

The complaint

Mrs A complains that Jarvis Investment Management Limited trading as x-o.co.uk (Jarvis) caused her financial loss after it hadn't told her about a corporate action.

What happened

Mrs A held shares in Company A on Jarvis's platform. In December 2020, there was a corporate action affecting shares in Company A. The corporate action was for a share consolidation – that is that each 100 shares held would be consolidated into one share. Mrs A wasn't told about this corporate action.

On 21 December 2020 Mrs A checked her holding and saw the value of her shares in Company A had increased substantially. She decided to sell some shares and put her order in. She sold 10,460 shares for around £47,000. The following day, Jarvis bought back 9,383 shares for around £49,500 from Mrs A's account. Mrs A complained as she hadn't given Jarvis permission to do this and she had incurred a loss of around £2,500 as well as not having a shareholding in Company A anymore.

Jarvis explained that it hadn't received notification of the corporate action from CREST – the electronic share depository – and as CREST hadn't processed the consolidation in time, Mrs A's account looked like she held 100 times the shares she actually did. It explained that the price had been updated, but the shareholding hadn't. Therefore, she didn't have that number of shares to sell – which is why Jarvis had to buy back those shares.

Jarvis showed evidence it had asked CREST to compensate Mrs A for her losses, but it had refused to do so. Jarvis said its terms limit its liability to losses caused by events outside of its control – this was one of those events so it didn't accept responsibility.

I sent my second provisional decision on this complaint on 28 July 2022. In this I explained that I felt both parties should take some responsibility for the loss Mrs A incurred and so the loss should be split. For clarity, my reasoning for this decision is copied below and forms part of this decision.

"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 still intend to uphold this complaint but I've thought about the redress, and what would be fair and reasonable having considered Jarvis's detailed comments. So, whilst this may be disappointing for Mrs A, I don't intend to hold Jarvis responsible for the full loss she's experienced. I'll explain why.

I maintain that Jarvis hasn't done enough here. Jarvis is the nominee of Mrs A's shares. That is, it's the legal owner of the electronic shares. So, Mrs A should be entitled to rely on information she gets from Jarvis. Jarvis has said throughout 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 register, Mrs A doesn't have any relationship with CREST and should be allowed to rely on information Jarvis gives her. Jarvis didn't tell Mrs A about the corporate action – despite knowing about it. I've taken on board Jarvis's point that it's not

required to make customers aware of non-elective corporate action. This may be so, but the internal emails between Jarvis and CREST show Jarvis was aware of the action. And whilst it wasn't aware of the error until a day after Mrs A made her trade, I don't think it's fair to say that it should take no responsibility.

Jarvis's platform displayed incorrect information – this isn't in dispute. I appreciate that it took Mrs A making the trade for Jarvis to realise this but I don't agree that she should be responsible for her full 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 as the trade was executed based on misinformation showing on Jarvis's platform, it needs to take some responsibility, as nominee, for the information it gives to its customers.

I now turn to whether it was reasonable for Mrs A to make the trade that she did – and this is where this provisional decision differs from my first. I've thought about whether Mrs A ought to have known something wasn't quite right. She has mentioned that due to other market volatility, the rise in share price wasn't outside of the realms of possibility. And I agree that there were some sharp movements in the market in relation to some particular shares. But I've looked at Mrs A's trading history that Jarvis has provided and the arguments she's made to determine her experience. And I don't think she's inexperienced in these matters. It's clear Mrs A buys and sells shares using her platform regularly.

Mrs A purchased shares in Company A over a six month period. The most recent purchase was on 3 December 2020 when she paid around 3.372 per share. She then sold 10,460 shares on 21 December at 450.9967 per share. This increase is over 13,000%. The surge Mrs A referenced in her complaint to say the increase wasn't outside the realms of possibility was 700% and related to a specific stock that had been part of an online movement. So, given Mrs A's trading history and experience, I think she ought to have been aware that the increase may have not been right.

Mrs A explained that following the trade she became suspicious that something wasn't right after checking the same shareholding her family members had on different platforms. And I don't doubt that she may have thought the share price had actually increased, but I think she ought to have been aware something wasn't right prior to placing the trade.

It is for this reason that I don't think it's fair or reasonable for only one party to bear the losses here. I think that had Jarvis's platform been accurate or if it had notified Mrs A of the corporate action (of which it knew) then I don't think the trade would've happened. Equally, I think had Mrs A questioned her position and share prices she'd have found that there was an error and the trade wouldn't have happened. So, I've thought about what would be fair and reasonable in this particular case when outlining the redress I intend on awarding.

I've thought about the position Mrs A would be in at this point in time. It's clear from her trading history that she reacts to movements in the market so I think it's likely, had the share consolidation been apparent on the platform, that she'd have sold her shares in Company A around this time. I can't see that Mrs A repurchased these shares afterwards. Jarvis, in not repurchasing the full number of shares Mrs A held after consolidation, hasn't cost Mrs A any more. So, the loss here is limited to the repurchase of the oversold shares.

I understand it's disappointing for Mrs A to now be in this position, but because I think both she and Jarvis can be held responsible for the erroneous sale of 10,460 shares, the fair and reasonable position here is to split the loss incurred for the repurchase of the oversold shares. We know that the repurchase of the oversold shares was at a loss of £2,325.09 – so Jarvis now needs to pay Mrs A half of this loss."

Responses to the provisional decision

Neither Jarvis nor Mrs A agreed with my provisional decision. In summary Jarvis said there was no way it could've avoided the issue with the incorrect information on its platform. It also said that the provisional decision was contradictory to published guidance on the Financial Ombudsman Service's website which talks about compensation. Specifically where it says *"We don't compensate for the impact of events that were outside of the business's control, or for the effects of a third-party's action."*

Mrs A explained why she disagreed and said, in summary, the following in response to the provisional decision:

- Any movements are a result of information, and if the information lacks then she wasn't able to make a sound decision about market movements.
- Jarvis should've suspended trading as it knew about the corporate action, as she's aware another platform had done this.
- She lost the shares as well as money on that day and that hasn't been taken account of.
- Jarvis could've contacted her to ask for consent prior to repurchasing the shares.
- She's not the "savvy investor" that Jarvis has made her out to be, and she's asked to be awarded the full loss plus interest that the first provisional decision awarded.
- Jarvis tend to always alert investors to corporate actions, but on this case it didn't to her detriment.

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've considered all points made by both parties. I've not directly referenced each one but I'll summarise why the points haven't changed my decision. As such, I've reached the same outcome as my provisional decision dated 28 July 2022 – the relevant extract of which is copied above and forms part of this decision.

Jarvis has said that it had no control over the issues. I explained in my provisional decision that I believed it could've done more to prevent the impact of the issue, or to inform its customers so they would've been aware of an issue. I don't agree there was no way for it to avoid people trading incorrectly. It may not have been able to prevent incorrect information being displayed on its platform, but that doesn't mean it shouldn't be responsible for issues caused by this. It has more recourse than its customers when it comes to information it gets from CREST.

It has quoted information from the Financial Ombudsman Service's website. This information relates to compensation awarded for trouble and upset. And in any event is about compensating people for issues that businesses haven't caused – usually relating to external factors. Whilst I can see why Jarvis is mentioning that here, I've concluded that it has overall responsibility over its platform information and there are things it could've done to avoid the situation – especially since it was aware of what was happening with that corporate action prior to the issue occurring.

I'll turn to Mrs A's points. I understand that she ought to be able to rely on the information on Jarvis's website and this is why I came to the conclusion that I did – that it wasn't fair or reasonable for only one party to be responsible for the losses. I understand Mrs A feels her

investment experience has been misrepresented by Jarvis, but I reached my conclusion about whether she ought to be aware something wasn't right by looking at her trading history to determine her level of experience, rather than what Jarvis had told me. And after considering her points I've reached the same conclusion that I believe she ought to have thought something wasn't right given the rapid increase of over 13,000% in her share price.

I did acknowledge that Mrs A ended up losing shares, as well as money from the repurchase. But looking at her history I thought that as she reacts to movements in market it was likely she would no longer have the shares in any event – as she'd likely have sold them. And as she had oversold her shares, Jarvis needed to repurchase to reconcile the correct position on the register – I don't think it needed to ask her consent to do this – she had oversold shares, that is she sold shares she didn't have. Had Jarvis repurchased all shares, the loss would be even higher, and I don't think it's likely she'd have held on to those shares – I've not seen evidence to show she's repurchased them later down the line.

I appreciate Mrs A lost out because of the repurchase, but I concluded it was fair and reasonable for both parties to take some responsibility for this. I think that had Jarvis's platform been accurate or if it had notified Mrs A of the corporate action (of which it knew) then I don't think the trade would've happened. Equally, I think had Mrs A questioned her position and share prices she'd have found that there was an error and the trade wouldn't have happened. As such, the fair and reasonable position in this case is for the loss to be split between both parties.

Putting things right

The original loss (£2,325.09) that was applied to Mrs A's account when Jarvis repurchased 9,393 shares on 22 December 2020 should be halved. I direct Jarvis to pay Mrs A that half into her account. As I think that this loss is partially due to Mrs A's own actions, I don't consider it fair or reasonable for Jarvis to pay interest on this sum, despite Mrs A regularly trading with a credit balance.

My final decision

For the reasons I've explained I uphold this complaint and direct Jarvis Investment Management Limited trading as x-o.co.uk to follow the instructions set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 21 September 2022.

Charlotte Wilson
Ombudsman