

The complaint

Mr P complains that Alpha Real Property Investment Advisers LLP trading as Time Investments ('Time') failed to do enough to put things right after admitting it made an error during a transfer request.

Mr P said he lost out financially during the period when his funds were not invested '*...due to Time's error*'. To put things right, he asked for compensation and wanted to understand why his instructions were not followed.

I'm grateful to Mr P's representative for his assistance with this complaint. But, to keep things simpler, I'll just refer in my decision to Mr P as he is the complainant and this is a complaint about what happened to his investment.

What happened

Mr P held an Individual Savings Account ('ISA') with a third party I will refer to as 'O'. He wanted to transfer 50% of his subscription to Time and the other half to another ISA provider I will refer to as 'P'.

O was unable to process a partial transfer of this sort. So Mr P requested the transfer of the whole subscription to Time, with the intention that Time would invest 50% of the value of the ISA and retain the rest in cash ready to transfer out to P on receipt of a transfer request.

Mr P is unhappy that Time made an error on receipt of the ISA transfer in from O when it failed to keep half the proceeds in cash and instead, invested the entire amount in a new ISA. And he's concerned that Time's error meant the transfer out to P took longer than Mr P thought it should've done, with the result that he lost out on investment gain whilst his money was disinvested.

Time upheld Mr P's complaint in part, saying that internal failings caused its dealing team to invest the full ISA transfer amount received from O. Time took steps to cover any extra costs arising as a result of its error. And, noting that Mr P's investment had gained in value whilst it had been invested with Time, said it was satisfied he had not been financially disadvantaged as a result of what happened. Time didn't accept there had been any delay acting on P's transfer request and said this was dealt with '*...in a timely manner*'.

Mr P didn't feel this went far enough to resolve things and so he brought his complaint to us and one of our investigators looked into what happened.

Our investigator said (very briefly) he couldn't fairly or reasonably ask Time to do anything more when he thought it had already done enough to put things right after making an error and completed the transfer to P well within the guidelines for this sort of transfer.

Mr P disagreed with our investigator, mainly saying that:

- the investigator had missed the key issue regarding the complaint which was the loss incurred through the errors made by Time '*...as there was a period where the monies were uninvested in a rising market entirely as a result of their actions.*'
- he required a full explanation about why the investigator hadn't covered or considered this, despite having been sent substantial supporting information.
- Time had not put things right and Mr P was in a worse financial position than he would have been if his instructions had been followed correctly.
- the investment would have grown by a similar amount if the monies had been transferred so this didn't represent compensation or any form of positive action on the part of Time.
- The guideline for an ISA transfer is irrelevant as the complaint is about instructions not being followed causing loss.
- Fees relating to Time's error would not have been incurred if the error had not been made and to charge fees for an error is unacceptable.

The complaint came to me to decide. I issued a provisional decision.

What I said in my provisional decision

Here are some of the main things I said.

'I sympathise with Mr P – I can completely understand that it was upsetting and frustrating for him when Time wrongly invested the ISA proceeds transferred in from O. And I appreciate that it took longer than he hoped to complete the transfer out of the cash he wanted to move to P. But having thought about everything I've seen and been told, I've independently reached the same overall conclusions as our investigator. I'll explain why I say this.

We provide an informal complaints handling service and this is reflected in the way I've approached the complaint. It's part of my role to identify and concentrate on the core issues I need to address in order to reach a fair outcome. This means I won't necessarily comment in detail on everything that Mr P has mentioned. But I will comment on everything that makes a difference to the outcome of the complaint.

The background facts are broadly agreed – there doesn't seem to be any particular dispute about what happened. Time admits it made a mistake when it invested funds that it should have kept as cash. I appreciate that Mr P would like to know in more detail why his instructions weren't followed. But Time has already told him that an email from Mr P's financial advisor, with instructions to hold 50% of the ISA transfer from O as cash, was 'quarantined' by its IT security protocol. As a result, this information didn't reach Time's dealing team before the next dealing date - the dealing team acted on the written instructions received in the application form and the monies received from O on 10 October 2022 were invested in a Time ISA in full on the next available dealing date, 17 October 2022. I don't require any more detail about this in order to make a decision on the complaint so this isn't something I need to say more about.

It seems to me that the key questions I need to focus on are whether Time:

- has done enough to put things right in relation to its admitted error

- is responsible for any other shortcomings in the service it provided to Mr P resulting in financial loss or causing him other detriment?

Has Time done enough to put things right in relation to its admitted error?

There's information on our website which explains the Financial Ombudsman Service approach to redress. Briefly, I need to decide what the impact on Mr P has been as a result of Time making this error. And when thinking about what redress is fair and reasonable, it's important to keep in mind that the ombudsman approach is to try to put Mr P back into the position he would've been in but for Time's mistake.

So I must first decide what the consequences were for Mr P of that error.

Mr P incurred dealing fees when Time incorrectly purchased more shares than it should have done with the proceeds from O and subsequently had to sell half the value of those shares. It's fair and reasonable that Mr P shouldn't be out of pocket as a result of Time's error. Time said it rebated the dealing fee charged on 50% of the shares purchased and waived the dealing fee on selling the shares it needed to in order to facilitate the ISA transfer request from P.

So I find that in terms of any financial loss, Time has provided appropriate redress. Mr P hasn't had to bear any of the costs incurred as a result of Time's error.

Fair compensation isn't just about not being worse off in money terms – it needs to properly reflect the full impact on Mr P of Time's service failing on this occasion. I've taken into account that Mr P's investment grew in value while it was wrongly invested, resulting in an additional amount of around £2,123 being transferred to P. Mr P said the investment would have grown by a similar amount if the monies had been transferred. But I think it's fair to say that even if Time had correctly kept the proceeds in cash in anticipation of getting a transfer request from P, there would still have been a period of time when Mr P was disinvested and out of the market whilst the transfer to P was underway. So to this extent, Mr P benefitted from Time's error.

Is Time responsible for any other shortcomings in the service it provided to Mr P resulting in financial loss or causing him other detriment?

Time has said the transfer took place within the allotted timeframe under the HMRC ISA rules for stocks and shares ISA transfers. Mr P is unimpressed by this argument – his point of view is that, but for Time's error reinvesting the cash proceeds, this should have been a cash transfer – as he always intended.

I've thought carefully about the transfer timescale here. Mr P signed his transfer request (to P from Time) on 11 October 2022. This was sent to Time on 18 October 2022. Time received this on 26 October 2022 - the same day Time got an email from Mr P's financial adviser saying that 50% of the proceeds transferred from O should have been retained as cash. To complete the request as quickly as possible, Time arranged an ad-hoc dealing event, outside its usual dealing processes, on 31 October 2022 to ensure the sales were placed at the earliest available date. On 10 November 2022, Time completed the transfer request to P, paying the 50% of Mr P's portfolio value to P via a same day payment.

Despite what Mr P has said about guidelines for an ISA transfer being irrelevant, I must take into account the relevant law, regulatory requirements and best industry practice when making my decision. HMRC guidance says that ISA transfers should take no longer than 15 working days for transfers between cash ISAs. Given that this was always intended to be a cash transfer, I think this is a more relevant benchmark for assessing whether Time acted fairly and reasonably when it actioned the transfer to P. By my reckoning, the transfer took a total of 15 calendar days for completion (26 October – 10 November). So I can't reasonably find that Time's error impacted on the transfer to the extent that the transfer was unreasonably delayed when it completed within the expected timeframe. And I can't reasonably assume in these circumstances that the transfer would have completed any more quickly than actually happened even if Time had already been holding the proceeds as cash and not needed to sell the shares it wrongly purchased. The key thing here for me is that the transfer did complete on a timely basis – so I don't find that any investment loss can fairly be attributed to Time.

I have also kept in mind that even if I were to uphold this complaint, it would ultimately make no overall difference so far as the question of compensation is concerned. That's because the ombudsman approach to redress is to also take into account what Mr P could have done differently to mitigate any loss. We expect consumers to take reasonable steps themselves to limit the impact of things going wrong. Here, if Mr P's priority had been to minimise any period of disinvestment, then perhaps he might have considered giving new instructions for the transfer to be made '*in specie*' – in other words, for the transfer of 50% of his existing holdings to P (as opposed to those shares having to be sold and the cash transferred). In this way, he could have remained invested throughout and (for as long as he was invested) able to benefit from a rising market had that been his priority.

Taking things as a whole, I think that the steps taken by Time already are enough to ensure that Mr P is not any worse off in money terms as a result of Time's error. And given that he had the unexpected benefit of investment gain as a result of Time investing his money, albeit incorrectly, I think this effectively (more than) offsets the redress I might otherwise have awarded to reflect the frustration and upset he's been caused by Time's mistake here.

I'm sorry to disappoint Mr P. But as I'm satisfied that Time has dealt with his complaint fairly I'm not telling it to take any further action.

I hope that setting things out as I've done explains how I've reached my conclusions and even though this isn't the outcome Mr P hoped for, he will at least feel that the Financial Ombudsman Service has fully considered his complaint.'

What the parties said in response to my provisional decision

Neither party has sent me any further substantive comments and the deadline for responses has now passed, so I think it's reasonable for me to proceed with my review of this complaint.

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.

I'd like to thank both parties and Mr P's representative for all the information that has been provided previously about this matter. Given that I've not received any further evidence or comment that changes my mind about this complaint, I confirm the conclusions I reached in my provisional decision.

My final decision

For the reasons I have set out, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 23 April 2024.

Susan Webb
Ombudsman