

The complaint

Mr J complains that KW Investment Management Limited (“Kingswood”) sold some of his shares without his agreement.

What happened

Mr J held around 600,000 shares in a company I’ll call A. In October 2022, he emailed his broker at Kingswood about selling some of his A shares. He said:

“I’d like to test the market for liquidity of [A] shares. Last time we did this we offered the whole tranche circa 663,000 shares as offering too little to the market garnered no response. Please can you contact me so we can discuss this further”.

Kingswood responded, telling Mr J his normal broker was away, and saying *“Considering the size of the trade would you consider starting with the sale of 100,000 shares to see if we can get that away?”*

Mr J confirmed he’d like to *“[put] 100,000 shares on the market to test the response”.*

His broker then said *“I’ve put that good-til-cancel execution-only sell order on for you for tomorrow’s open.”*

The following morning Kingswood contacted Mr J to say it had sold 100,000 of his A shares at a price of 18p.

Mr J complained. He said he hadn’t wanted to sell the shares, and would definitely not have done so at the price of 18p. He said he’d wanted to repeat *“the previous strategy whereby he went to the market to see if there was an interest, he then told me what the market was prepared to offer and only when I received that information do I make a decision”.*

Kingswood didn’t think it had done anything wrong. It said the broker had confirmed an order was going to be placed when the market opened, and Mr J hadn’t questioned or contradicted it. It explained it didn’t have the same relationships with other brokers which had previously enabled it to give Mr J some idea of what prices were being quoted for particular sized trades before he entered an order.

Mr J brought his complaint to our service, and said he should have received what he considered the market price on the day in question (which was 22p) or that he should get his shares back.

One of our investigators looked into things. She thought Kingswood was wrong to have placed the trade it did. She was satisfied based on emails showing previous occasions Mr J had asked to test the market that he would reasonably have expected Kingswood to come back to him with a market quote before executing an order. If it had done so, she thought Mr J wouldn’t have placed the order to sell 100,000 shares at 18p. She said he should be given his shares back, subject to Mr J sending the proceeds of the original sale back to Kingswood.

Kingswood maintained it had acted on a legitimate instruction from Mr J, and had given him clear information about the order it was placing on his behalf. It asked for an ombudsman to decide the matter.

Mr J agreed with the investigator's conclusions. But he said he should get either the difference between the 18p at which his shares were sold, and the price he says he would have dealt at that day, which was 22p. Or he should get the total loss he crystallised by selling the shares, which was the difference between 18p and the price he'd paid for the shares, which was 78p.

After the complaint was passed to me, I wrote to the parties to explain I thought Mr J should be compensated differently to our investigator's suggestion. I thought, on balance, that Mr J would have sold his shares at 22p had Kingswood acted differently and confirmed what orders he could place on the basis of what information from the market. So I said Kingswood should compensate him on that basis.

Mr J again argued that he ought to receive the difference between the sale price and what he'd paid for the shares, before accepting my proposed redress.

Kingswood continued to disagree it ought to compensate Mr J at all. It also said Mr J had mentioned wanting a trade reversal – and said that if I was going to uphold the complaint this was the right way to remedy things.

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.

This complaint, in my view, arises from a miscommunication between Mr J and Kingswood. I don't think Kingswood understood what Mr J was asking it to do when he first emailed it about his A shares. And I don't think Mr J fully understood what Kingswood was saying it was going to do as a result – place an active order in the market to sell some of his shares.

As a regulated firm, Kingswood needed to ensure it had regard for Mr J's interests and treated him fairly. And it needed to ensure its communications with Mr J were fair, clear, and not misleading. I'm not satisfied Kingswood treated Mr J fairly here. I'll explain why.

Mr J told Kingswood he wanted to *"test the market"* and, when agreeing to offer 100,000 shares, that he wanted to *"test the response"* to that volume. In his initial email, Mr J clearly referred to *"last time we did this"*. I've considered the emails of December 2021 and January 2022 which appear to refer to Mr J's previous conversations with Kingswood about his A shares.

Initially Kingswood say to Mr J there's an order in the system to sell his holding *"at a price of no less than 24.7p"*. It goes on to say *"have asked likewise if the market makers can keep us informed of any close bids of within a penny or so to pass on for your consideration"*.

A few weeks later, Kingswood tell Mr J the best price its been offered for his holding was 21p per share. Mr J says he isn't willing to accept that, and after some further back and forth he tells Kingswood to offer 23p to the market. There's no interest from Kingswood's brokers/market makers, and so the order is cancelled. So Kingswood ought to have known that *"last time"* Mr J's attempt to *"test the market"* involved correspondence between them based on feedback Kingswood had gathered from market participants. I think it would have been reasonable for Mr J to expect the same thing here.

I understand this sort of correspondence was no longer possible because of changes in Kingswood's relationships with its brokers. But it hadn't told Mr J that. So I think, having regard for Mr J's interests, Kingswood ought to have known Mr J was expecting some kind of price information from it before placing a firm order in the market. I think it therefore ought to have ensured both that Mr J understood what it could and couldn't do, and that it understood what Mr J was instructing it to do.

I've considered carefully Kingswood's argument that Mr J was experienced in the financial markets, and that he ought to have understood Kingswood had placed a live order for him based on its email that said "*I've put that good-til-cancel execution-only sell order on for you*". I've given weight to Mr J's experience, but I'm persuaded by the evidence of the previous interactions that Mr J would, in these particular circumstances, have had a reasonable expectation of more correspondence from Kingswood (with a quote from a broker/market maker) before he gave an instruction to deal.

I say this also because Kingswood's email telling Mr J it was placing an order for him didn't give a price. In fact, in the discussions in October 2022 about testing the market with 100,000 shares, Mr J at no stage tells Kingswood at what price to set his order.

Price is clearly key to the January 2022 conversation about selling his shares. Mr J is asking what prices the market is willing to pay, and where he gives instructions to place orders it is at specific prices. I think it was reasonable for Mr J to have thought Kingswood hadn't yet taken a dealing instruction from him when he hadn't given it a price at which to deal.

Kingswood also described the order it was placing as a good-til-cancelled order. These are generally limit orders – with a price being set as the limit at which the client is willing to buy/sell, and the order sitting in the market until it is either executed, or cancelled. If this was a limit order, I don't think it was fair or reasonable for Kingswood to have placed it without agreeing a limit price with Mr J (which it seems to have done when placing the order in December 2021). If it was a market order, that would be both unusual for a good-til-cancelled order and out of keeping with Mr J's previous orders with Kingswood to sell these shares. I therefore think it would have been fair and reasonable for Kingswood to ensure that Mr J understood he was placing an order to sell 100,000 shares at whatever price the market was willing to deal. I'm not persuaded it did so.

Taking all this into account I don't think it was fair or reasonable for Kingswood to have sold Mr J's shares in October 2022. It therefore remains for me to decide how it should put things right.

Putting things right

Firstly, I don't think it would be fair for Mr J to be compensated based on his purchase price of the shares. To receive that amount would put him in the position as if he'd sold the shares at 78p. Between October 2022 and now A shares haven't traded anywhere close to that price, but have been significantly lower. I therefore don't think Kingswood's error deprived Mr J of the opportunity to sell his shares at 78p. Its error removed his ability to decide what to do with those 100,000 shares. But those choices were limited to either keeping the shares, or selling them at some other price between October 2022 and now.

Kingswood have argued Mr J would have kept the shares, as in one email during his complaint he says he'd accept a reverse trade. I can confirm I've considered that evidence, and haven't discounted it. But where I can't say with certainty what Mr J would have done, I have to decide on balance what I think is more likely than not to have happened.

In his complaint form to our service Mr J says he wants Kingswood to either reinstate his

shares or pay him the difference between 22p a share and 18p a share. As Kingswood has rightly pointed out, when corresponding about his complaint Mr J does say to Kingswood he “*would’ve accepted a reverse trade*”. I’m also mindful that Mr J was, in January 2022, willing to instruct Kingswood to place orders in the market at around 25p and then at 23p a share for his A shares.

Overall, I think Mr J was facing a large loss on his shares and was therefore reluctant to sell. But I think he was looking to sell at least some of them to realise some cash proceeds – he’d come close to doing so in January 2022, and he knew broadly where the market price was in October 2022. I don’t think he’d have approached Kingswood at all if he’d had no intention of selling any of the shares at any price near to the market price.

Had Kingswood confirmed, as I think it should, that Mr J could only gauge the market sentiment by placing an actual limit or market order for his shares, on balance I think it’s more likely than not that he’d have placed a limit order for 100,000 shares. Based on his testimony since his complaint, and the orders he’d placed earlier in 2022, I’m satisfied he’d have probably placed that order at around 22p. In any event I think this price represents a fair and reasonable approximation of the price he’d have received for selling 100,000 shares.

So Kingswood must:

- Calculate the amount Mr J would have received had his 100,000 shares in A been sold at 22p a share in October 2022.
- Pay him the difference between that amount, and what he actually received for the sale of his A shares.
- Pay 8% simple interest on this compensation figure, calculated from the date of the original sale to the date it settles this complaint.

My final decision

My decision is that I uphold this complaint and direct KW Investment Management Limited to pay Mr J compensation as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr J to accept or reject my decision before 19 January 2024.

Luke Gordon
Ombudsman