

The complaint

Mr M complains that due to the actions of Rowan Dartington & Co Limited ('RD'), there was an avoidable delay in him receiving his share entitlement following a corporate event.

Mr M would now like RD to recompense him for being unable to sell his shares sooner along with the other wider financial impact he says their delays have had on him.

What happened

Mr M owned shares in a Canadian company, Playmaker Capital Inc ('Playmaker') who in November 2023 announced it was being acquired by Better Collective A/S, a Danish company that trades on both the Stockholm and Copenhagen Nasdaq exchanges.

On 11 January 2024, Mr M gave his instructions to RD, asking them to vote on his behalf in favour of the acquisition, preferencing to receive his proceeds in cash. Shortly after the corporate action closed, RD's custodian received a notification from Better Collective's agent, Odyssey, that cash considerations were subject to proration, meaning that shareholders would need to take part cash and part shares because the corporate action was oversubscribed.

On 14 February 2024, Mr M received £419,871.48 in cash as part settlement of the corporate action. After not receiving the shares he was anticipating in lieu of the cash, Mr M contacted RD on a number of occasions over the coming months but didn't receive any satisfactory answer on when he could expect his new Better Collective shares. Eventually, on 7 June 2024, he received his entitlement of 38,269 shares.

Mr M decided to formally complain to RD. In summary, he said:

- The time elapsed between the acquisition being completed (6 February 2024) and his Better Collective share entitlement under the terms of the deal being available to him to trade (on 7 June 2024), resulted in a notional financial loss to himself of c£230,000. That's due to the reduction in the Better Collective share price during this period.
- The inability to access his share holding in Better Collective post the acquisition has had a material consequential impact on himself. The issue had caused personal stress and anxiety.

After reviewing Mr M's complaint, RD concluded they were satisfied they'd done nothing wrong. They also said in summary:

- At all times, RD complied with Playmaker and Better Collective's transfer agent (Odyssey Transfer and Trust Company) and the Issuing Agent (Stifel) in their handling of the acquisition. RD said that they'd sent the election confirmation on his behalf and reflected the cash and share proceeds in his RD account in a timely manner once received.

- RD had met its responsibilities and obligations under the terms of their Order Execution Only dealing and custody services in this case.
- They couldn't be held liable for the change in value of his Better Collective share entitlement whilst they waited on third parties (such as Odyssey and Stifel) for the shares to be issued.

RD went on to say that their investigations had identified that their communications to him following the acquisition did not meet the standards that they expect in terms of the timeliness and accuracy of updates that should have been provided. RD said that was in part due to a lack of information coming from third parties. Nevertheless, RD explained that they were offering a goodwill payment of £1,000.

Mr M was unhappy with RD's response, so he referred his complaint to this service. In summary, he said that he didn't think it was fair that he'd had to wait as long as he did to receive his Better Collective shares. Mr M went on to say that he was aware from other investors that had used different brokers (to RD) that they'd received their shares much sooner. In addition, Mr M said that he wanted RD to:

- Provide an explanation on why they had offered to take on the transaction knowing that they would need to use a sub-custodian who has demonstrated that they are incapable of delivering.
- Give a full, detailed explanation why he was subject to such a delay in receiving his shares.
- Put right their promise to cover the financial losses he has suffered (that were confirmed during a call with them on 23 March 2024).
- Provide financial cover for the time spent communicating on the matter – as his day rate is £2,000, Mr M says this amounts to around £10,000 which is five days' worth of his time.
- Pay interest on the monies that he would've earned on the sale proceeds of the shares from March 2024 to the date of the final decision.
- Give an ex-gratia payment to cover the inconvenience, stress and unnecessary worry caused by a company who have not managed his portfolio or kept him informed.

The complaint was then considered by one of our Investigators. She concluded that RD hadn't treated Mr M unfairly because from what she'd seen, the delays weren't attributable to RD. Mr M, however, disagreed with our Investigator's findings. In summary, he said:

- Our Investigator had made no reasonable attempt to establish how other shareholders were able to sell their shares in March 2024.
- No account appears to have been taken of what happened during February and March 2024, when the broker that he normally dealt with was away.
- He wasn't clear why information hadn't been obtained directly from Playmaker and Odyssey about how shareholders were able to access their shares. If it's the case that they were responsible for the delays, then in his opinion RD should be taking action against them on his behalf.
- He didn't think £1,000 was an acceptable level of compensation given the impact the

issue has had on him.

- RD hasn't fulfilled its moral and professional duty to take due care of his investment and treat him fairly and as such, they ought to put him back in the position that he would've been in on 7 June 2024.
- It's a 'kick in the guts' to completely dismiss his concerns about realising his shares prior to the outcome of the FOS investigation.
- The delays in dealing with his complaint by both FOS and RD has affected his health and his ability to run his business.

Our Investigator was not persuaded to change her view as she didn't believe RD had presented any new arguments she'd not already considered or responded to. Unhappy with that outcome, Mr M then asked the Investigator to pass the case to an Ombudsman for a decision.

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 have summarised this complaint in less detail than Mr M has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts.

My role is to consider the evidence presented by Mr M and RD in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, whilst I'm upholding Mr M's complaint, I won't be instructing RD to do anything beyond what they've already offered – whilst I don't have a great deal more that I can add over what our Investigator has already set out, I'll explain why below. Before I do, I should explain that this complaint is about the actions of RD and as such, my decision focuses only on them and not any third parties.

From what I've seen, RD use an intermediary (or sub-custodian) to deal with all international shares - I shall call that business Firm N. And, as I've already explained, Mr M gave his instructions to RD in January 2024, setting out his wishes on the corporate action. However, Odyssey, the agent for Playmaker and Better Collective, explained to RD's custodians that they had to collate and then make one submission with all its shareholders' instructions for the corporate action. So, rather than taking direction from Firm N as and when each shareholder informed them of their wishes, Odyssey explained that all instructions would need to be aggregated and submitted as a single event. And, from what I've seen, it does appear that Firm N questioned this at the end of February 2024 but didn't receive any leeway.

Firm N was given a deadline of February 2025 to provide Better Collective's agent with all the instructions from each of the shareholders. However, in an effort to speed up the process, Firm N set a shorter deadline of 6 May 2024 for shareholders to notify them of their wishes. All of the instructions were collated by Firm N and submitted to Better Collective's agent the following week, who then passed their instructions to Stiffel, the issuing agent, the next working day. It seems that Better Collective's agent attempted to deliver the position the following week (on 29 May 2024), but the transaction failed and it wasn't until the week after, on 7 June 2024, that RD's custodians received the shares which were then subsequently passed to Mr M.

I do appreciate Mr M's frustration with the delays that he experienced here but for me to be able to direct RD to recompense him, I'd need to be satisfied that they had done something materially wrong, but I haven't been. Custodians have a duty to collect and transmit shareholder instructions accurately and on time. And, from what I've seen, Firm N did that but the delays in Mr M receiving his shares weren't as a consequence of something that RD (or Firm N) didn't do – Better Collective appears to have taken the position that they wanted only one bulk notification from RD's custodian. That's not RD's fault. This isn't an uncommon practice; processing one bulk instruction is far less complex than handling multiple individual shareholder responses and it minimises the chance of mismatches, duplication or conflicting data. But, such an approach doesn't come without its frustrations – which Mr M is well aware of having submitted his wishes in a timely fashion. Despite being given until February 2025 to provide their instructions, Firm N put a tighter deadline on its customers to expediate the matter – May 2024. I think in the circumstances, that deadline was reasonable in light of the fact that consumers will have needed to have been given sufficient time to set out their wishes.

Mr M explained to our Investigator that had he known RD would need to enlist the support of another custodian he'd have likely used another provider. However, just because RD used a sub-custodian, it doesn't necessarily follow that they've done something wrong. RD is a UK based business and it's not uncommon in such circumstances for firms to utilise the services of other international custodians who have experience in foreign markets when non-UK securities are being handled - and from what I understand of the size and scale of Firm N, this is an area where they have significant experience in. And, when I consider the fact that this was a Canadian listed company being taken over by a Scandinavian firm, I well suspect that this was outside the norm for most UK custodians. So, it wasn't unreasonable I don't think for RD to want to draw on the skills of a larger, more experienced business such as Firm N. But, as our Investigator has already pointed out, within the terms and conditions of the arrangement that Mr M entered into with RD, they quite clearly explained that in some circumstances they may need to enlist the help of a sub-custodian.

In his response to our Investigator's view, Mr M said that she had made no reasonable attempt to establish how other shareholders were able to sell their shares in March 2024. Whilst other brokers may have been able to progress their clients' applications and secure receipt of their new Better Collective shares sooner, this complaint is about RD. In reaching a decision, I wouldn't ordinarily canvas other customers for their experience of this corporate action process and the brokers that they used; that's something that this service just does not have the means to facilitate or would ever do. Importantly, this complaint is about the actions of Mr M's broker – RD, and not what other brokers did or didn't do. Indeed, it's entirely possible that those other shareholders may not have held their shares in a nominee arrangement or they used custodians with a fewer number of shareholders, meaning the turnaround times were different. But, from what I've seen, it does appear that RD were in regular contact with Firm N, checking in daily with them via email and having a weekly call with them to understand the progress of the transaction.

Mr M says that he doesn't understand why information hadn't been obtained directly from Playmaker and Odyssey about how shareholders were able to access their shares. Mr M went on to say that if they were responsible for the delays, then in his opinion, RD should be taking action against them on his behalf. However, this complaint is about the actions of RD and what impact (if any) they had on Mr M not receiving his shares in what he considers to be a timely manner. Whether Mr M wishes to pursue a complaint against any other firm is a matter for him and RD, and not one that this service will comment on.

In his complaint to this service, Mr M explained that he wants RD to compensate him for the reduction in Better Collective's share price. That's because, he says, had he received his shares sooner than 7 June 2024, he'd have sold them at an earlier point and achieved a higher price than is available currently in the market. And, since receiving those shares, Mr M states that he has chosen not to liquidate them because he wanted to see what the outcome of his complaint was, and he says that's despite needing the money to fund a number of personal projects.

But, I think Mr M's strategy is problematic because once a consumer becomes aware of an issue, we'd generally expect them to act reasonably and responsibly to mitigate any further losses. So, by not selling his shares when he was able to do so in June 2024, from what I've seen of Better Collective's declining share price since then, Mr M has allowed the problem to deteriorate. Mr M has made clear it was always his intention to liquidate those shares, so whilst I accept that Better Collective's share price could have appreciated within that timeframe, by not selling them when he first had the opportunity to do so, the subsequent decline in the value of his shares is as a result of his actions, and as such, it's not one that I'm going to instruct RD to put right. What happens to a consumer's shares when they're in custody of them is their responsibility and this service does not give financial advice of any sort.

I've listened to the call that RD had with Mr M on 28 March 2024. RD said that they were mindful that Mr M wanted to sell his shares and if the price had dropped, the price would need to be backdated. But, despite RD explaining that they'd look at any losses, they subsequently determined that they'd done nothing wrong when they issued their complaint resolution letter to him several months later, so they decided not to go forward on what was discussed. I think RD were premature in explaining to Mr M that they'd need to recompense him as that discussion created a level of expectation that then resulted in his disappointment. However, I don't believe that just because RD initially suggested that they would look at his losses, that they should then decide to reimburse him for them. We'd only ask a business to reimburse a customer when we were satisfied that the actions they'd taken had resulted in a loss to them – and as I've already explained above, I don't think that's the case.

RD have said that their investigations had identified their communications to Mr M following the acquisition did not meet the standards that they expect in terms of the timeliness and accuracy of updates that should have been provided. RD went on to say that this was in part due to a lack of information coming from third parties. Nevertheless, RD explained that they were offering a goodwill payment of £1,000. Given the facts of the case, I wouldn't ordinarily make an award at that level, however in light of RD's phone call to Mr M on 28 March 2024 and as they have already made that offer, having thought about matters, I'm of the view it's not for me to take it away. So, I think it's fair and reasonable for RD to keep the £1,000 on the table and pay it to Mr M if they've not already done so.

I do appreciate that Mr M has mentioned that the time taken by this service to answer his complaint has affected his health. I am sorry to learn of the impact this matter has had on him, however whilst we do aim to respond as promptly as possible, this service does receive

a significant volume of complaints every month from consumers asking for our help. Complaints are dealt with in the order in which they're received.

From the point that RD's custodians sent Mr M's wishes to Better Collective's agent to the point at which he received his shares was three weeks. I don't find that window unreasonable.

My final decision

Rowan Dartington & Co Limited have already offered to pay Mr M £1,000 to settle the complaint, which I think is fair and reasonable in the circumstances.

So, my decision is that Rowan Dartington & Co Limited should pay Mr M £1,000 if they've not already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 24 September 2025.

Simon Fox
Ombudsman