

## The complaint

Dr R, on behalf of the R Trust, complains about the lack of information about corporate actions received from Evelyn Partners Investment Management Services Limited regarding the Trust's investments.

## What happened

In 2020 the R Trust opened a general investment account with Bestinvest, a trading name of Evelyn Partners. In 2021 Dr R raised concerns about not receiving information about certain corporate actions and voting rights for the holdings in the Trust's account. She mentioned three specific holdings and the related corporate actions:

- The merger of the Schroder UK Equity fund into the Schroder UK Alpha Plus fund
- Glaxo Smith Kline undertaking a share split and demerging from Haleon
- Scottish Investment Trust merger with JP Morgan Global Growth and Income

Dr R is primarily unhappy with this because it means the trustees weren't aware of their right to vote at the Annual General Meetings (AGM) held by the companies in which they've invested, nor were they in an informed position to decide whether to sell their holdings prior to the activities taking place. In particular, she's said this is contrary to SRD I and II, and MIFID II. In reply, Evelyn Partners explained that they weren't required by regulation to inform the trustees of these mandatory corporate actions, or proactively provide them with the AGM proxy voting forms. As she remained unhappy with the reply, Dr R, along with the other trustees of the R Trust, brought the complaint to our service.

An investigator at our service looked into the complaint and found that the custodian, a separate company appointed by Bestinvest, was responsible for informing investors of the corporate actions. In reply, Evelyn Partners explained that this wasn't correct – the custodian will notify them of the action, and neither them nor the custodian have a regulatory duty to notify investors, unless there's a choice to be made by the investor. Dr R also disagreed with the outcome as she strongly feels Bestinvest should do more to make her aware of the issues affecting the Trust's holdings.

As no agreement was reached, the complaint was passed to me for a decision. I issued a provisional decision on the case, and set out my findings as follows:

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

*In general, I consider that when deciding to hold their investment via a platform that a customer would reasonably expect to receive the same information that they'd receive if they held their investments directly. Holding investments via a platform and nominee, as the Trust does here, is generally done for convenience – all investments are in the same place. If a firm decides that they will provide a different service, by not passing on all information received from the fund managers or registrars, that is at the firm's discretion. However, I'd expect them to set out clearly what service their customer can expect from them. This is usually done via the terms and conditions. I can see that the terms, at point 14.4, say:*

*“If there is a corporate action affecting the investments held in your Bestinvest Online Investment Service Account, we will make reasonable effort to contact you, usually by email, to inform you that you should log into your Bestinvest Online Investment Service Account to obtain the information issued by the relevant registrar or exchange”*

*The terms governing the custodian say, at point 3.1:*

*“The Custodian will provide the following services... informing the Customer or the Investment Service Provider of corporate actions and other events affecting Client Assets.”*

*In practice, the custodian, as the entity named on the investment register, will be given the information by the registrar and pass this to Bestinvest. It would then be Bestinvest's responsibility under section 14.4 referred to above, to pass this to investors. Bestinvest has explained that they only inform investors of corporate actions that require them to make a choice.*

*However, I'm satisfied that isn't what their terms say they will do – they state that Bestinvest will inform customers of any actions affecting the investment. The mandatory corporate actions that Dr R has pointed out have involved a change in some way to the investments the Trust holds. So, I'm satisfied that under the terms, they were actions that Bestinvest ought to have notified the trustees of.*

*Again, if Bestinvest were to choose not to send notification of all actions that affect the investments that would be up to them – provided they communicate this in a clear way. They haven't done this here, because the terms don't differentiate between types of corporate action. This means customers are led to expect a certain level of information which in practice isn't provided. I'm satisfied that Bestinvest has agreed to do something, that hasn't then been done and so I'm upholding this complaint.*

*I've carefully considered the position the Trust would likely be in now, if Bestinvest had been providing the information in line with their own terms. Dr R has said that if the trustees had been made aware of the various mergers prior to them taking place, they would have considered selling the investments. Based on the evidence I have so far, I'm not convinced I have enough to say it's more likely than not that any would have been sold – or when they would have been sold and so what price the Trust would have received. I don't believe any were sold subsequent to the trustees discovering what had happened – which leads me to believe that the trustees were happy to remain invested following the various mandatory corporate actions in question.*

*Nor am I convinced that the trust's vote in an either the annual or extraordinary general meetings would have made a material difference to the outcome of any voting that took place, bearing in mind the size of their holdings.*

*So, I'm satisfied there's been no financial loss to the Trust due to the lack of notification. I do however think the trustees have been caused distress and inconvenience by finding information out after the fact and not being kept informed. It's clear that the trustees take their duties seriously and like to ensure they are running the trust properly – and the lack of information has impaired their ability to do that.*

*Taking into account the number of times Bestinvest hasn't provided the information, and the fact this has happened over a number of years, I think an award of £300 would be fair and reasonable in the circumstances.”*

**Replies to my provisional decision**

Evelyn Partners replied and said they accepted the provisional decision. Dr R replied and said she and the other trustees agreed with the decision for the most part, but, in summary, wanted my comments on the following:

- What will happen in future – will the process that Bestinvest has in place regarding mandatory corporate actions change or remain the same?
- They've identified a potential issue with the way dividends and rights issues are reported in the capital gains reports provided by Bestinvest, which has meant they've had to submit the tax return for 2022-23 based on potentially flawed information.

### **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.

Regarding any future mandatory corporate actions, in issuing this decision, unfortunately I can't provide a guarantee that there will be no problems going forward. If something else does go wrong, the trustees would be entitled to complain about it.

With regards to Dr R's points about the capital gains reports, these are new complaint points that don't directly relate to the notification of mandatory corporate actions and so I will not be commenting on them in this decision.

Overall, the points Dr R raised didn't relate to my findings on what Bestinvest ought to have done regarding the three corporate actions that were the subject of the complaint that I reviewed. As such I see no reason to depart from those findings as set out above, and I make them final. I'm satisfied that a payment of £300 would be fair and reasonable for the inconvenience that has been caused to the trustees here.

### **My final decision**

My decision is that I uphold this complaint and Evelyn Partners Investment Management Services Limited should pay £300 to the trustees of the R Trust. Under the rules of the Financial Ombudsman Service, I'm required to ask Dr R and the other trustees to accept or reject my decision before 22 December 2023.

Katie Haywood  
**Ombudsman**