

The complaint

Mr L complains that Freetrade Limited incorrectly advised him that he'd be able to trade some shares on its platform. When that turned out not to be the case, he asked to transfer the shares to another platform. He says this took too long. Mr L says the combination of these events led to him selling his shares for less than he ought to have been able to.

What happened

Mr L held shares in a company I'll call A, on Freetrade's platform. In August 2022, A merged with another company I'll call E. As a result of this merger shareholders in A received an allotment of shares in E, in place of their A shares.

Mr L contacted Freetrade and was told he should be credited with his new E shares in September 2022, and *"you should be able to trade them on or shortly after this date"*.

Once he'd received the shares Mr L contacted Freetrade again – but was then told that Freetrade couldn't support trading in E shares after all, and couldn't transfer them anywhere else either. Mr L complained.

Freetrade responded in October 2022. It apologised for misinforming Mr L, and offered him £19.98 to say sorry. It said the E shares were traded overseas and that's why Freetrade couldn't facilitate trading in them – which it hadn't known before the shares were received. But it said that it would be able to transfer Mr L's shares to another provider. It says that while it couldn't usually transfer overseas shares *"this is quite a unique circumstance where the share is actually held on CREST"*.

Mr L then opened an account with another platform (which I'll call B) and submitted a transfer request to B in early December 2022.

The transfer took some time – and both Mr L and Freetrade were in dialogue with B, as well as Freetrade's US custodian for the E shares Mr L had received. As the transfer progressed, Mr L complained about how long things were taking, and referred matters to our service.

In May 2023, Freetrade responded to that complaint. It said B had initially given an incorrect reference number in the transfer request. And that it had then explored the different ways the shares could be transferred with its US custodian, resulting in Freetrade finding out on 15 March 2023 that it couldn't transfer Mr L's E shares as it had originally intended. It said it had then made arrangements to transfer the shares through CREST, which it initiated on 18 April 2023 resulting in Freetrade sending a renewed valuation to B on 4 May 2023.

Freetrade apologised for the poor communication it had given Mr L at times, and said that *"our team is at fault for the significant delays to your transfer being completed"*. It offered Mr L a further £300 to say sorry and indicated the transfer should complete soon.

The transfer eventually completed on 5 July 2023, and Mr L sold his E shares the next day.

Mr L wasn't happy with the responses he'd received from Freetrade and asked our service to

continue investigating. He said that he'd intended to sell his E shares at US\$1 per share. He said the shares had traded at that level multiple times in both January and May 2023, and had Freetrade either told him sooner he wouldn't be able to trade the shares on its platform, or transferred his shares more promptly, he'd have been able to do so.

One of our investigators looked into things. He concluded that Freetrade had caused delays in the transfer between 15 March and 4 May 2023. He said it should pay half of any loss caused by a decline in E's share price between those dates.

Mr L didn't agree and still felt the outcome didn't reflect the losses he'd suffered. Another ombudsman issued a provisional decision on the complaint. In summary, she said:

- The misinformation about whether Mr L could trade E shares on Freetrade's platform hadn't made a difference. This was because even if Mr L had been told the right information the first time he asked, it was already too late to sell or transfer his old A shares before the merger completed. And so he'd have needed to carry out the transfer he later did in any event.
- Freetrade had caused some delays in the transfer, but some delays due to things like needing to liaise with its US custodian and waiting for B to respond were outside its control.
- In particular she didn't think Freetrade had contributed to delays after 4 May 2023.
- She agreed with the investigator that once Freetrade discovered it couldn't transfer the shares the way it originally intended, it shouldn't have taken from 15 March 2023 until 4 May 2023 to progress things.
- She thought Freetrade should pay half the difference in price of E shares between those two dates, adding 8% simple interest to any loss.
- She thought the sums Freetrade had paid for non-financial loss - £319.98 in total – were fair.

Mr L still didn't agree and argued that he ought to have been able to sell his shares sooner, and for a higher price. Freetrade said that it had told Mr L the situation in its original final response letter of October 2022, but it didn't receive a transfer request until January 2023. So it said Mr L could have transferred his shares sooner if he'd wanted to.

I issued a provisional decision on the matter. I said:

There are two distinct but interrelated aspects to this complaint. Firstly the information Freetrade gave, or ought to have given, Mr L about the E shares he was due to receive. And then the issues with the transfer that was initiated due to Freetrade being unable to facilitate trading in E shares. Freetrade issued two separate responses to these matters – although its second response in May 2023 also made reference to the misinformation. Mr L has complained about both issues together – as he feels they are linked in terms of how he's been caused a loss. And Mr L complained to our service within six months of both letters. So for completeness I'm satisfied these issues form part of the same complaint and it's appropriate to consider them all together here.

Freetrade told Mr L in August 2022 that he'd be able to trade E shares with it after the merger, then in September it said it couldn't. I'm satisfied that Mr E wouldn't have been sure of the situation until Freetrade confirmed and explained it in its response of 26 October 2022.

I've gone on to consider whether Freetrade could, or should, have told Mr L about the situation earlier. In its October 2022 response, Freetrade makes two points. It said that while *"we try to keep our customers up to date about Corporate Action announcements"* that it had no obligation to do so under the terms of the account. It

referred to clause 24.1 of the terms which said *“we will have no duty to inform you of any corporate actions related to any Securities that are beneficially owned by you through our Services”*.

It also said that it wouldn't always know where new shares resulting from an action like this would be traded before the event – and said it was when it received the issued shares that it was established Freetrade couldn't support trading in them.

While Freetrade's terms say it isn't compelled to inform Mr L of corporate actions, it doesn't say it won't do so. And Freetrade said it generally tries to keep customers updated about them. I've also considered that Freetrade held Mr L's A shares as his nominee. So Freetrade was the legal owner of the shares and would be in receipt of information and communications about them which were sent to shareholders. And Freetrade had an obligation under the regulator's conduct of business rule at COBS 2.1.1R to *“act [...] in accordance with the best interests of its client”*.

I've considered all this in the context of the particular facts of this action.

I've seen the announcement from A and E issued to shareholders on 14 June 2022, setting out the terms of the merger to take place. I'm satisfied that Freetrade would have received this communication from the company registrars of A.

This notice states on the very first page that the basic terms of the merger are that *“each [A] Shareholder will be entitled to receive: 0.5940 New [E] Shares for each [A] Share”*.

The glossary in the document explains that New E Shares are the shares being issued pursuant to the merger, but are otherwise simply ordinary E shares.

So on receiving that notice, I think Freetrade ought reasonably to have known it was simply E shares – which already existed and were traded on a Canadian stock exchange – which Mr L would be receiving as a result of the merger. If it wasn't able to facilitate trading in E before the merger, it wouldn't be able to afterwards. So I think Freetrade ought to have known at that time that Mr L wouldn't be able to trade the shares he'd be receiving on Freetrade's platform.

While I accept that Freetrade had no direct obligation to inform Mr L of this proactively, I don't think it was fair and reasonable for it not to do so. I think it knew or ought to have known that it held as nominee shares for Mr L which, in a few months time, he'd be unable to trade. I think it was inarguably in Mr L's best interests to know that – as without this information he would at best be stuck for a period of time with shares he couldn't trade, and I think it was clearly in his best interests to be able to choose what to do with his shares at any given moment.

I will return to what I think the impact of this was later in my decision. But I would note at this point that I've given weight to the fact that once Mr L did discover his shares were untradeable with Freetrade (on receipt of the October final response) it was over two months before Freetrade received a transfer request.

I'll now turn to the transfer itself. I won't rehash the entire timeline in detail, as I think some aspects appear to be common ground following our investigator's view and the previous ombudsman's provisional decision. In particular I don't think there's currently dispute that:

- Freetrade was responsible for delays between 15 March 2023 and 4 May 2023, and

- Freetrade wasn't responsible for delays after 4 May 2023.

I've looked closely at what happened before 15 March 2023.

Between 20 January 2023 (when Freetrade had received the corrected form and issued a valuation to B) and 15 March 2023 – a period of around 7.5 weeks – it appears Freetrade was in dialogue with its US custodian about how the transfer could be carried out. Freetrade's said it tried to either have them transferred directly or sold and then transferred. But by 15 March 2023 it became apparent this couldn't happen, and after that Freetrade explored and then carried out the CREST transfer which subsequently took place.

But from what I've seen, all this was information Freetrade knew before initiating the transfer. In fact in its October 2022 response to Mr L, Freetrade itself said to him that he had been told a "normal" custodian transfer couldn't happen for these shares, and that the only reason it suggested at that time he still could transfer was because *"this is quite a unique circumstance where the share is actually held on CREST"*.

So I'm currently minded to conclude that the delays between 20 January and 15 March 2023 weren't reasonable, because Freetrade ought to have known it needed to carry out a CREST transfer here from the start.

So notwithstanding that there were delays here outside Freetrade's control (lack of responses and incorrect forms from B, correspondence with other parties including overseas custodians) I currently find that had Freetrade acted fairly towards Mr L:

- It would have told him in June 2022 that E shares weren't tradeable on its platform, not in October 2022.
- Mr L's transfer out of Freetrade would have been quicker by approximately 14.5 weeks (being the unreasonable delays between 20 January 2023 and 4 May 2023).

I've thought carefully about what, if any, difference that makes to fair compensation here.

- The counterfactual – what I think on balance would most likely have happened but for Freetrade's errors – isn't straightforward to evaluate in these particular circumstances. Had Mr L known sooner his shares wouldn't be tradeable, I think it's more likely than not he'd have initiated a transfer sooner. Because he'd have wanted to be able to sell his shares when he chose. But I've taken into account that Mr L didn't initiate a transfer for a few months even once he knew the shares weren't tradeable. And depending on when Mr L initiated his transfer some of the other delays may still have happened, or may not have done.

But considering that I think Freetrade ought to have told Mr L some four months earlier about the situation regarding E shares, and that it then caused a further 3.5 months or so delay in the transfer, I'm satisfied on the balance of probabilities that had Freetrade treated Mr L fairly, his E shares would have been transferred to B before the end of 2022.

Mr L has been consistent throughout his complaint that he wanted to sell his E shares for US\$1 a share. And I've given weight to the fact he said this in his complaint to our service in March 2023, when the shares were trading lower than that but before a period when they did indeed trade above that level in May 2023. And that, once Mr L received his shares with B, he immediately sold them, mitigating any further loss.

Overall I'm currently persuaded that, had Freetrade done as it should have, Mr L would have had his E shares in an account through which they could be traded in early 2023, and would have sold them for US\$1 a share.

From what I've seen the shares traded around and above that price for much of January 2023. It's impossible to say exactly when Mr L would have sold them, but I think he would have done so as soon as possible.

To fairly compensate Mr L, Freetrade therefore should:

- Identify the earliest date in January 2023 when E shares traded at the equivalent of US\$1 a share.
- Calculate what Mr L would have received in pounds sterling had he sold his shares at US\$1 a share on that date.
- Pay him the difference between that sum and what he eventually received when he sold his shares in July 2023.
- Pay 8% simple interest on the loss figure, from the date it identified above to the date it settles the complaint.

Like our investigator and the other ombudsman, I'm also satisfied that this experience was upsetting and inconvenient for Mr L. And that the amount Freetrade has already paid him in light of that - £319.98 – is fair compensation.

Freetrade confirmed it received the provisional decision but didn't add anything. Mr L accepted my provisional findings.

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, and as neither party has added anything in response to my provisional decision, I see no reason to depart from the findings and conclusions I reached there, and so make those findings and conclusions final.

Putting things right

Freetrade should compensate Mr L as set out in my provisional decision, that is to say:

- Identify the earliest date in January 2023 when E shares traded at the equivalent of US\$1 a share.
- Calculate what Mr L would have received in pounds sterling had he sold his shares at US\$1 a share on that date.
- Pay him the difference between that sum and what he eventually received when he sold his shares in July 2023.
- Pay 8% simple interest on the loss figure, from the date it identified above to the date it settles the complaint.

Freetrade has already paid Mr L £319.98 in light of the trouble he's been caused, which I still think is fair.

My final decision

My decision is that I uphold this complaint. Freetrade Limited must compensate Mr L as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 30 June 2025.

Luke Gordon
Ombudsman