

## **The complaint**

Mrs R is represented. Her complaint was part of a collective complaint about a number of investment related accounts held with Henderson Rowe Ltd ('HR'). The collective complaint was then split and separated.

This decision is only about her accounts and about the following – she says HR failed to execute an email instruction on 11 March 2022 to liquidate a holding in her Individual Savings Account ('ISA') and to liquidate her jointly held General Investment Account ('GIA') prior to an impending transfer; that it had done nothing as of 14 March 2022; and that on 15 March 2022 it eventually took action.

HR concedes responsibility for the execution delay between 11 and 15 March. It has calculated financial loss and redress. Mrs R and her representative disagree with the calculation and redress amount. They say the calculation omits the ISA holding and they disagree with the calculation prices.

## **What happened**

One of our investigators looked into the complaint and agreed with HR's approach towards its compensation analysis.

Mrs R's representative disagreed with this conclusion. He highlighted that the ISA holding had not been addressed, he questioned the price point (at 11.30am on 11 March) used by HR in its calculations and he disputed the prices it used in considering financial loss in the GIA. He said they were non-market prices and that relevant market-based pricing shows a higher financial loss.

In support of this her representative presented his own calculations of financial loss based on closing mid prices on 11 March. He acknowledged that, in terms of redress, a range of price time points on 11 March and price types (the day's low, closing or average prices, for example) could be used – which he said the Ombudsman can consider in determining the complaint. However, he argues that it is unacceptable for HR to use prices that did not exist in the market on 11 March at 11.30am.

The investigator was not persuaded to change her view, and she repeated that HR had used the approach towards its redress consideration that we would expect it to use. The matter was referred to an Ombudsman.

## **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.

HR accepts that it delayed the liquidation of the jointly held GIA, that it ought to have executed it on 11 March when instructed to do so, and that it did not act until 15 March. It has calculated financial loss and redress for the delayed liquidation on the following basis:

- It says the instruction email of 10.37am on 11 March would have been executed by 11.30am on that date.
- It calculated the total proceeds that would have been generated based on the bid prices at that time, and compared that to the total proceeds generated on 15 March.
- It found that some sales in the jointly held GIA had been disadvantaged by a price difference during the delay, but overall (considering all the sales) the delay had led to a net gain. However, as gesture of goodwill it offered the total liquidation value difference, for the negatively affected sales, in compensation.

As stated above, Mrs R and her representative challenge the price point of 11.30am (on 11 March) and the actual prices used in HR's calculations. They have invited us to review this and to consider their alternative calculation of redress. A number of price points and price types might be used for the calculation. However, we must not lose sight of the specific purpose that redress should serve in this case. Redress is aimed at calculating whether (or not) the sales that should have happened on 11 March would have achieved higher proceeds than what was achieved on 15 March. As the investigator said, this purpose is reflected in the approach HR used in its calculations.

The exercise cannot be precise, because no-one can determine exactly when the liquidation on 11 March would have happened, or the associated sale prices. Mrs R's representative favours the use of day-closing prices and he questions why HR selected 11.30am. I understand his concerns. He refers to price charts showing this particular time as being unfavourable for prices. However, I have not seen enough evidence to say this was/is HR's motivation for selecting the time. Instead, I find its explanation – about 11.30am being when (just under an hour after the instruction) the sales would probably have been executed – to be plausible. The same explanation refers to time being used to input and authorise the associated trades, and then time for execution by its custodian. These could have been done within an hour.

Investment transactions are inherently time sensitive and firms are commonly expected to provide timely execution. The instruction at 10.37am did not specify liquidation at closing, or at any particular later time, so it is fair to conclude that HR ought to have applied such timely execution. Therefore, I am not persuaded to prefer a day-closing price/execution point (many hours after the instruction) over a price/execution point within an hour of the instruction.

On balance and for the above reasons, I agree with the price/execution point of 11.30am on 11 March.

The sales that should have happened on 11 March would have been subjected to the relevant market bid prices (in the applicable bid/offer price spread(s)). HR says the bid prices are exactly what it used in its calculations. It confirmed that its calculations were based on relevant published bid prices from 'FactSet' (the online financial data resource).

With regards to the argument about HR using non-market prices, it does not appear that the price chart evidence cited by Mrs R's representative shows the relevant bid/offer price spreads (or two-way quotes) as of 11.30am on 11 March. They appear to show single chart pricing. This might explain the differences that he refers to. Given that two-way quotes usually exists around the associated single chart price, this could be the reason why he has been unable to match the chart pricing with the bid pricing used by HR.

Based on HR's evidence for its calculations, I share the investigator's view that it has used the calculation approach we would expect it to use. However, I understand Mrs R's and her representative's concern about accuracy in the calculation (and of the compensation offer).

Their point about omission of the ISA holding appears to be supported by HR's evidence of

its calculations. The holding is not included in it. I made a similar finding in relation to a separate ISA holding in one of the other linked complaints, which I have already determined. In that decision I noted the need for HR to resolve the issue by verifying all the investments that existed in the relevant ISA as of 11.30am on 11 March 2022 and to apply the same financial loss and redress calculation/analysis in this respect.

HR responded and agreed with the finding. I expect that it has probably identified that the same issue exists in Mrs R's case with regards to her ISA holding, and that it will probably be taking the same resolution steps in her case. For the sake of clarity, this means I rest this decision on Mrs R's case partly on the understanding and expectation that HR is already in the course of – or will be – recalculating, without undue delay, financial loss and redress for the delayed sale of her ISA holding, this being a calculation that it appears to have previously omitted.

I also consider that Mrs R's and her representative's concern about price accuracy would probably be addressed by full disclosure from HR of the source price information/data it used/uses in calculating financial loss and redress. I recommend that HR provides this to them without undue delay.

My decision is to not uphold Mrs R's complaint because I consider that HR has already followed the correct approach in calculating financial loss and redress for her jointly held GIA; I expect that it will extend its calculation to her ISA holding as stated above; it is my understanding that HR continues to stand to pay what it previously offered; it is also expected that it will pay Mrs R any financial loss and redress resulting from the extended (ISA holding related) calculation; and it is also expected that it will be providing full disclosure to her of the source price information/data it has used/uses for its calculations. Otherwise, based on the facts, I would have upheld the complaint and issued HR with orders on redress (inclusive of an order to fully disclose source price information/data for its calculations).

### **My final decision**

For the reasons given above, I do not uphold Mrs R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 16 October 2023.

Roy Kuku  
**Ombudsman**