

complaint

Ms G has complained about TD Direct Investing (Europe) Limited's failure to carry out her instructions in respect of a monthly direct debit. Ms G says the impact of the direct debit failing was that her stocks and shares ISA held with the business had less units.

background

Ms G gave instructions to set up a monthly direct debit in March 2016 for a £1,000 purchase of units in her investment ISA. The direct debit was not put into effect which led to the purchase of units not going through for a number of months. Ms G says she realised there was a problem in July 2016. So Ms G contacted the business in July 2016 to ask what had happened.

The business initially said that the direct debit had not worked because Ms G had not set up an ISA for that year. The business later recognised that was not correct.

Ms G made a complaint to the business. Ms G set up the direct debit again and increased her contributions for three months to make up most of the difference. But Ms G complained that she has received fewer units than if the units had been purchased at an earlier stage. Which they would have been if the direct debit had gone through as per her instructions

The business was unable to shed much light on what went wrong. But the business said that Ms G should have realised there was a problem much sooner. The business also said that Ms G should have acted sooner and invested £4000 in July 2016 to make up for the missed direct debits. It offered Ms G £25 in compensation for the inconvenience caused by they incorrect information it had given and £25 for the direct debit failing as a goodwill gesture.

One of our adjudicators looked into the complaint. He considered that the business was at fault for the direct debit not going though. He noted that Ms G had accessed her account in February but this was before the direct debit had failed. The adjudicator felt the business should purchase units in the ISA to put the account as close as possible to the number of units it would have had if the direct debits had been collected. This would be in addition to the £50 already offered.

The business did not agree. It made the following points:

- The terms and conditions state that Ms G is responsible for the monitoring of the account.
- Ms G had plenty of opportunities to notify the business of the problem with the direct debit before she did.
- Once she raised the issue in July 2016 Ms G could have then paid in the missed £4,000 but didn't.
- When raising the issue she didn't make any mention of her intention to buy any additional units.
- It's not fair to ask the business to buy the additional units and also not possible because Ms G has already invested the cash in her ISA.
- It does not believe that Ms G's decision to increase her direct debit to £2,000 was to mitigate her losses but to ensure she used her ISA allowance by the end of the year.

Ms G then made some further points in response:

- It was her intention to make regular investments of £1,000 by setting up the direct debit.
- No funds were available to invest because the business did not follow her direct debit instructions – it should have been communicated to her that the direct debit hadn't gone through.
- It was not clear exactly what was happening which is why the business wasn't contacted earlier. Ms G questioned whether it was the customer's responsibility to make sure the direct debits have gone ahead.
- £4,000 was a significant sum of money to pay to rectify the situation all in one go.
- Due to the delay, her loss had now increased to £500 and she would like to increase her claim accordingly. Ms G said the loss would have been over £700 if she had not acted to mitigate the loss as she did.

As no agreement could be reached the complaint came to me for review.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Ms G had an investment ISA with the business. In March 2016 Ms G gave instructions to the business to set up a monthly direct debit. In July 2016 she realised that the direct debit had not gone through and units had not been purchased. Ms G contacted the business and asked why units had not been purchased in April, May, June and July.

The first response she received from the business explaining why the direct debit had not gone through was incorrect. The business has not really been able to give a clear explanation as to what went wrong. Ms G has provided evidence to show the direct debit was set up. So, I am satisfied on balance that the business was at fault for the direct debit not going through.

The business has said that Ms G ought to have realised that direct debit had not gone through sooner and so she should have contacted the business sooner to explain there was a problem.

The business has pointed out that the direct debit was not collected in March and that Ms G made a payment into her account in that month. The business has also said that Ms G would have been aware of how much of her ISA allowance had been used up and so would have known that the direct debit had not gone through. Because if her direct debit had gone through then Ms G would have been over the ISA allowance for that year.

Ms G has pointed out that the figure only tells you how much of the allowance has been used- not what has just been paid in.

I take into account that Ms G made this payment towards the end of March. I think it is likely Ms G made this payment to ensure that she used up her ISA allowance without being aware of whether or not the direct debit (that she had only recently set up) had gone through. In fact when Ms G complained she did not even seem aware that the March direct debit had not gone through as she did not make that part of her complaint.

So, I am not persuaded the fact Ms G made a payment at the end of March demonstrates she was aware that something had gone wrong with the direct debit. I also agree with the adjudicator that the fact Ms G accessed her account on February 2016 is of very limited relevance because the direct debit was set up in March.

The business has also pointed out that the terms and conditions make it Ms G's responsibility to monitor her account and report any problems/anomalies to the business promptly.

I note that the condition referred to by the business does not state how often the consumer should check their account but states in general terms that "*You accept full responsibility for monitoring your account.*"

I think that monitoring your account has to be interpreted as what could be reasonably expected in the circumstances. I am not convinced it would mean that Ms G had to check her account every day. Equally I don't think it would be reasonable for Ms G to leave her account for long periods without checking it and then complain of an error many months or perhaps many years down the line.

But I think it was reasonable for Ms G to believe that the business had carried out her instructions and that her direct debit had gone through. The whole point of setting up a monthly direct debit is so that you don't have to keep going into your account to make individual payments. I also think Ms G did monitor her account when she checked it in July. Having realised there was a problem Ms G did then contact the business promptly to inform the business of the problem

I also take into account that the error was on the business' part and not caused by Ms G.

Overall, I think Ms G's actions were reasonable in the circumstances. So, I am not convinced in these circumstances that the business can avoid any responsibility for its error because Ms G did not check her account sooner.

The business has also referred to the terms of the investment ISA which state:

2.8 You are responsible for ensuring that sufficient Available Cash of a value no less than your Total Monthly Subscription is in your Regular Investment Account on each Purchase Date. We accept no responsibility or liability where an Investment Instruction cannot be carried out due to lack of Available Cash.

I understand the point the business is making but I have to take into account that the lack of available cash was due to the business' error. I think that Ms G could reasonably expect that the business would carry out her instructions.

The business also says Ms G should have mitigated her loss by placing £4000 in her investment ISA as soon as she became aware of the problem.

I tend to agree with Ms G that £4000 is quite a lot of money to find in one lump sum. Particularly, as Ms G had planned to fund the ISA with a monthly amount and the money was coming from her current account. I consider it likely that Ms G would have spent at least some of that money on other things without realising it had not been taken from her account.

Overall, I consider the actions Ms G took to mitigate her loss in setting up a new direct debit and increasing the monthly amount to £2000 in October, November and December to be fair and reasonable in the circumstances.

Ms G has now caught up the missed payments by using her full ISA allowance for the year. I note that when the adjudicator looked at the complaint that was not the case so he suggested the business made an additional purchase of units in respect of one missed payment. But, I don't think that is now necessary because the missed payments have been all caught up.

So I consider the business should put Ms G's account back in the position as if the direct debits had gone through at the right time. If that had happened Ms G would have been able to buy more units and so there would be more units in her investment ISA.

As we have now reached the end of the tax year the business can compare the position at the end of the tax year ending in April 2017 with the position Ms G would have been if the direct debits had gone through and it should purchase the extra units to put into Ms G's ISA investment account.

The business should be able to put the extra units into her ISA investment account as Ms G has indicated that she is still holding her investment ISA this year. If for any reason the business is unable to do so then it should pay Ms G the equivalent in money

The business should also pay Ms G the £50 offered for trouble and upset caused by the incorrect information initially given and the inconvenience caused by the direct debit failing.

my final decision

My final decision is that I uphold Ms G's complaint against TD Direct Investing (Europe) Limited. TD Direct Investing (Europe) Limited should pay compensation as outlined in my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 24 May 2017.

Julia Chittenden
ombudsman