DRN-5124407

The complaint

Mr B complains that Evelyn Partners Investment Management Services Limited (trading as "*Bestinvest*") has failed to provide appropriate information about his shareholdings, notably in relation to corporate actions.

What happened

Mr B has a number of holdings within a portfolio on Bestinvest's platform – these are wrapped into a Best ISA.

In June 2023, Mr B contacted Bestinvest. He said that he had logged into his account and discovered that Bestinvest had failed to inform him about the delisting of two businesses from the London Stock Exchange ('*LSE*') for which he held shares – I'll call these P and M. He had since found out – too late – about the delisting and both holdings were left with nil value.

A series of emails were exchanged, which were later treated by Bestinvest as a complaint.

On 20 September 2023, Bestinvest rejected the complaint. It said that one condition of the service it provided was that it does not notify clients about upcoming mandatory corporate actions, including the delisting of P and M from the LSE. It also explained that the responsibility rested with the account holder to make investment choices or carry out any relevant research, including relating to upcoming corporate actions. Bestinvest had no influence over the actions of P or M in relation to the delisting of the shares.

Bestinvest explained that M had since been renamed – I'll call this business S. S was undergoing a re-domiciliation and was going to be relisted on the Australia Stock Exchange ('*ASX*') in due course. Within his ISA, Mr B could hold Chess Depository Interests (instruments traded on the ASX allowing overseas companies to list shares and use the exchange's settlement systems) for S, with each CDI representing one share. Once the conversion was complete, the value of the holding would be restored to his ISA and thereafter CDIs could be traded as required.

Bestinvest suggested that Mr B should monitor his holdings for the point at which S holdings were reinstated within his portfolio. In respect of P, Bestinvest said he still held the shares within his ISA, but they had no value.

Mr B did not accept the explanation given by Bestinvest. He queried its actions in relation to the shareholding for S, as he felt it should have updated him relating to information sent to the nominee regarding a security reference number for the trading of the CDIs. He also felt that ISA regulations hadn't been properly followed.

Bestinvest said it hadn't breached any regulations – and it had been acting within the terms applying to Mr B's online investment service. In relation to the S shareholding, it said that the nominee was an agent of its custodian, and it should have received updates. However, the custodian had now confirmed that the holding will have a value once the conversion from M to S was complete and Mr B could review this himself, by monitoring his account.

Mr B remained dissatisfied with the explanation given by Bestinvest and therefore referred his complaint to this service.

An investigator reviewed the complaint and concluded that he didn't think Bestinvest needed to do anything further. He firstly explained Bestinvest's role as an execution only service for Mr B. He thereafter looked at Mr B's account documentation, and he felt Bestinvest had acted in line with the terms and conditions; it was obligated to contact Mr B if he had to take some kind of action – but the information related to announcements.

Furthermore, actions were taken by P and M, not Mr B. He otherwise felt that if Bestinvest had taken any steps with the shares, it would be unreasonably drifting into providing an advisory service – and that was not the arrangement held between Mr B and Bestinvest.

Mr B disagreed. He made a number of further points, noting:

- There is a specific paragraph in the terms and conditions for his account which sets out that the customer must be informed of corporate actions affecting their assets.
- Instead, he had to chase Bestinvest to find out what had happened to the M shares, and he was only finally informed on 19 January 2024 – some eight months after they were delisted.
- Similarly, it made no attempt to contact him in relation to P's delisting in December 2022.
- Bestinvest used the phrasing corporate action in its communications to him after he chased it for assistance.
- For the avoidance of doubt, he considers a delisting to be a corporate action – as it is a material change affecting the shareholders in a business.
- Bestinvest hasn't acted in his interest at all; it only responded to him after he had to complain.
- He believes that the Financial Conduct Authority clearly requires execution only businesses to pass on relevant information, where action might be required by a customer.
- In each case, the notices were not merely announcements – shareholder votes were required.
- He believes the terms and conditions have been breached, as well as general ISA regulations.
- He also holds shares in a separate general investment account with a different business on an execution only platform. That business – despite being neither the custodian nor nominee - passes on all information relevant to his shareholdings, including shareholder votes on delisting.

Our investigator was not minded to change his view on the complaint. Mr B therefore asked that the complaint be referred for review by an ombudsman.

I then issued a provisional decision to the parties on 28 October 2024. In that provisional decision, I gave the following findings, set out below in italics.

In reaching my decision, I will take into account relevant law and regulations, regulator's rules, guidance, standards and codes of practice, along with what I consider to have been good industry practice at the relevant time. And where the evidence is incomplete, inconclusive or contradictory, I'll make conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence before me and the wider surrounding circumstances. Overall, as noted above, it is my role to decide what I believe is fair and reasonable in all of the circumstances.

Having looked at everything provided by the parties, I intend to reach a different outcome on the complaint, since I believe it ought to succeed. I'll summarise my reasons for reaching that view below.

I recognise that Bestinvest has a custodian which appoints its own (subsidiary) nominee – and that neither role is performed by Bestinvest. That being said, my view is that – from an objective standpoint - when deciding to hold their investment via an online platform such as Bestinvest, a customer could reasonably expect that they would be appraised with the same information regarding actions relating to their holdings that they'd otherwise receive if they held the investments directly. And in this case, this is what the terms and conditions applying to Mr B's online investment account say.

In the terms for the online investment service, Bestinvest (as the Investment Service Provider) also includes terms and conditions for Custody Services, performed by a different business. Those subset terms say, at section 3:

> *"**3 Responsibilities of the Custodian***
>
> *3.1 The Custodian will provide the following services (the "Services"):*
> - *informing the Customer or the Investment Service Provider of corporate actions and other events affecting Client Assets."*

Mr B was not informed about any of the LSE announcements for prospective delisting for either P or M by the custodian. Bestinvest suggested to Mr B after he pursued his complaint that it hadn't received any updates either – though I note there has been internal email exchange about both holdings thereafter.

I am satisfied that the events relating to both P and M amount to corporate actions. In the case of P, in May 2023 it announced its intention to redomicile in Central Asia, with its decision stemming from sanctions related to the Russia-Ukraine conflict. Thereafter, P confirmed in June 2023 that it would delist from the LSE. In the case of M, shares were being delisted from the Alternative Investment Market ('AIM') linked to the LSE, with notices being issued three times before completion in December 2022.

On general grounds, I expect that the business acting as custodian will ensure that a customer with a shareholding on an investment platform will be kept informed about anything that could affect their interests as a shareholder, such as corporate actions; this may include - but not be limited to - takeovers, consolidation, rights issues, selling or transferring the business and stock splits. I do not accept that Bestinvest wouldn't reasonably have been made aware of the intended delisting of either business. And I believe that its terms compel it to pass notifications over to Mr B of the same.

I say that because within the main terms and conditions applying to Bestinvest, it says at section 14:

> *"**14 Reporting to you***
>
> *14.4 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** [my emphasis], 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 or to inform you that we are posting this information to you."*

The terms also say at section 6:

> *"**6 Communications between us (including our paperless service)***
>
> *6.6.1 The information you may receive via our website includes (but is not limited to): valuation statements; contract notes; Account Opening Documents; terms and conditions; "Key facts about our services and costs"; Key Features Documents; notification of corporate action events; and tax certificates."*

I am not persuaded that the clauses at sections 14 and 6 of Bestinvest's terms and conditions should be disregarded. And I am satisfied that an objective interpretation of those terms should have required Bestinvest to inform Mr B of the impending delisting of the shares in both businesses, as corporate actions involving a (potential) change to the shareholding. It might also have considered updating its website, as this is the type of information it commits to publishing.

If Bestinvest took an approach not to send notification of all types of actions that affected the investments within a customer's online investment service account that would likely be a matter of its choosing – providing it gave clear and not misleading information about that. It appears Bestinvest has tried to make this argument to Mr B when it said that it didn't believe the notices from either business regarding delisting intentions required any steps by Mr B - though he rightly disagrees.

Nonetheless, that's not what the terms and conditions say; in fact, the terms don't differentiate between types of corporate action at all. It follows that Bestinvest's terms lead its customers to expect a certain level of information will be passed on directly, as well as possibly more generally to all customers online. That there may have been a failing between the custodian and Bestinvest in communicating about both corporate actions isn't the fault of Mr B. I'm satisfied that Bestinvest's inaction was unfair and unreasonable in the circumstances, and so I intend to uphold this complaint.

In looking at how to put matters right following Bestinvest's inactions from both December 2022 and May 2023, I've considered the likely position Mr B would have been in – but for those failures. Based on what I have seen so far, I don't believe Mr B has suffered a direct financial loss.

Both businesses undertook re-domiciliation exercises for different reasons. In the case of M (now S), I have seen valuation statements for his holdings now set up as CDIs on the ASX. I haven't seen any suggestion that Mr B would have acted materially differently with the holding following the conversion, nor any suggestion that he's lost out consequentially.

The situation for P is different in that though the shares remain held in Mr B's portfolio – they currently have no value. Furthermore, he wouldn't have been able to trade these shares based on their redomiciled location, as ISA wrapped shares would need to be listed on a HMRC recognised stock exchange.

I haven't seen any objective evidence that even if Bestinvest had passed over information relating to the notices in December 2022, that Mr B could've taken any other alternative action such that he would be in a different position now. Nor am I persuaded that any vote Mr B may have had in the extraordinary general meeting of 12 December 2022 would have made a material difference to the outcome, bearing in mind the size of his holding.

As well as putting right any financial losses in a complaint (though there are none in this circumstance), we also consider the emotional or practical impact of any errors upon a complainant. In doing so, we do not fine or punish businesses; that regulatory role falls to the

Financial Conduct Authority ('FCA'). Though I'm satisfied there's been no financial loss to Mr B due to the lack of notification, I do believe he has been caused distress and inconvenience by finding information out after the fact and not being kept informed about corporate actions and material changes which relate to stockholdings within his ISA.

Considering the impact of Bestinvest's inactions covering a duration of many months, I believe a payment of £300 is fair and reasonable in circumstances. If helpful, Mr B may wish to review to the guidance available on our website around the amounts and types of awards made in instances of upset, trouble, inconvenience and distress caused by businesses in the complaints we see at this service.

Bestinvest accepted my provisional findings.

Mr B said he was pleased the complaint was upheld. And he said that he would – conditionally – be inclined to accept the outcome if Bestinvest did too. However, he did wish to note that he would have sold the P shares right away, had he been properly informed. This was since there had been significant market activity following P's announcement, and he may have been able to achieve some value for the P shares.

Finally, Mr B asked if this service would be reporting Bestinvest to the FCA, given that many customers may have been affected in a similar way to himself, as well as potentially suffering breaches of ISA regulations.

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 thank both parties for replying promptly to my provisional decision and by confirming that they both agree with the outcome I had reached. In light of the acceptance from the parties, I've reached the same conclusions in this final decision as in my provisional decision, for the same reasons. I'll also address Mr B's additional comments below.

I realise Mr B feels that Bestinvest's failures stopped him being able to take timely action with his P shares. However, I did address this in my provisional findings above. I noted how Mr B wouldn't have been able to trade these shares based on their redomiciled location, as ISA wrapped shares would need to be listed on a HMRC recognised stock exchange. I also concluded that I was not persuaded that Bestinvest's failure to notify Mr P of the relevant corporate action(s) led to any identifiable financial loss.

I remain of that view. I realise Mr P feels he might have done something differently, but I've not seen any objective evidence that he would have been able to sell the P shares within the timescale of P's notice of its intention to redomicile and the delisting.

Nonetheless, I still believe – for the reasons set out above – that Bestinvest should compensate Mr B for its failure to inform him about corporate actions and/or material changes to his holdings. I therefore still uphold this complaint on the same basis I set out in my provisional findings.

Finally, I note Mr B's request in relation to the FCA. To reiterate what I've set out previously, our role is to tell both sides what we think is a fair and reasonable conclusion to individual complaints. Though this service does have the capacity to make the FCA aware that concerns have been brought to us if we find there is a legitimate reason to do so, I can't make that finding in my decision here. I realise Mr B is rightly frustrated that Bestinvest didn't

act within its terms and conditions, but the redress for this specific complaint about that issue is the compensation I'm awarding to him (as there is no other financial loss). I am not able to make a wider direction in the context of Mr B's complaint in relation to other customers who may or may not have experienced the same issue with Bestinvest. My decision doesn't preclude Mr B from contacting the FCA if he feels that is appropriate.

Putting things right

Bestinvest ought to make a payment to Mr B of £300 for the upset and inconvenience caused to him following its failure to notify him about corporate actions affecting his shareholdings.

My final decision

For the reasons explained, I uphold this complaint. I direct Evelyn Partners Investment Management Services Limited trading as Bestinvest to pay Mr B £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 9 December 2024.

Jo Storey
Ombudsman