

The complaint

Mr E says The Share Centre Limited ('TSCL') was wrong not to have given him prior notice that China New Energy ('CNE') stock – in which he had a holding – was being delisted from the Alternative Investment Market ('AIM'), and was to be listed on the Hong Kong Stock Exchange ('HKEX'); and that it was also wrong to have frustrated his efforts thereafter to trade his holding, which has not been possible since April 2021 when CNE was suspended from its HKEX listing.

What happened

One of our investigators looked into the complaint. He noted and found, mainly, as follows:

- Mr E bought 300,000 shares in CNE on 10 July 2020; on 15 July 2020 CNE was listed from the AIM and then listed on the HKEX; and Mr E's first complaint point is that he received no prior notice from TSCL about this, and had he received such notice he would have behaved differently.
- TSCL was subject to a merger, with Interactive Investor Services Limited ('IISL'), around the time. In this context TSCL gave Mr E two options – after the merger, it could be possible for him to trade his holding using IISL's online platform, or he could have the share certificate(s) for the holding re-registered in his name and he could thereafter find a broker to trade the holding on the HKEX for him. Neither option had been achieved by the time CNE was suspended from its HKEX listing.
- TSCL was not responsible for notifying Mr E about the AIM delisting. His account was based on an execution only service, in which TSCL was not obliged to advise him and was not obliged to play a role in considering the suitability of his purchase of the CNE shares. TSCL tries to notify accountholders of corporate actions relevant to their holdings but its terms say there may be circumstances where it cannot do so. Furthermore, there is evidence that on 30 June 2020 CNE's website gave prior notice of the AIM delisting and listing on HKEX, so that was information Mr E could have discovered himself, he did not need to be told by TSCL.
- After the AIM delisting Mr E needed the matter addressed as quickly as possible. TSCL initially focused on the option in which Mr E could possibly trade his holding using IISL's platform. However, evidence shows that from August 2020 onwards it gave him inconsistent and conflicting information, and the option never appears to have been a certainty. For these reasons TSCL ought to have discounted it earlier than it did (which appears to have been in October 2020). Then, in pursuing the second option evidence shows that, despite the relevant process being more complicated, TSCL caused delays and other delays appear to be unexplained; and the process had still not been completed when CNE was suspended from the HKEX in April 2021.
- TSCL is responsible for the delay in Mr E being able to trade his CNE holding. In the context of the second option, he could have been in the position to do so (with the re-registered shares) within two months of TSCL receiving the share certificates from

the shares' Hong Kong registrar (which was around the middle of September 2020); so he should have been in this position by around the middle of November 2020. The balance of evidence – and the behaviour of CNE's share price – also suggests that Mr E would then have sold his holding around February 2021.

- Fair compensation to Mr E would be to receive from TSCL payment for his holding at the price of 0.55 Hong Kong Dollars (HKD) per share (the share price for CNE between 8 and 10 February 2021 when he probably would have sold his holding, but for the delays caused by TSCL), and at the HKD/GBP exchange rate that applied at the same time; and in return for which he would need to either assign ownership of the holding to TSCL or give an undertaking to reconcile the award with TSCL in the future event that the suspension is lifted and he is able to sell his holding. With evidence of the sort of fees he would have incurred in selling the holding, such fees can also be deducted from the compensation. TSCL should also pay him £500 for the trouble and upset the matter has caused him.

Mr E accepted this outcome and shared evidence of the fees quoted to him in May 2021 from a prospective broker, in relation to selling his holding, and information about the HKD/GBP exchange rates on 8, 9 and 10 February.

TSCL said it agreed with the trouble and upset award but that the redress proposed by the investigator was redundant because it had learnt that CNE shares could now be traded on IISL's platform. In response, both the investigator and Mr E established that CNE shares remained suspended, so they could not be traded. This was conveyed to TSCL, with clarification from the investigator that Mr E is to be compensated for not being able to trade his holding *at all* due to its delays and that the case is not limited to him not being able to trade the holding on IISL's platform.

TSCL does not accept that it is, or should be held, responsible for the suspension of CNE's listing on HKEX. It says it accepts responsibility for the delay in Mr E being able to sell his holding, but it considers that has been addressed by the trouble and upset award it has accepted. It says the circumstances of the case were complex, difficult and, given the global pandemic, unprecedented; that CNE's AIM delisting and HKEX listing, both on 14 July 2020, was preceded by unusual trading by Mr E in the CNE stock (in which, between 3 and 10 July, he first bought a slightly larger holding, then sold it at a loss and then bought the present holding); that settlement of his 10 July purchase on 14 July coincided with the delisting/listing events on the same date; and that primarily it was incumbent on Mr E to have been aware of the impending delisting/listing events before buying the holding; so, for these reasons, it disagrees with the redress proposed by the investigator.

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.

Having done so, I have reached the same conclusions that were presented by the investigator, for broadly the same reasons he gave.

The issues presently in dispute appear to be limited to the matter of redress.

TSCL says Mr E is responsible for his purchase of the holding and that it was also his responsibility to have made himself aware of the impending AIM delisting of CNE shares prior to his purchase; but TSCL accepts responsibility for the delay in Mr E's ability to sell his

holding; and it accepts that Mr E should receive £500 for the trouble and upset he has faced. In its own words, TSCL told the investigator as follows –

“Your decision seems to centre around that you feel [Mr E] should have been able to sell his shares prior to the suspension and I feel that this has been fully discussed. The delay has been accepted by TSC and the appropriate redress of £500, made by your offer, is acceptable to TSC.”

The investigator agreed that Mr E was responsible for his purchase. However, he concluded that TSCL was responsible for the delay Mr E faced in selling his holding.

For the sake of completeness, I have considered the available evidence and I have reached the conclusions – on the balance of said evidence – that Mr E ought reasonably to have informed himself about news related to CNE (including news about the impending AIM delisting) which was accessible to him before his purchase; that the execution only service upon which his account was based did not guarantee him prior notice of such an event from TSCL; that his trading in CNE from 3 July 2020 means he was probably engaged in monitoring the stock on or around that date and up to 10 July 2020 (the date of his final purchase) so he should have been informed about news related to the stock (including the impending AIM delisting) before and by 10 July 2020; that, in terms of mitigating his position after the final purchase and after the AIM delisting/HKEX listing events, TSCL holds responsibility for drawing out the consideration of the IISL trading platform option for longer than it should have and responsibility for the uncertain, inconsistent and conflicting messages it gave Mr E (as has been evidenced) about this option; and that, also in terms of mitigation, TSCL caused delays to the [alternative] re-registration option, up to the point in April 2021 when CNE stock could no longer be traded (because it had been suspended from its HKEX listing).

TSCL’s present reference to the IISL trading platform option – which appears to have been abandoned by both parties last year – ignores the ongoing fact that the CNE shares remain suspended from their HKEX listing. It therefore makes no difference to Mr E that IISL’s platform can now facilitate trading in the stock, because the stock cannot be traded. Furthermore, it also makes no difference to him in terms achieving a resolution to the matter, because his claim is essentially about the opportunity he could have had, but lost, to avoid buying the holding and about the opportunity he could have had, but lost, to mitigate his position by selling the holding earlier than the suspension. I repeat, the former was his responsibility and not TSCL’s, but the latter was caused by TSCL.

As such, a fair resolution for Mr E’s case requires consideration of what is more likely (than not) to have happened in his pursuit to sell the holding, but for the delays caused by TSCL that led to the holding remaining unsold when the stock was suspended. As the investigator said, the re-registration option had yet to complete even at the time of that suspension. This appears to be the main issue in dispute. TSCL says compensation should end at the trouble and upset award because the substantive cause of the matter is Mr E’s responsibility for buying the holding (at the outset).

However, mitigation is a distinct matter, so even if – as both the investigator and I have found – Mr E is responsible for his purchase of the holding, evidence shows that he has since acted reasonably in trying to mitigate the problem. His efforts have been frustrated by what could be described as TSCL’s misguidance (and delay) in terms of the IISL trading platform option and, more importantly, by the delays it caused in his pursuit of achieving the re-registration (and sale) option. I consider the latter more important because there is evidence that as early as August 2020 there was mutual awareness, between TSCL and Mr E, that re-registration was required – and this appears to have been relevant to both options. The delays caused to the re-registration pursuit therefore appears to have been

pivotal.

In broad terms, TSCL had to obtain the share certificates from the Hong Kong registrar for the shares; it (and Mr E) then had to execute the relevant stock transfer forms; and then it had to return the completed forms/documentation to the registrar, in order for the re-registration process to thereafter complete.

TSCL's evidence is that it received the share certificates on 10 September 2020; despite numerous chasers (and a complaint) from Mr E to TSCL, it did not send the stock transfer form to him until 28 October; on 7 November TSCL confirmed to him that the stock transfer form that he had completed and returned was received and that it would be forwarded to the Hong Kong registrar; and available evidence shows that TSCL had still not forwarded the relevant documentation to the Hong Kong registrar in January 2021. This amounts to a delay of around four months, to one that was avoidable and to one that was caused by TSCL. I am satisfied that this, mainly, led to the re-registration (and sale) pursuit being incomplete by the time CNE shares were suspended from the HKEX in April 2021.

I am also satisfied, on balance, that the above analysis establishes TSCL's responsibility to compensate Mr E for his continuing inability to sell his holding and for the lost opportunity to have sold it earlier. I have given due consideration to how this should be fairly achieved and to the investigator's proposal, and I consider that his proposal is indeed a fair and reasonable basis for redress. It seeks to balance the uncertainty about how *precisely*, and but for the delays, Mr E would have behaved in trying to sell the holding, with evidence of how he *probably* would have behaved to sell the holding.

Having received the share certificates on 10 September 2020, it is reasonable to conclude that TSCL should have managed the re-registration process to a successful conclusion by late 2020; so Mr E would have had his re-registered shares by the end of 2020 at the latest.

Account statement evidence is that he bought the 300,000 CNE shares at the total cost of 23,601GBP, which equates to 0.07867GBP per share. The investigator made an important point, with which I agree and have applied, about avoiding any redress consideration influenced by the benefit of hindsight. I accept that Mr E would have sought to mitigate his position, but I do not consider it fair to search, with the benefit of hindsight, for *the most* favourable price level to sell prior to suspension of CNE's listing in April 2021.

However, with a balanced approach, due regard can reasonably be given to the probability that he would have sought 'a' favourable price to sell his holding in order to mitigate what the holding cost him. If he had access to and use of the re-registered shares by the end of 2020 he would have looked into the sale from around the beginning of 2021 onwards. Historical market data shows that CNE's share price had fallen between November and December 2020, and had fallen significantly below the level at which he bought his holding. In broad terms, and despite some volatility, the same price level at the end of 2020 was roughly maintained for most of January 2021. In the last few days of January 2021 the price level began to rise somewhat impressively.

The investigator's redress proposal was set in the period between 8 and 10 February and, on balance, I consider it a fair assessment. Prior to 8 February the price rise that had begun in late January had also experienced some volatility, but by 8 February the price level had benefited from an impressive rise and was broadly stable over 8, 9 and 10 February. On balance, it is reasonable to conclude that Mr E would more likely (than not) have sold his holding during this period. As the investigator said, the average price for CNE during this period was 0.55HKD, so this is the price to be used in calculating redress for Mr E.

The above is not an exact science and I do not consider it possible to predict precisely how

Mr E would have behaved with the holding had he been able to sell it from around the end of 2020. However, I consider the above to be fair, based on the balance of available evidence and on the state of the market related to the CNE stock.

Putting things right

To compensate Mr E fairly, TSCL must do as follows:

- Pay him £500 for the trouble and upset caused to him.
- Pay him the value of his holding of 300,000 CNE shares at the rate of 0.55HKD per share (for the reasons given above); this compensation amount should initially be calculated in HKD but it must be paid to him in GBP – the currency in which he bought the holding; so the average HKD/GBP exchange rate during 8 to 10 February 2021 – to match usage (above) of the average price for CNE during the same period – must be used to convert the total compensation amount from HKD to GBP; TSCL can, if it wishes, deduct from the total compensation amount fees Mr E would have incurred in selling his holding, and in this respect it should use the evidence of what those fees would have been that Mr E has shared with us (and should share with TSCL).

In return for the non-trouble and upset compensation above, Mr E must do as follows:

- Assign ownership of his CNE holding to TSCL, if TSCL is prepared to undertake such ownership.

Or

- Give a legally binding undertaking to TSCL, to be professionally drafted at TSCL's expense, in which he agrees to notify TSCL in the event that the CNE holding is sold in the future and in which he agrees to pass to TSCL the full net proceeds of such sale.

My final decision

For the reasons given above, I uphold Mr E's complaint. I order The Share Centre Limited to pay him compensation as set out above, and to provide him with a calculation of the compensation in a clear and simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 24 September 2021.

Roy Kuku
Ombudsman