DRN-4317824

The complaint

Mrs M has complained about the misinformation she received from Interactive Investor Services Limited ('II'). As a result, settlement of her trades was delayed, she received less sale proceeds than she thought she would receive and couldn't place the buy orders she wanted to.

What happened

Mrs M could take advantage of two trading services with II – manual trading and its commission free Regular Investment Service. Based on information received from II she carried out some trades but because of the delay in settlement, and the amount of sale proceeds received, this impacted on the money available and timing for her Regular Investment.

She contacted II on 14 December 2021 as she noticed that some of her Regular Investing trades hadn't gone through. II explained that not all of the funds in her account were cleared funds.

Mrs M wasn't happy about the information received prior to her carrying out the trades, the trading itself, the execution, the amount of proceeds and her inability to reinvest all of those proceeds via the Regular Investment Service.

Mrs M raised a complaint. In its response to Mrs M on 26 January 2022 II said the following;

- It accepted that Mrs M had been given the incorrect cut off time for placing a trade in all funds as 11.15am. It offered its sincere apologies and upheld this element of the complaint. It said Mrs M should allow one hour before any fund's cut off time as stated in the relevant Key Investor Information Document ('KIID') to place a trade with II.
- Mrs M had also been misinformed that she could trade with unsettled cash for her Regular Investment trades. It apologised for this and upheld this complaint point.
- For online trading, the prices Mrs M would have seen prior to the trades were indicative prices – they weren't necessarily the price Mrs M's trades would execute at. As there was no error in handling Mrs M's orders it couldn't uphold this element of the complaint.
- To put the matter right it credited Mrs M's account with four 'Trading Credits' equal to the amount of £31.96 to cover the commission of placing the four unexecuted Regular Investment trades from December. It also funded Mrs M's Trading Account with £50 for the time she had spent on the matter and the misinformation she had been given.

Remaining unhappy with the outcome to her complaint Mrs M referred to the Financial Ombudsman. Our investigator who considered the complaint thought that it should be partially upheld. She said;

- She couldn't find that II was at fault about the indicative prices quoted. It is industry standard and it didn't contravene any regulatory requirements. It was also explained in II's terms of business. The investigator wouldn't review all Mrs M's trades – which she had requested – as this service would only look at complaint points where a customer was able to identify how they saw things went wrong.

- With regard to cut-off times for trading, despite the fact that Mrs M's account was an execution only account, II also offered a call and message service and the investigator felt that it wouldn't be fair to expect Mrs M to correct misinformation by reading the KIIDs. She was persuaded that Mrs M had planned her next steps because of the information given.
- The investigator thought II was correct in upholding the complaint point about the misinformation Mrs M was given about being able to trade with unsettled funds for her Regular Investment trading.
- But to put the matter right the investigator concluded that II needed to do more. It should back date the trades Mrs M made as if they had been received prior to the cut off time as Mrs M had been advised. It should also reconstruct Mrs M's unsettled fund trades and be processed as she had requested. And she also thought Mrs M should receive an additional payment of £200 for the upset and inconvenience she experienced.

II didn't agree with the investigator, it said;

- Customers are required to confirm they have read and understood the KIID at the time of placing an order. KIID information supersedes all other information. That Mrs M's husband was given the incorrect cut off time information a month before the trades didn't take precedence over the information given in the KIID.
- The same applied to the misinformation given about Regular Investment. This was a customer service issue as customers are provided with all the information at the point of initiating Regular Investment.

The investigator maintained that it wouldn't be fair to expect Mrs M to check information given to her. There was no reason for her to think the information given was inaccurate or needed to be relooked at.

As the complaint remained unresolved, it was passed to me for a decision. I was thinking of reaching a different conclusion than the investigator so issued a provisional decision to allow the parties to provide me with any comment or evidence that wanted me to consider before I reached my final decision. This is what I said;

> 'In response to the investigator, Mrs M provided further information for me to consider which I'll address as part of this decision as necessary.
>
> <u>The information given about the timings of trade</u>
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> On 30 November 2021 Mrs M's husband called II to ask about the settlement of potential fund trades and the cut off time to place an order. He was told that fund trades settle in one to two working days and the cut off time to place an order was 11.15am.
>
> II upheld this element of Mrs M's complaint but upon further review it told us this wasn't correct as it was Mrs M's husband who was misadvised during that call and not Mrs M. It said Mrs M was required to gain information for herself to act upon and she had not asked II for this information nor read and understood the documents relevant to investing in a fund, or the further information available on its platform

which she was required to do. As an online execution only broker all information needed by a customer to use its platform is available on its website.

While I accept that it wasn't Mrs M who made the call to II, I don't think it was unreasonable for her husband to share that information and for her to have relied upon it. That being said, II has already compensated Mrs M £31.96 for this error and the poor customer service that was provided by giving incorrect information.

A few weeks later after Mrs M's husband's call with II, Mrs M carried out two sales placed on 13 December and executed on 13/14 December – the Baillie Gifford Managed Fund and HSBC Global Strategy Fund. These raised the balance on her account to £23,547.46 and she wanted the sale proceeds of those funds available for reinvestment via the Regular Investing service which was to take place on Wednesday 15 December.

The HSBC Global Strategy Fund settled on 15 December and Baillie Gifford Managed Fund on 17 December. The delays in settlement of the trades had an impact on Mrs M's ability to reinvest the funds.

II initially acknowledged the information Mrs M was given – via her husband and which I have said it wasn't unreasonable for her to have relied upon – during the phone call about the cut off time for placing the unit trust orders was incorrect as was the settlement dates.

However, II also told us that Mrs M had called II in October 2021 to ask it to speed up settlement of a payment so as to make it available for Regular Investing. It said this suggests Mrs M was already aware that unsettled funds could not be used for Regular Investing prior to her husband being given the incorrect information. That being said, II has already apologised for its error and paid Mrs M £50 in acknowledgement of this. I'm satisfied that amount is a fair reflection to compensate for the misinformation given.

Our investigator asked II what Mrs M would have seen on her account showing that funds weren't settled so couldn't be used to trade. II provided a screenshot of what Mrs M would have seen. There is a column marked 'pending' which I see shows unsettled funds. And it's also provided a transaction history where Mrs M would have seen when the funds were due to settle.

However, while II initially accepted and acknowledged it made an error in the information it gave Mrs M via her husband and which I think it was right for it to do so, I have gone on to consider the impact of the delays in settlement.

<u>The 'Monthly Regular Investing' service</u>

This is a commission free service offered by II where settled cash on a customer's account is invested on a regular basis. Customers can set up monthly trades in advance for either the first or the third Wednesday of every month. When trading takes place, the orders are executed throughout the day at Market Best by its Trading Team. If a customer wishes to, they can manually place an order themselves outside of this service, but that trade would incur a commission charge.

Only cleared funds can be used for the Regular Investing service whereas for manual trading a customer can use non cleared cash – cash awaiting settlement from a sale. For the Regular Investing service, cleared cash is taken from the customer's account at midnight on the trading day. Doing this prevents the customer from using that cleared cash for any manual trading during the day or duplicating trades. II is entitled to manage its own business and services as it chooses.

Under the 'Regular Investment Service' section of II's terms of service it says;

> '5.6 We will carry out your Regular Investment Instruction on the Purchase Date by carrying out a Purchase for an amount not more than the Purchase Consideration, provided that there are sufficient *Cleared Funds* in your Account and provided that the Purchase price (e.g. share price) of the Regular Investment does not exceed the amount of your Regular Investment Value.' [my emphasis].

In Mrs M's case she wanted to sell her investments and then to reinvest the sale proceeds. She says she was prevented from doing so via the Regular Investing service as not all of the cash from the sales was cleared cash and so wasn't available for reinvestment. Mrs M says that it was the misinformation given over the phone that caused this. Because of Mrs M's husband's call, she was given the impression that the cash would be cleared by the time the Regular Investment was carried out on 15 December.

While I accept that Mrs M's husband was misinformed when he spoke with II, I also have to acknowledge that Mrs M's account was an execution only account which meant that the management of her account was solely her responsibility. And I don't think it unreasonable to conclude that by Mrs M being the holder of an execution only account to think that she should reasonably have been aware of how trading in funds such as the ones she held and was selling. The terms of service refer to this;

> 'Our service is execution-only, which means we will not provide you with investment advice or assess suitability of any investments you make. All investment decisions are your own. You should not trade with us unless you are comfortable making your own investment decisions and you understand the nature of the products and services and the extent to which they expose you to financial risk.'

I think the reference to 'financial risk' isn't limited to the risk implicit in investing itself. I consider it includes all risks associated with investment and pertinent to this complaint, such as the practicalities of trading, being aware of cut off times for trading in funds etc. I also note under the 'Provision of Information' section of the terms of service it says;

> '7.1 Any news, prices, opinions and other information we may provide to you ("Information") is provided solely to enable you to make your own investment decision and does not constitute a personal investment recommendation or personalised advice.'

So while I have sympathy for the position Mrs M found herself in, overall and taking all of the above into account I don't find that II is responsible that the sale proceeds of the trades carried out on 13/14 December weren't cleared funds for the Regular Investing service which took place on 15 December.

With regard to placing manual orders II's terms of service say;

> '3.6 By placing an order for the purchase of investments, you agree that you will have sufficient Cleared Funds in your Account on the date when you are required to make the payment to settle the trade. We may accept the order

> even if there are not sufficient Cleared Funds at the point of placing the trade. Cleared Funds must be available in order to effect and settle any trade.'

This term makes clear that by a customer placing an order themselves – a manual trade – they can do so even if there are insufficient cleared funds at the time of the order. But the customer must have cleared funds available upon the date of settlement of the trade. Stock market settlement dates are usually T+2 – the trade date plus two working days. But for other types of investments, including unit trust transactions which take place via the fund manager rather than the stock market, these settlement dates can vary but usually up to around four days which is what happened for Mrs M's trades.

II's service allowed Mrs M to place manual trades for any trades that couldn't take place during the December 15 Regular Investing service because of lack of cleared funds. So, I can't see she was prevented from carrying out those trades as a result of II's actions, or inactions, as she could use the unsettled funds on her account to place the trades manually. She just needed to make sure those funds were cleared funds upon settlement date of the reinvestments.

So, it's clear that Mrs M could have placed manual trades when those funds did become cleared funds in the following few days – on 16 and 17 December in line with II's terms. And II has already credited Mrs M's account with four Trading Credits equal to an amount of £31.96 to cover the commission of placing the unexecuted Regular Investment preferences from December.

<u>The trades and sale proceeds</u>

Mrs M has said she's not happy with the sales proceeds received from the funds compared to what she thought she would be receiving. She has said that irrespective of II not contravening industry standards or regulatory requirements, there is something innately wrong at II as she always lost out financially when selling a fund. Mrs M has said that if you choose to sell at a particular price, that is the price that should be received minus dealing costs.

However, this isn't correct, and I think Mrs M may be referring to equity/stock market investments which are quoted on the stock market and would offer live quotes throughout the day compared to the once a day valuation point for a unit trust.

As a background to trading in unit trusts, in general they are priced using 'forward pricing'. This means that the customer placing an order will not know the exact price they will receive or pay. The only price that is known for sure is the price that was established at the most recent valuation point – usually the previous day. This is because the prices of unit trusts are generally valued at the end of market close globally, hence their prices will only be available sometime after the date a customer places a trade. And the price of the fund at the next valuation point may be higher or lower than the previous – and known – valuation point.

As unit trusts are collective investments, the valuation would depend upon on the net asset value of the underlying assets held within that unit trust. And depending on what those assets are, they will vary in value on a daily basis, but the value of the underlying assets and the fund overall will be fixed at the next valuation point of the fund. Fund managers don't have 'discretion' over the valuation of a fund. Mrs M questions what 'level of discretion and influence are decided upon between II and the fund manager'. But this isn't the case. II won't have any 'influence' on the resulting price. This will be calculated by the fund manager according to regulatory standards and after taking account of the value of the underlying assets and allowable costs or charges etc.

For unit trusts, to be able to trade at the next valuation point the orders need to be placed with the fund manager by a certain time of day – usually sometime in the morning. Any trades prior to that cut off point will receive the price at the next valuation point. Any orders received after that cut off point would be rolled over and placed the next day. And businesses placing those trade orders – such as II – would usually have its own cut off point some time prior to the fund manager's cut off point to allow it to collate the buy and sell orders received for that fund and then to place the actual trades with the fund manager.

II has provided us with a screenshot of what Mrs M would have seen when placing her trades online via a 'Preview Order'. This shows the intended order a customer has placed with the current price, the settlement date, etc. I note the screen also says, 'the price quoted cannot be guaranteed until the order is confirmed.' The price quoted for stock market investments is based on live trade prices but for funds like the ones Mrs M was trading in, it would show the previous day's valuation price. That price would only become available once the fund manager has priced the fund again and that would be the price the customer would receive.

Mrs M has said that she didn't see the price guarantee warning when she sold her funds and questions whether it is a recent modification. On balance though I think it more likely this was showing on the Preview Order screen and even if Mrs M didn't notice it, I think it is something she should have been aware of as an execution only client.

II has given us a screenshot of what Mrs M would have seen at the point of placing her trades. It has told us that this information is available to customers at any time. I note that it says;

> 'By continuing with your order, you confirm that you:
>
> - Have been provided with the information document and any appropriate supporting document;
> - Have had sufficient time to read and understand the documents(s) – we recommend you take time to do so; and
> - Wish to proceed with the transaction immediately.

And I see that the KIID Document and Prospectus Document are viewable and downloadable on the same screenshot. II has said the significance of those documents is a regulatory requirement and they are presented at the point of order for ease of reference.

II told us that the cut off times are one of the many valuable pieces of information contained in the documents and that Mrs M failed to read those documents, meaning she would have also been unaware of other key information, and is not something for which II should be accountable. It said – and I don't think unreasonably so – that it couldn't guarantee a fault free service, so Mrs M should have confirmed the information contained within the documents rather than relying upon the information her husband was given.

And even if that information wasn't available in the documents on the website, such information is very easily accessible from various sources and other websites including from the fund manager of the particular fund. Taking all of the above into account I'm satisfied that it was Mrs M's responsibility to make herself aware of the relevant cut off times.

With reference to 'Orders' in II's terms of service it corresponds with what I have said above about fund pricing.

It says;

> '3.10.5 Units in a collective investment schemes are normally traded on a forward price basis. This means a price calculated by reference to the valuation point which occurs after the unit trust manager's agreement to sell or redeem the units in question;'

This is a very common and an industry standardised method for pricing unit trusts and similar collective investments. And as mentioned above, settlement periods for different unit trusts can vary. Any difference from one valuation point to the next – whether higher or lower – is as a result of the varying values of the underlying assets. So, I can't agree that II or the fund manager has done anything unusual or wrong when carrying out the trades. The trades proceeded as I would expect to see for such assets. And Mrs M's account is an execution one. So, it is solely her responsibility to manage her account and understand how it works. And this would include the practicalities of trading in equities and funds alike.

However, I hope what I have said above about how funds trade has explained this difference in valuations to Mrs M. I am sorry that Mrs M didn't receive the amount she was expecting from the sales of the funds. But as I have explained above, the reduction in value of the units from one valuation point to the next is one of the risks and vagaries evident in trading in investments.

Mrs M has referred to II relying upon its terms of service and how it has used those. But II is able to rely on those terms of service and I don't find that it has been unfair or unreasonable in doing so. Both parties to the relationship agreed to those terms of service at the outset.

Overall, I provisionally don't uphold Mrs M's complaint and I won't be asking II to do anything further. I think the amount it has so far paid to resolve the complaint is fair and reasonable under the individual circumstances of this complaint. I am of the opinion that the account was execution only and it was for Mrs M to acquaint herself with how that worked and in particular how fund trades are carried out. II carried out those trades as I would have expected it to.'

II didn't respond to my provisional decision. Mrs M didn't agree with my conclusion and made the following points for my consideration;

- The complaint was about poor advice and the reduced sale proceeds and the detrimental impact this had on Mrs M. It wasn't about poor investment choices and losses but II's procedures and bad advice.
- Mrs M had been misinformed over the phone and in writing about cut off times and cleared funds for Regular Investing. II should be accountable for any losses and not just an apology.
- For Mrs M to consult other sources of information wasn't practical.
- Mrs M expected to receive accurate information and for II to now rely on its terms

and conditions wasn't fair.

- The amount refunded for the trades was spent anyway and the £50 for the time Mrs M had spent was insufficient for the misinformation and doesn't reflect the consequential losses.
- Accurate bespoke information should have been provided at the outset which could be trusted and relied upon. When Mrs M sought advice from II she was wholly dependent on this and had acted in good faith in making investment decisions.
- Even if the information had been given a month before the investment it should still stand. Mrs M couldn't keep phoning II to confirm things that had been addressed already.
- There were financial consequences for poor service and advice relied upon. And this matter was also about II's procedural issues about being able to use cleared funds and not something included in the KIID. And the cut off times given in the KIID were different from II's cut of times and which were different for other funds. This information was not easily looked up and was confusing. Some KIID didn't give cut off times.
- Different sources can provide conflicting information so Mrs M questioned where an execution customer should turn to.
- It may have been Mrs M's husband who called II in October and it might have been to forewarn II that there were funds pending sales in anticipation for Regular Investing. They were advised that unsettled funds could be used in lieu of Regular Investing which was free and not manual investing.
- If there was uncertainty with information being given by II, it should be referred to someone senior.
- The consequences of poor advice needed to be considered on the basis of exposing Mrs M to financial risk and not being about Mrs M's ability to manage her own account. Mrs M lost out because of the misinformation.
- While II would wait for cleared funds for manual trading, the same was stated for Regular Investing.
- The different settlement times – T + 2 or more, was misinformation that should have been advised.
- With reference to indicative pricing, this wasn't readily apparent on screen and the final amounts received were less than the 'initial original value'.
- Mrs M had been advised there were discussions between II and the fund manager about the final proceeds. This shouldn't happen unless the negotiations were to Mrs M's benefit and she should be told and offered the choice to accept the final price.
- This didn't happen when Mrs M used the services of another investment platform. Mrs M always received less when trading with II.
- Mrs M didn't recall seeing the statement 'the price quoted cannot be guaranteed until the order is confirmed' and II amended its site regularly. If the fund devalued by an unacceptable amount, Mrs M should reserve the right to stop the sale.
- The whole experience had been very stressful. II hid behind its terms and conditions despite the investigator's findings.

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.

After doing so, I remain of the opinion that II doesn't need to do anything further. I'll explain why below where I have addressed the salient points of Mrs M's complaint.

The pricing of the investments

Mrs M has said she should be reserved the right to stop the sale if the fund had devalued by an unacceptable amount when compared to the price she thought she was going to get. But this isn't how investing in unit trusts (and similarly constructed types of collective investments) works. I'll explain – very broadly – how they do work.

With reference to the pricing of unit trusts, the underlying funds are what is known as 'open ended'. This means that the units of the funds themselves can be created or cancelled by the fund manager if necessary. The manager will collate all the buy and sell the orders for a given day – hence the cut off time for placing an order to trade – and if they broadly match there won't be any need to create or cancel units. But if say there is a high demand on that day, then more units will be created, and the cash received will be invested in investments within the fund itself.

The unit trust fund manager has to consider the number of units that are available on a daily basis, and that will depend upon the amount of funds being invested or withdrawn. Because of that, it wouldn't be practical for a fund manager to create the buy/sell unit prices for that day, which would depend upon the net asset value of the underlying assets, and then refer back to the unit holders and potential investors, prior to the price being fixed for the day. The fund manager has to know, in advance – hence the cut off time – the number of units and the net asset value of the underlying investments in order for the prices for that day to be fixed.

This is one of the disadvantages of investing into unit trusts (and similarly constructed funds) as the investor doesn't know for sure what price they will receive/pay as it is based on a forward pricing basis. It could be more or less than the previously day's price.

These differ from investment trusts – also collective investments – which are 'closed ended'. Once the investment trust is created and the funds invested, the manager cannot create or cancel shares to meet demand. The shares are listed on the stock market and the value of the shares will rise and fall on the stock market like any other investment and can be traded in the same way.

For unit trusts it isn't industry standard – nor would it be practical because of the way unit trusts are constructed – for current and potential investors to be referred back to prior to the prices being fixed on any given day. Those bid/offer prices are dependent upon the known value of the amount being invested and redemptions on that day and are based on the net asset value of the fund itself. II – or any other product provider – wouldn't have anything to do with the pricing of a fund. That would be for the fund manager to calculate and would be dependent upon the issues as I've mentioned above. I'd like to assure Mrs M this is industry standard. Because of this, I can't agree with Mrs M on this point, but I hope I have been able to – albeit broadly – explain why.

I also haven't been given evidence to suggest that Mrs M received reduced sale proceeds. Above I have explained how the pricing works and I've seen nothing to show that Mrs M received reduced proceeds using II's services than she would if she had used a different platform.

The Regular Investment transactions

Mrs M placed two trades on 13 and 14 December which settled by or on17 December. But I note that Mrs M placed 12 trades on 15 December – the date of the Regular Investment – and which all settled on a T + 2 basis on 17 December using those unsettled funds.

I sought additional information from II about how Mrs M's Regular Investment was set up – was it set up to use all settled cash or was it a monthly set amount to be invested as examples. II told us that Mrs M regularly updated her Regular Investment instructions on a monthly basis and based on how much cleared funds she had in her account in the days prior to the trade date. As an example, it told us that for the December 2021 trades there was £33.42 available, and Mrs M logged in and set the instruction to buy shares to utilise those funds. It told us Mrs M was very active and her activity was based on the funds available at the time on a monthly basis.

So, I'm satisfied that Mrs M didn't have any instruction for a fixed amount of investment or number of units/shares she wanted to purchase each month and which she potentially missed out on. It appears she was flexible in her approach and her instructions depended upon the amount of funds available in any given month.

II has refunded the trade commissions by way of four trading credits – £31.96 – because Mrs M had to place manual trades using unsettled funds rather than utilise the free Regular Investment Service as the funds weren't cleared in time from the two sales which would need to be the case when using that Service. If those funds had been settled on 15 December, the trades would have been carried out free of charge and placed via the Regular Investment Service.

I asked II about the Regular Investment Service and whether Mrs M was able to manually carry out the same trades on 15 December using unsettled funds as those trades that would have taken place using the Regular Investment Service if those funds had been cleared.

II has confirmed that while Mrs M wasn't able to participate in the Regular Investment Service, due to her being misadvised on the clear funds aspect, she did place the same/similar trades – and could have deposited more to invest more on that date if she had wanted to – and was therefore in the same position she would have been in had the trades been placed via the Regular Investment Service rather than manually. It had already refunded the trading commissions paid on the manual trades and paid £50.00 for the stress and inconvenience that had been caused.

So, because Mrs M was able to trade via the manual service – albeit with unsettled funds – she was able to trade on the same date as she would have done if she was using the Regular Investment Service. And she could manually carry out the same transactions that she may have wanted to via the Regular Investment Service. So, I can't agree that Mrs M has lost out financially – she was in the position to carry out the same transactions she wanted to and which it looks like she did by placing the 12 trades. If she did make any different transactions than she originally intended to make, then that would have been Mrs M's choice at the time. And Mrs M has been credited the four Trading Credits in recognition of the costs incurred using the manual service. Effectively she is in the same financial position she would otherwise have been in.

In Mrs M's response to my provisional decision she said that the consequences of the poor advice she received needs to be considered on the basis of exposing her to financial risk and her not being able to manage her own account. She had lost out because of that information.

However, I’ve previously commented about the incorrect trade times Mrs M had been given in my provisional decision. II had already accepted that it made an error with the misinformation that was given to Mrs M and it's already given her £50 in recognition of that error in any event. I don’t find that an unreasonable sum to award in the particular circumstances of this complaint and because of what I've concluded above – that Mrs M was able to manually place the trades she intended to – then I can’t agree that she has lost out financially or suffered any consequential losses.

My final decision

For the reasons given, my final decision is that I don’t uphold Mrs M’s complaint about Interactive Investor Services Limited.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs M to accept or reject my decision before 19 October 2023.

Catherine Langley
Ombudsman