

The complaint

Mr C complains that AJ Bell Securities Limited should have known, and given him fair warning, that buying certain shares through its platform would contravene rules that allowed those shares to be traded.

When the decision was subsequently taken to remove that stock from A J Bell's platform, this forced the sale of those shares he would no longer be able to trade in, resulting in financial loss which Mr C puts at around £19,000. Mr C wants A J Bell to compensate him.

What happened

Mr C held an execution only ISA stocks and shares account with AJ Bell. He had a holding of shares in a company which I'll refer to as 'C', which he had bought through AJ Bell in October 2018.

The shares were owned and operated by a business I will call E as CREST Depository Interests ('CDIs'). CREST is the electronic system for holding securities and settling transactions in the United Kingdom and Ireland. CREST also distributes dividends and implements corporate actions and carries out many other important functions.

Shortly after a corporate action was announced concerning C, A J Bell notified Mr C that E had announced his C shares could no longer be traded. It said the reason was that C no longer satisfied the requirements for admission to the CREST system due to the connection with a certain controlled substance and that it would accordingly be removed from the CREST system. A J Bell explained that this meant Mr C wouldn't any longer be able to hold his C shares and he had to sell them by 31 October 2022. A J Bell said that if it didn't receive Mr C's sale instruction by 31 October 2022, it would sell the shares for him.

Mr C responded expressing his disappointment at this news and he asked A J Bell if the same rule had been in place when he bought his C shares, and if so, why it had allowed him to purchase the shares through its platform.

A J Bell said it had only recently been notified by CREST that it would no longer be supporting the trading, holding and settlement of shares of companies that had a connection to this particular controlled substance. A J Bell said it had already obtained an extension to the deadline and exhausted other possible avenues that included finding a way to keep trading in the shares in some alternative way to using CREST.

Mr C said he wanted to plead his case directly with CREST and reiterated to AJ Bell that it should have prevented him from buying C shares if the rule had applied retrospectively.

Mr C also made contact with E and he asked A J Bell to *'act for me'* to convince E that it *'...must not retrospectively apply their new interpretation of CREST Rule 7 to persons such as myself who have held these shares for 4 years during which time a considerable loss has accumulated which will be imposed upon me should I be obliged to sell. Do not sell my shares...'*

There was further correspondence between Mr C and A J Bell during which period the October deadline was extended by E to 3 February 2023.

On 31 December 2022, A J Bell sent a secure message to Mr C telling him that from 9 January 2023 it would start the process of selling his C shares and the cash proceeds would be applied to his account.

In response to his complaint, A J Bell said it could appreciate Mr C's dissatisfaction, but didn't agree it had done anything wrong saying (in brief summary), that:

- following a change in regulation, E had decided to remove from its holdings stock related to this particular controlled substance and that decision was out of A J Bell's control
- A J Bell had thoroughly explored all other options but ultimately been required to restrict the stock
- its terms and conditions allowed it to do this
- A J Bell had provided Mr C with the option of having his C shares registered in his own name, but he needed to give instructions for that to happen by 31 October 2022.

When Mr C brought his complaint to us, our investigator didn't recommend that the complaint should be upheld. She concluded that AJ Bell hadn't had any influence over the events that led to C being removed from the CREST system and she said it was Mr C's own choice to invest. She didn't think AJ Bell had made any error or that it was responsible for any financial loss Mr C suffered.

Mr C didn't agree. He replied in detail to say, in summary, that the investigator had over simplified things and:

- Crest Rule 7 had been retrospectively strictly applied by E, forcing A J Bell to require all of their clients to have to sell affected shares
- the rule had been in place when the shares were bought and A J Bell had a duty of care to customers, even if the account was execution only. So A J Bell should either not have allowed such shares to be bought through its website or it should have advised clients of the Crest Rule 7 contravention, but as A J Bell did neither of these things, it should compensate him for loss.
- Mr C said A J Bell had acted incorrectly and unreasonably and pointed to the fact that on its platform it was still offering shares in other companies with links to the same controlled substance.

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 appreciate how strongly Mr C feels about this complaint and I sympathise with the position he found himself in. My role is to consider all the evidence presented by the parties and reach a fair and reasonable decision based on the facts of the case. I've expressed some of Mr C's concerns in my own words and my focus is on what I think are the key issues here. Our rules allow me to do this and this approach simply reflects the informal nature of our service as a free alternative to the courts.

In addition to complaining about A J Bell, Mr C is also unhappy about the way CREST and E have dealt with matters but, just to confirm, I am looking only at his complaint specifically about A J Bell. And having considered everything very carefully, I have come to the same conclusion as the investigator. I'll explain why I say this.

Mr C has an execution only trading account with AJ Bell. This means AJ Bell did not provide investment advice to Mr C and it was up to Mr C to decide for himself how he wanted to invest his money when he chose to invest in company C.

A J Bell didn't have responsibility for determining compliance with CREST requirements. And I haven't seen enough to fairly say that A J Bell made any error when it enabled Mr C to invest in company C via its platform. Mr C was aware of the nature of C's trading activity and he felt this was an attractive investment option for him with significant potential for future growth. It was up to Mr C to decide if putting his money into company C was right for him. It was only after he invested that E determined on a risk-based approach that stock in company C did not meet the criteria for admission to the CREST system as set out under CREST Rule 7. Following that, as far as I can see, A J Bell acted promptly in response to the corporate action once it was announced, notifying Mr C of the consequences for him.

A J Bell was entitled, under the terms and conditions that Mr C had agreed to in order to be able to use his account, to '*...alter the permitted investments range at anytime without notice and... require the sale (or at our discretion if the related regulatory requirements permit, transfer out or withdrawal) of investments removed from it...*'

So I find that A J Bell was entitled to take the action it did. Nonetheless, just because A J Bell acted in line with its terms and conditions doesn't mean it shouldn't fairly and reasonably have done more. Mr C was entitled to expect A J Bell to treat him fairly and reasonably and I've considered this aspect carefully.

A J Bell negotiated an initial extension to 31 October 2022 to allow customers additional time to consider their position. It explored alternative options such as finding other custodians to which it had access who might be willing to hold the shares as an alternative to CREST. It also explained that, if Mr C didn't wish to sell his C shares, up until the 31 October deadline it was offering him the opportunity to withdraw the shares from its nominee holding and have them transferred to Mr C to be registered directly in his name in certificated form.

In the event, A J Bell couldn't find anyone else willing to take on the shares and Mr C didn't apply to have the shares transferred to him nor had he instigated the sale of his C shares himself. A J Bell had by then identified that market liquidity issues for these sorts of shares were making them difficult to trade in and took steps to find the best options for a sale.

Ultimately, after reminding Mr C that the shares would be sold and confirming that this would start to happen after 9 January 2023, A J Bell took the action it said it would. I don't think that was unfair or unreasonable given that it had:

- provided customers with as much notice as it could about this, and
- exhausted any and all alternative avenues it had identified, and
- set out some options giving customers a degree of choice (even if these were understandably unattractive alternatives so far as Mr C was concerned), and
- handled the sale on behalf of customers who otherwise risked ending up holding stock that would be effectively illiquid for UK shareholders like Mr C who would be left without access to any avenue allowing him to trade in C shares.

In order to uphold this complaint I would have to find that A J Bell made an error or didn't act towards Mr C in a fair and reasonable way. After having taken into account everything that Mr C and A J Bell have told me, I haven't seen enough to show that A J Bell did anything wrong or that it treated Mr C in a way that wasn't fair and reasonable.

So I can't uphold this complaint.

In coming to my decision, I've thought carefully about everything Mr C has said, including his comments made in response to the investigator's view. But he hasn't said anything that changes the outcome of this complaint. He's mentioned that shares in other companies linked to the same controlled substance were still being offered in February 2023. But, for the reasons I've explained, this alone isn't a good enough reason for me to uphold his complaint about the way A J Bell treated him in relation to his shares in company C.

Mr C has also said that E's actions, requiring shares to be sold resulting in significant financial loss, should be unacceptable to financial and legal authorities. I'm also aware that Mr C feels strongly that share dealing organisations like A J Bell should proactively act on behalf of clients to fight E's decision, and he believes that a court would likely find E acted in contravention of principles of natural justice. But the remit of the Financial Ombudsman Service is to investigate complaints and reach a fair and reasonable outcome. How businesses choose to operate and the services they offer are matters that come under the oversight of the regulator - the Financial Conduct Authority (FCA). I can't make legal findings the way a court would do and telling A J Bell it should take a lead on a legal challenge to E's actions isn't something I would have power to do in any event.

If I have not referred to every point Mr C has raised, it's because I have concentrated on what I consider to be the main points that affect the outcome of his complaint and there's nothing more I can usefully add to what the investigator has said already. But I hope that setting things out as I've done helps to explain how I've reached my conclusions.

My final decision

For the reasons I have set out above, I do not 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 26 December 2023.

Susan Webb
Ombudsman