

The complaint

Mr C complains that AJ Bell Securities Limited ('AJB') failed to sell his shares and hasn't paid him dividends due for holding them.

What happened

Mr C holds CREST depositary interests ('CDIs') for 107 shares in a company I'll refer to as 'B'. Around mid-October 2022, CREST notified AJB that as B no longer met its entry requirements, it wouldn't be offering or dealing CDIs relating to B.

On 26 January 2023, AJB sent Mr C a secure message on its platform explaining he would no longer be able to hold his investment in B, and that if he didn't sell his holdings by 27 January 2023 then it would sell them for him. The reason given was CREST – the depositary AJB held Mr C's shares through – no longer wanted to hold or facilitate trades involving companies with links to the cannabis industry, which included B. However as AJB wasn't able to find a market for Mr C's holdings, it wasn't able to sell them and he continued to hold them.

Separately Mr C contacted AJB on 28 April 2023 as he hadn't received dividend payments he had been expecting from his holdings in B. Following communication with CREST on this matter, AJB explained to Mr C that he wasn't due a dividend payment from those holdings due to the corporate action around B no longer meeting CREST's admission requirements.

Unhappy with the explanation given, Mr C complained to AJB. He also asked for his shares to be sold, however AJB said in the circumstances it wasn't able to and was waiting for the underlying share certificates to be issued.

AJB considered the complaint but didn't agree it should be upheld. It said:

- AJB hasn't received the dividends from CREST and so had no payment to pass to Mr C.
- The shares were disabled at and by CREST and as it is outside AJB's control, it has no influence over it not paying dividends or its decision to disable trading.
- AJB had been in regular communication with CREST to attempt to receive the dividends.
- Its terms and conditions informed Mr C from the outset that AJB wouldn't be responsible for these issues.

As Mr C didn't agree, he asked our service to look into what happened further. One of our Investigators considered the complaint and issued a number of opinions on the matter. In summary she didn't think the complaint should be upheld because:

- While AJB should've been aware of the impending restrictions on B's shares around mid-October 2022, there was no market at that time for them. Because of that, it was unlikely AJB would've been able to complete a trade had it tried then.
- While the shares were being traded, she wasn't persuaded that meant Mr C could

materialise his shares and sell them in time.

- CREST had placed restrictions on the dividends which was outside AJB's control.
- There was no evidence AJB withheld dividends from Mr C.
- AJB fairly communicated the issues affecting B to Mr C.
- Reasonable attempts were made by AJB to communicate and resolve the issues with CREST.

Mr C rejected our Investigator's opinion and provided further explanation as to why he felt he was unfairly treated by AJB. In summary he said:

- AJB didn't give him notice he needed to sell his shares until the day before.
- His shares weren't sold when the corporate action said they would be.
- He wasn't given the 20 business days' notice AJB's terms say it will give when an asset has been removed from AJB's permitted list of investments.
- He hadn't received dividends prior to the corporate action, not just since.
- A final decision from our service on another matter said AJB were able to sell similarly affected stock.
- He wasn't offered the opportunity to certify the shares in his own name.
- Other brokers told him they could trade B's shares, so AJB should've been able to.

As no agreement was reached, the complaint was passed to me to decide.

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.

Firstly, I acknowledge during the complaint AJB's opinion was we couldn't consider the part of Mr C's complaint about AJB not selling his shares. But I don't agree. As our Investigator said, when we notified AJB of Mr C referring his complaint to our service we provided it with a copy of his submissions. Those included Mr C's dissatisfaction that AJB hadn't sold his shares. As that was sent to AJB and eight weeks had passed since then, I can consider that part of his complaint regardless of whether AJB has issued a final response on that point.

For the sake of clarity Mr C doesn't hold direct shares in B, he instead holds CDIs. A CDI differs from a share as it is a security which represents a share listed on an overseas stock exchange, rather than directly holding the share itself. CDIs exist to facilitate the holding and trading of electronic shares in overseas companies through CREST, which otherwise would be more difficult. This means when Mr C is dealing his holdings in B, he is trading the CDI rather than the actual shares themselves which impacts how he can dispose of his holding, which is relevant to his complaint.

Corporate Action

The corporate action notification AJB sent Mr C on 26 January 2023 said that Mr C wouldn't be able to retain his holdings in B due to it no longer meeting CREST's admission requirements. This notice told Mr C he needed to sell his holdings by 27 January 2023, the next day. If he didn't, it would.

I've considered what AJB's terms and conditions set out should happen in these circumstances.

The most relevant of these are:

“18.3 – We may alter the range of Permitted Investments at any time without notice and may require you to sell... any investments removed from it. We will only require you to do this if we can no longer allow the investment to be held for any reason... If this is the case, we will notify you and give you 20 Business Days to sell (or Transfer Out, where applicable) the investment, after which we will sell the investment on your behalf.”

And:

“23.5 – We will use reasonable endeavours to notify you of a Corporate Action and request your instructions. If you do not give us instructions within the required timeframe, the default option of the company will apply as advised by us...”

AJB says it was aware that CREST publicly announced that it would no longer support CDIs for shares with links to the cannabis industry around mid-October 2022. However, it didn't communicate this with Mr C, or the impact this would have on his holdings in B, until several months later on 26 January 2023. The day before CREST's deadline for investors to sell.

Given AJB had given Mr C one day notice about the issue, which it was aware of for several months, I agree with Mr C that he was given less notice than AJB's terms say should be given. AJB has explained it didn't give Mr C more notice because he was the only holder and it only identified CREST's actions affected him when it was reviewing affected holdings on its platform. While I understand how that could happen, I'm not persuaded it would be fair for AJB to cast aside its obligations under its terms to give 20 business days' notice to Mr C in these circumstances. I say this because it would've known it needed to remove B from its permitted list since mid-October 2022 and CREST's deadline of late January 2023 was sufficient for AJB to give the notice its terms say it will.

As AJB hasn't fairly applied its terms here, I've considered then what most likely would've happened if Mr C received the corporate action around mid to late October, as ought to have happened. The key considerations are whether Mr C would've likely been able to sell his holding or have been able to materialise them into the underlying shares to sell himself or through another broker prior to 27 January 2023.

On obtaining the underlying share certificates, I'm not persuaded this likely would've been an option for Mr C. While in normal circumstances he could request the underlying share certificates and either sell himself or through another broker, which he's provided evidence he would've likely been able to do, I'm not persuaded he would've been able to receive the certificates.

I say this because whether a holding could be materialised or not lay with CREST, not AJB. The evidence I've seen shows CREST wouldn't provide the underlying share certificates on request. Given CREST wasn't, and still isn't, willing to materialise the shares I'm satisfied had Mr C asked for the underlying shares, or AJB offered him such an option, that would've likely been refused – which AJB would have no control or influence over. It's unlikely then Mr C would've been able to receive the share certificates at any point to date.

It follows then I can't fairly say AJB is required to compensate Mr C for it not being able to provide him with the share certificates.

Turning now to whether AJB ought to have sold Mr C's holdings – either because the corporate action notification said it would, or because Mr C instructed AJB to – I'm not persuaded not being able to sell Mr C's holdings means AJB treated him unfairly.

As I mentioned above, Mr C held CDIs instead of the underlying share. This is an important distinction as there was, and remains to be, a tradable market for the actual shares themselves on the overseas exchange they are listed on, but not for the CDIs.

The evidence available shows AJB carried out reasonable attempts to find a buyer for the affected CDIs held on its platform, which included B, in October 2022. This included contacting its market makers to discuss selling the affected holdings to, where their large market exposure might help to find buyers. Unfortunately, the firm AJB was discussing this decided not to accept the holdings in B. On balance I'm persuaded this evidenced there was no, or a very limited, market to sell Mr C's holdings and I've not seen any other evidence to suggest otherwise. It follows then I can't fairly say it's likely AJB would've been able to sell these holdings had Mr C received the corporate action when he should've, or prior to the January 2023 deadline.

I appreciate the corporate action told Mr C his holdings would be sold – and used definitive language around this. But as I've said above it's unlikely AJB would've been able to sell them and has carried out reasonable attempts to do so. Additionally, AJB doesn't provide any assurance it will complete a sale in its terms and wouldn't be obligated to under any other rule outside of the reasonable attempts I'm satisfied it took.

It follows then AJB wouldn't be treating Mr C unfairly by not selling his holdings or providing the underlying shares given the above.

Dividends

Mr C says he is due dividends from his holdings in B which haven't been paid to him. The terms and conditions between Mr C and AJB say the following around payment of dividends at 23.1:

“Dividends or other investment income will be credited to your Account on the day we receive them, wherever possible, but no later than 10 Business Days after receipt. We will make the payment based on information then available but may need to adjust it afterwards.”

This term is significant as in my opinion it only requires AJB to pay dividends that it receives on Mr C's behalf, not in advance or in absence of. B's website sets out that it has paid a dividend to its shareholders quarterly since December 2021, which is the period Mr C says his dividends haven't been passed onto him.

However, while B paid dividends throughout that period, I'm satisfied from the communications between AJB and CREST, that AJB hasn't received the dividend payments as the communications between them evidence CREST still hold them. As AJB hasn't received them, in line with its terms, it's under no obligation to pay the dividends it hasn't received from CREST. Whatever the reason CREST may have for withholding them, as those decisions are outside AJB's control I can't fairly hold AJB responsible for the outcome of those decisions.

It's unfortunate AJB's attempts to resolve this matter with CREST and find alternatives hasn't successfully led to Mr C receiving his dividends. But for the reasons given, I can't fairly ask it to pay Mr C the dividends he says is due to him where AJB hasn't received them and isn't responsible for them not being received.

My final decision

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 February 2025.

Ken Roberts
Ombudsman