

The complaint

Mr W complains that Jarvis Investment Management Limited bought back shares he'd sold at a loss without his permission.

What happened

Mr W has a trading account with Jarvis. In August 2020 he purchased 1,240 shares in Company A. In December 2020 there was a corporate action affecting the shares in Company A. This was a share consolidation – that is that every 100 shares would be consolidated into one share. Mr W wasn't told about this corporate action.

On 21 December Mr W still had 1,240 shares in his trading account. The price of the shares were significantly higher. Mr W sold his shares and expected to receive over £5,000. On 22 December, Jarvis said it realised an error had occurred and Mr W's trading account hadn't been updated. As he should've only had 12 shares, Jarvis bought back 1,228 shares. The share price had increased so Mr W was left owing Jarvis around £1,400 with no shares in Company A. Mr W complained about this.

Jarvis explained that the error was caused by CREST – the electronic share registrar. It said it had asked CREST to reimburse Mr W for his losses but it didn't do so. Jarvis said its terms set out that it isn't responsible for any losses caused by third parties. It has continued to charge Mr W interest on the money he owes it due to this action. Jarvis also felt that it was unreasonable for Mr W to believe his holding had increased so much overnight.

Our Investigator felt the complaint should be upheld. She explained that Jarvis shouldn't seek to exclude its liability if it isn't in the client's best interest. In this case she said she accepted there was an error caused by CREST, but that Mr W doesn't have a relationship with CREST. He is a customer of Jarvis and the trade he placed on was on Jarvis' platform – that displayed incorrect information. The Investigator felt that Jarvis is in a better position to seek any losses it incurs due to the error but by buying back shares at a loss, and charging Mr W the loss Jarvis is protecting itself rather than Mr W.

Our Investigator also explained that had Mr W queried his holding and the stock price he'd likely have received the same misinformation that was on the platform. He believed he held 1,240 shares, he hadn't been told anything differently. And if he'd looked at the share price it was accurate. Given Jarvis says it hadn't been made aware by CREST of the issue with consolidation, it's likely Jarvis would've confirmed Mr W's shareholding and the price. So she felt the transaction would've gone ahead even if Mr W had queried it.

The Investigator recommended Jarvis compensates Mr W for the loss. In this case she recommended that his shareholding be reinstated – as 12 shares - and cancel Mr W's debt. This would put him in the position he'd have been in had the error not occurred.

Both Mr W and Jarvis disagreed with the Investigator's findings and asked for an Ombudsman to reach a decision. Mr W would like the full value of the trade he placed – over £5,000. Jarvis said it carried out the instructions of Mr W and it was this instruction that caused him the loss, not Jarvis.

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 agree with the Investigator for similar reasons. I'm upholding this complaint and I'll explain why.

It's not disputed that there was an error. The share consolidation was effective from 21 December 2020 – when Mr W made the trade – but it didn't show in Mr W's account. Jarvis has explained, and provided evidence to show, that the delay in consolidating the shares on the platform was due to information from CREST.

I first want to explain to Mr W that he should never have had 1,204 shares when he sold them at the price he did on 21 December 2020. I appreciate he would like the full value of that trade but it's something that wouldn't be right. He should have only had 12 shares at that time. So, I'll now turn to whether I think Jarvis could've done more.

Jarvis is the nominee of Mr W's shares. That is, that it's the legal owner of the electronic shares. So, Mr W is entitled to rely on information he gets from Jarvis on this matter. Jarvis has said throughout that the error lies with CREST and that its terms limit its liability when the loss has been caused by a third party. But in this case, CREST is the share registry system. Mr W doesn't have a relationship with CREST and should be allowed to rely on information Jarvis gives him. Jarvis didn't tell Mr W about the corporate action – despite evidence suggesting it knew about it - so to Mr W, he was making a transaction he believed he was entitled to make.

Jarvis's platform displayed incorrect information – this isn't in dispute. I understand it relies on the information it receives from CREST but as nominee it had access to the relevant information to know the holding hadn't consolidated in the way it was supposed to. I appreciate that it took Mr W making the trade for Jarvis to realise this but I don't agree that Mr W should be responsible for the loss in this case. Jarvis has explained throughout that it bought back the shares in a timely manner when it realised, on 22 December 2020, that something had gone wrong. And I agree it did this, but I can't agree that Mr W should bear this loss. The trade was executed based on misinformation showing on Jarvis's platform. It needs to take responsibility, as nominee, for the information it gives to its customers.

Jarvis has argued that the loss was caused by Mr W's actions. To some extent this is true, it's the trade he made that caused the overall loss – but I don't think it was unreasonable for Mr W to make this trade. He did so on misinformation provided on Jarvis's platform and I think Jarvis excluding itself from any liability isn't in the best interests of its client in this case. Mr W has no recourse to CREST, and his trade was able to go through because of what was displayed on Jarvis's platform. Jarvis, as nominee, had the ability to know there had been an error and I can't see it did anything to stop the trade or reverse the trade. It simply bought back the oversold shares at a loss to Mr W. I can also see it's continued to apply interest to the debt Mr W owes it. I don't think it's fair or reasonable for Jarvis to be excluded from liability when it was its platform that displayed incorrect information and allowed Mr W's trade to be executed.

I have considered Jarvis's argument that the increase in share price should've alerted Mr W to question the trade. In this case I've thought about Mr W's circumstances and his trading account. I think it's likely that had Mr W questioned his share price in Company A, he'd have found the same information that the share price had increased. I also think if he'd called Jarvis about it, he'd have been told his shareholding was 1,204 and the price of the shares

was what he was seeing – this is because Jarvis maintains it wasn't aware of an issue with the consolidation until 22 December 2020, the day after Mr W placed his trade. So, I don't think this trade would've been avoided and I don't agree that Mr W was trying to exploit an obvious error – as I don't think this was obvious to Mr W.

If the error hadn't occurred, I don't think it's likely Mr W would've sold his shares. So, Jarvis needs to put Mr W in the position he'd have been in had this been the case. I understand that this may come at a cost to Jarvis. But I've explained why I think Jarvis should bear responsibility for Mr W's losses, despite the overall error being caused by a third party. Jarvis can then explore its own options to recoup its losses through the third party.

Putting things right

Jarvis Investment Management Limited must do the following:

- Cancel the debt on Mr W's account that is associated with this particular trade (including the interest Jarvis has applied to that debt).
- Purchase 12 shares in Company A for Mr W at no cost to him.

My final decision

For the reasons I've explained, I uphold this complaint. Jarvis Investment Management Limited must follow the instructions I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 25 August 2022.

Charlotte Wilson
Ombudsman