 31 January 2018, but it then became apparent that a particular asset transfer form was needed, specific to the US and Canada.

This was provided and the transfer recommenced on 8 February 2018. IIS indicated at this point that the transfer could take up to six weeks for UK stocks, longer for international stocks like Mr C's. (The initial transfer confirmation had indicated a potential eight-week transfer period. I note later information sent to Mr C towards the end of the transfer process said, "*Funds and International stocks can take up to 8 weeks*".)

There was then a lack of progress and Mr C continued to contact IIS through its secure messaging system. There were many delays and as time passed Mr C made it clear that he needed the transfer to be completed by the end of the tax year, in April 2018.

This deadline came and went, and the transfer still hadn't completed. There was then further delay because the required Direct Registration System (DRS) statement of holding completed at the outset in January was only valid for 90 days, so a new updated version had to be provided. The transfer was eventually completed on 29 August 2018.

On the same date IIS issued a final response letter to Mr C. The letter didn't deal with the general issue of the delayed transfer. Rather, it responded very specifically to concerns Mr C had raised about the DRS statement issue on 17 August 2018, as part of his ongoing attempts to get the transfer completed. IIS offered to refund one quarterly account fee of £22.50 to Mr C.

Mr C referred the matter of the delayed transfer to this service in February 2019. Our investigator considered it and concluded that although IIS had provided him with poor service, it was unlikely the transfer would've completed in time, before the end of the tax year.

By this point IIS had looked further into what had happened and offered to pay Mr C £200 compensation, which the investigator felt was fair in the circumstances. Mr C didn't accept this. He felt the transfer could've been completed in time if IIS had dealt with the matter straightaway, in which case the additional DRS statement issue would never have arisen. He maintained that he'd incurred a significant loss through not being able to sell when he wanted to, along with having to continue to pay fees to IIS to hold the stock.

As the investigator wasn't persuaded to change her opinion, the matter's been referred to me to review.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm currently of the view that it should be upheld, and I'll explain why.

Although there was the initial issue with the asset transfer form, IIS confirmed to Mr C on 8 February 2018 that the transfer was in progress. In doing so it said "*Transferring UK stocks can take up to 6 weeks. International stocks can take longer. We'll do everything we can to speed up the transfer but you may be able to help move things along by contacting your current provider directly.*"

So, at this point it seems there was a reasonable amount of time for the transfer to complete – eight weeks until 5 April 2018. While there was no guarantee offered by IIS as to how long it would take, the guidance offered indicated that Mr C could expect the transfer to be completed before the end of the tax year.

The next contact Mr C received from IIS was on 17 February 2018 and somewhat confusingly appeared to relate to the issue with the asset transfer forms, which by that point was resolved.

Mr C responded on 19 February 2018 saying, in part, *"I need to sell my shares fast and don't want to learn too late that you can't access my shares held in Canada"*. IIS responded with a fairly generic response saying that it probably could trade a Canadian stock, but it would depend on what stock it was. It didn't acknowledge in any way that the transfer had already been in progress for nearly two weeks.

Mr C responded to this – albeit almost a month later on 19 March 2018 – confirming the name of the stock and asking when IIS thought the transfer would be completed because *"we are running out of time"*.

IIS replied on 28 March 2018. It apologised for the delay in responding to Mr C and said simply that *"this will be processed"*. Mr C replied on 1 April 2018 to say *"You have me really worried now as my deadline is approaching in 3 days. Could you please elaborate on your answer?"*

The next response from IIS was on 19 April 2018. By this time, it was well beyond the point by which Mr C had wanted to sell the stock. As noted, the transfer did eventually complete after a new DRS statement had been provided by Mr C.

Much of IIS' response to the complaint about the delays (made after the complaint was referred to this service in February 2019 rather than in its final response letter of August 2018) has dealt with matters *after* 5 April 2018 and the fact that the delays related to Mr C having to provide a new DRS statement.

But I think that is all irrelevant. Mr C was only required to provide a new DRS statement because the original expired after 90 days. And looking at what happened I think it's clear the transfer should've completed well within 90 days (nearly 13 weeks) of 8 February 2018 and, more likely than not, within eight weeks of that date.

Going back to the confirmation of the transfer starting of 8 February 2018, IIS said *"We'll do everything we can to speed up the transfer"*. In fact, as far as I can see IIS didn't contact the Canadian transfer agent until 19 April 2018, 10 weeks after it had confirmed the transfer had started. It received no response from the transfer agent but didn't chase again until more than two months later on 29 June 2018.

This time a prompt response was forthcoming from the transfer agent. But because of what by that point was a significant delay, the DRS statement had become an issue. A new one was sought from Mr C, which did take some time, but by this point Mr C had missed his required deadline and there was less urgency.

(It's worth noting here that Mr C's desire to sell the holding in the 2017/18 tax year was driven by a wish to crystallise a loss for tax purposes, not price driven. Once into the new 2018/19 tax year his financial circumstances were different, hence why he didn't sell the stock as soon as the transfer was completed in August 2018.)

As noted, for whatever reason, IIS didn't chase the transfer agent until 19 April 2018. But I think it's reasonable to expect it to have started to chase a week after the transfer began, given its initial commitment to do everything it could to speed up the transfer. (I note that IIS has since said that, following an update to its transfer process, a case handler will now check a case every three working days, but I'll nevertheless use a week for the purposes of determining the hypothetical position).

If we assume in fairness that the transfer agent might well have failed to respond to this hypothetical first contact as it did to the actual first contact, a second chase should reasonably have then been made a week later, on 22 February 2018. If the transfer agent had then responded in four days as it did after the actual second contact, it would've then been 26 February 2018. (I'm aware that there

was some later delay caused by a change in transfer agent but again this wouldn't have been an issue had the transfer proceeded at a reasonable pace.)

At this point in the actual process there was a significant delay because, as noted, a new DRS statement had to be obtained from Mr C. But this wouldn't have happened if IIS had started chasing sooner, as it would've still been well within the 90-day validity of the original DRS statement.

Once the new statement was received the transfer took just over another week, which suggests that with a reasonable process in place and even allowing for some general delays the transfer *could* have been completed by 7 March 2018 – and certainly well before the deadline of 5 April 2018.

And I think that if this had happened there's little doubt Mr C would've sold the stock. All the evidence points to him wanting to do so within the 2017/18 tax year. So, I think IIS should put him in the position he'd be in if he'd sold the stock on 7 March 2018.

In this type of situation, I would generally direct IIS to pay the difference between the amount Mr C would've received if he'd sold the stock on 7 March 2018 and the amount he received when he was actually able to sell it. But in this case, for the reasons mentioned above, which I accept, Mr C didn't sell the stock. And it's my understanding that it is now no longer trading. As such IIS will have to pay the full amount Mr C would've received for a sale on 7 March 2018 and, if it wishes to and it's possible, take an assignment of the stock so it retains rights to any future value.

There is also the matter of Mr C's tax position and how this may have been adversely affected by not being able to sell in the 2017/18 tax year. As I'm not currently party to that sort of information, if Mr C wishes comment about this in response to this provisional decision, I can consider the issue and will confirm any thoughts prior to making a final decision.

I also think IIS should refund the account charges Mr C has incurred since March 2018 as it seems most likely he opened the IIS account solely as a vehicle for transferring and selling the stock, so he wouldn't have continued with the account once the sale was complete.

Finally, in respect of the trouble and upset caused I think the £200 already offered is fair, given the failings by IIS to respond promptly to Mr C and move the process along.

my provisional decision

For the reasons given, but subject to any further comments I receive, I'm currently of the view that the complaint should be upheld and Interactive Investor Services Limited should pay Mr C compensation as set out above.

EXCERPT FROM SECOND PROVISIONAL DECISION

background

The background to the complaint and my provisional findings were set out in my initial provisional decision, a copy of which is attached for reference.

In short, I felt that Mr C's complaint should be upheld. It was my view that IIS had failed to follow up on the stock transfer request despite having given Mr C the expectation that it would do so. I explained why I thought that if it *had* chased the transfer in reasonable time following it being initiated on 8 February 2018 then, given how the matter subsequently progressed once IIS did make contact with the transfer agent, it was more likely than not that Mr C would've been able to sell his stock in March 2018, before the end of the tax year, as was his aim.

I said that, this being so, IIS should compensate Mr C by comparing the value he would've received if he'd sold the stock in March 2018 with its current value and paying him the difference. I also suggested that, as Mr C had indicated that his desire to sell the stock prior to the end of the 2017/18 tax year was related to crystallising a loss for tax purposes, then upon provision of information from Mr C relating to this I would consider whether additional compensation should be paid.

I also suggested that IIS should refund fees incurred relating to it continuing to hold the stock after it would've been sold March 2018, plus £200 already offered by for what it had acknowledged were customer service failings associated with the matter.

Mr C responded to my provisional decision with a clarification of what he estimated as his loss, which was limited to the value of the stock as of 7 March 2018, plus the subsequent fees paid to continue to hold the stock.

IIS responded in disagreement with my provisional decision. It said, in brief:

- It didn't agree that Mr C made it clear that he needed the transfer to be completed by the end of the 2017/18 tax year. Based on a transcript of a call Mr C made to IIS on 13 February 2018, shortly after the transfer was initiated, it was clear that he had indicated a desire to sell the shares quickly, but no deadline was given. He had further opportunities to stress the deadline but didn't do so until much later in the process. And no mention was made of the tax loss issue until the complaint was referred to this service, by which point the value of the stock had fallen significantly.
- It didn't agree that it had indicated to Mr C that he could expect the transfer to be completed before the end of the tax year. He was informed that an international transfer could take longer than the usual six to eight weeks. And no guarantee of when the transfer would be completed was ever offered.
- Due regard must be given to IIS' terms and conditions of business when considering the complaint. These made clear that share dealing carried a high degree of risk and, further, that IIS' liability was limited, and it would *"not be liable to you for any indirect losses which you suffer, except in the case of our wilful default or fault."* *"Indirect loss" includes "for example, loss of profit, loss of opportunity, loss of business and any other indirect losses"*

IIS also commented specifically in respect of the potential quantum of loss. It distinguished between the 'pre-transfer loss' (that made between the hypothetical date of sale, 7 March 2018, and the date in August when the transfer actually completed) and the 'post-transfer loss' (that made after the transfer, when the stock value fell significantly).

IIS felt that it could not be held responsible for the former loss, primarily as Mr C had not indicated a deadline or been offered any guarantee. Nor could it be held responsible for the latter, as Mr C could've mitigated the loss by selling the stock once the transfer was complete. It said these post-transfer losses were too remote to be attributed to any customer service failings (if there were any) and, in any event, were also excluded under its terms, as quoted above.

I followed up on IIS' response to my provisional decision by requesting a copy of the recording of the call between Mr C and IIS of 13 February 2018.

Having listened to this, I put it to IIS that Mr C had made it abundantly clear that he wanted the transfer to complete very fast, noting that he had in fact gone as far to give a specific target date - 20 March 2018. He had also indicated that if the transfer was to go beyond the end of March, he would incur a loss (although I acknowledged that this part of the call was not very clear).

In short, I felt Mr C really couldn't have made it any clearer that the transfer was something he wanted to happen as quickly as possible, albeit he understood the nature of the potential time limits involved.

I also noted that the person Mr C spoke to did explain the likely time limits and that she didn't want to confirm anything definite in respect of a timescale. But I highlighted to IIS that she'd also gone on to say, in respect of the other provider involved in the transfer, that "we chase them on a weekly basis".

As such, I felt that while it was explained to Mr C that there was no guarantee about the time the transfer might take, it appeared that he was clearly led to believe that IIS would actively progress and monitor the transfer – therefore giving him confidence that the transfer *might* complete within his ideal timeframe. But the evidence showed that IIS did nothing to chase the transfer until 19 April 2018.

IIS responded to my comments about the call. It said, in brief, that there was no evidence that Mr C had specified 20 March 2018 as a hard deadline. Nor that he had explained that losses would be incurred if it wasn't met. IIS said that it accepted that there'd been some "limited customer service failings" (for which it had offered the £200 compensation) but that these failings didn't cause any loss to Mr C because it had been his decision to hold the stock on a platform that didn't allow sales (hence the need to transfer to IIS to sell) and also because market movements were outside its control.

IIS stressed again that no guarantee of how long the transfer would take had been given to Mr C and, although it accepted that following the initial sending of the transfer request on 8 February 2018 it hadn't followed the matter up until 19 April 2018, it wasn't necessarily the case that chasing up the transfer would have speeded the process up. It also noted that Mr C didn't chase the transfer from his end as much as he could've done, which it felt didn't suggest there had been any particular urgency on his part. Finally, IIS drew attention again to its terms in respect of how its liability was limited.

my further provisional findings

I've reconsidered all the available evidence and arguments, including the further submissions, to decide what's fair and reasonable in the circumstances of this complaint.

I'm conscious that consideration of Mr C's complaint had been lengthy, both in terms of related correspondence and the time involved. As such, I will endeavour to be as brief as possible in explaining my further findings, focusing on what I see as the primary issues.

Much has been said about the potential length of time this type of transfer might take, what was said to Mr C in this respect, and the fact that no guarantee was ever given to him that any particular deadline would, or could, be met.

But I don't think there's any dispute about this. It's clear from the phone call of 13 February 2018 that Mr C was aware that there was no guarantee as to when the transfer would be completed. He just wanted it done as quickly as possible because he ideally wanted to sell before the end of the 2017/18 tax year.

I think the key point is that although no guarantee or commitment was given about how long the transfer would take or when it would be completed, IIS *did* however give a commitment to Mr C that it would follow up the matter. It said this to him in writing on 8 February 2018 when it confirmed the

transfer had started – “*We’ll do everything we can to speed up the transfer*” – and also in the call of 13 February 2018 “*We chase them on a weekly basis*”.

IIS has accepted that it in fact didn’t do anything to speed up the transfer or to chase the other provider. At least not until 10 weeks later, on 19 April 2018. While it has acknowledged this significant delay as demonstrating “*limited customer service failings*”, I don’t think this goes far enough.

As noted, Mr C made it abundantly clear at the outset that he wanted things progressed as quickly as possible. He even went as far as to offer to pay for an expedited service if one had been available. I think it’s reasonable to conclude that if he’d been aware that, contrary to the commitments made by IIS, it was actually not going to make any efforts to chase up or manage the transfer – at least not for 10 weeks or so – then Mr C would’ve looked at alternatives to try and achieve his objective.

IIS has said that chasing up the transfer sooner wouldn’t necessarily have led to a quicker transfer. But I’ve shown in my provisional decision that when the transfer was eventually chased up by IIS the process completed in around a month (an estimate that takes account of some additional time actually being needed – relating to the DRS statement, etc – that wouldn’t have been the case had the chasing up of the transfer begun in a reasonable time).

So, as there is evidence of how long the transfer did actually take, I think it can reasonably be concluded that the transfer, more likely than not, could have been completed before the end of the financial year if IIS had taken action promptly and started to chase up the matter after a week, as it told Mr C it would.

I note IIS’ reference to its terms and the limitation of its liability. I accept that in respect of the potential tax loss this might fall under the definition of an ‘indirect loss’, as set out at 13.3 in IIS’ terms of service. However, I note Mr C has made no further submissions in respect of details about the tax loss, so as it stands, I don’t intend to consider it further in any event.

But I think more relevant to Mr C’s complaint is term 13.1 where it says that IIS will not be liable for any losses “*except where caused directly by the negligence, wilful default, fraud or breach of the terms by us or our employees, agents, sub-contractors or any Group company.*” I think it’s arguable that there was wilful default shown by IIS in its failure to follow up the transfer, as it clearly did not do what it was reasonable for Mr C to expect it to do, given both his clear wishes and IIS’ clear commitments to follow up the transfer. And that this led directly to a loss for Mr C, as he would clearly have sold the stock if it had been transferred in time.

But in any event, I think this is ultimately simply a matter of there being a clear failing on the part of IIS – not following up the transfer having committed to doing so – and it can be reasonably demonstrated that, ‘but for’ that failing, the transfer would more likely than not have taken place on or around 7 March 2018 and Mr C would’ve sold the stock at that time.

I note IIS’ comments about the lack of follow up from Mr C himself and how it demonstrates a lack of urgency on his part. But it isn’t the case that he simply left the matter to run after the call of 8 February 2018. As noted in my first provisional decision, he followed up by secure message – the method suggested in IIS’ message confirming the transfer had started – on three occasions, each stressing the importance of completing the transfer as quickly as possible. At no point during this period was he told that no further action had been taken by IIS.

my provisional decision

For the reasons given, but subject to any further submissions I receive, I remain of the view that the complaint should be upheld and that Interactive Investor Services Limited should compensate Mr C as set out in my first provisional decision, except there should be no provision made in respect of any tax issues.

Also, for clarity, interest at 8% simple should be added to any loss determined by the calculation, from 7 March 2018 to date of settlement. In respect of the issue of assignment of the stock, I note IIS' comments. If it is unable to take an assignment, then I would consider it acceptable that Mr C be required to provide an undertaking to IIS that any value recouped from the stock in future be repaid to IIS up to the value of the compensation paid.