

The complaint

Ms P complains that settlement for a purchase of an exchange traded fund in her stocks and shares ISA held with InvestEngine (UK) Limited was delayed.

She wants compensation for the delayed settlement and for the distress and inconvenience she was caused.

What happened

Ms P opened a stocks and shares ISA with InvestEngine. On 29 September 2022, she placed an order to buy some units in an exchange traded fund ("EFT"). She understood the trade was placed for T+2 settlement. The cost was debited from her ISA account, but she wasn't credited with the EFT. When she contacted InvestEngine, it told her settlement delays were a risk of investment and that it was chasing its broker about the trade but couldn't provide her with an expected settlement date. The trade settled on 29 November.

Ms P says she couldn't use the money for anything else, and she couldn't sell the EFT until it settled. This was the first time she had traded with InvestEngine, and she was worried that things had gone wrong. She says she suffered mental distress which led to physical pain.

Our investigator didn't recommend that the complaint should be upheld. He didn't think InvestEngine had done anything wrong, that its risk disclosure document explained there was a risk of delayed settlement, and that Ms P hadn't incurred a financial loss because the trade was settled at the execution price.

Ms P didn't agree. She said, in summary, that:

- She wasn't provided with the risk disclosure document when she traded, so it can't be relied on as evidence and doesn't form part of her contract.
- InvestEngine is required to settle promptly, and it didn't.
- She couldn't sell the EFT while she was waiting for settlement.

What I've decided – and why

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 find I have come to the same conclusion as the investigator for the following reasons:

When Ms P placed a purchase order for an EFT, InvestEngine was obliged under the Financial Conduct Authority rules to:

“take all sufficient steps to obtain...the best possible result.... taking into account.... price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of an order”.

This requirement is reflected in InvestEngine’s order execution policy, which forms part of its terms and conditions.

In seeking to obtain best execution, InvestEngine uses a panel of retail service providers (“RSPs”) who deal on the market, or direct with a counterparty. I’m satisfied that the RSP InvestEngine chose for Ms P’s trade is a key and reliable market participant with a track record of trade settlement.

Whilst I can’t say for certain, it’s possible InvestEngine could have obtained quicker settlement for Ms P’s trade had it chosen to use a different RSP. But settlement was only one element to be considered when choosing which RSP to use. An alternative RSP may not have been able to provide the best price for Ms P and it may not have been able to deal as quickly.

In any event, InvestEngine agreed settlement as T+2 with the RSP and I don’t find it could reasonably have been aware that settlement was going to be delayed when it placed the trade.

InvestEngine has provided evidence to show that it did contact the RSP to chase settlement on several occasions. Unfortunately the RSP wasn’t always responsive and didn’t give a reason for the delay or provide a likely revised settlement date. Whilst it may have been reassuring for Ms P to know that InvestEngine was on top of the issue, it didn’t have any firm information to provide to her about when the trade would be settled.

I understand why Ms P was so concerned about the delayed settlement, particularly as this was the first trade she’d placed with InvestEngine. And I’m sorry she became ill because of the worry. But I’m satisfied that InvestEngine fulfilled its best execution obligations and that it was in contact with the RSP to try to obtain settlement as soon as possible.

Ms P says she wasn’t able to sell the EFT until the trade settled. But I’ve not seen evidence to persuade me that Ms P wanted to sell the EFT during this period. I can see that the price of the EFT increased and continued to increase after 29 November 2022 when the trade had settled. So, if Ms P had wanted to sell the EFT, I would have expected her to have done so once the purchase had settled, given that the price after settlement was higher than it had been during the period she was waiting for settlement.

I’m satisfied that InvestEngine had warned Ms P about the risk of delayed settlement. Its order execution policy says that:

“there is a moderate risk that settlement of transactions are delayed as a result of external factors, such as market liquidity, RSP bandwidth or other unforeseen operational issues. We will seek where possible to settle T+2, but this may not always be possible, and settlement may take longer”.

Its Risk Disclosure statement repeats this, and adds, *“Late settlement can occur with any trade and is likely to be outside of InvestEngine’s control.”* I think it’s more likely than not that Ms P was presented with these documents before she agreed to open an account with InvestEngine. I say this because both documents form part of InvestEngine’s terms and conditions, and Ms P would have had to agree to those before she opened an account. The warnings about settlement delay weren’t particularly prominent and it’s likely Ms P may have skipped over these when she read the terms. But, overall, the risk of delayed settlement isn’t

high so I wouldn't expect InvestEngine to have highlighted this particular risk above any others.

Overall, I'm satisfied that InvestEngine provided best execution for Ms P's trade and that the delayed settlement was outside of its control.

My final decision

For the reasons I've explained, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms P to accept or reject my decision before 2 November 2023.

Elizabeth Dawes
Ombudsman