

The complaint

Mrs B complains Jarvis Investment Management Limited provided her with misleading information, which led to her selling shares she didn't own via its certificated dealing service.

What happened

Mrs B owned shares in a firm I'll refer to as Company D. She'd originally bought these shares through Jarvis' certificated dealing service.

In April 2021, Mrs B decided to sell her shares. She called Jarvis and spoke to its dealing desk. When asked what shares she wanted to sell, she wavered between naming Company D and Jarvis itself. After pushing Mrs B for clarification, Jarvis' call handler processed an order to sell an amount of Jarvis' own shares, equal to the number of shares she held in Company D.

But Mrs B didn't own any Jarvis shares. And when this became apparent to Jarvis, it processed a reciprocal purchase of Jarvis shares on Mrs B's behalf to reconcile the error. Due to movements in the markets, this meant Mrs B ended up owing a debt to Jarvis, which she settled promptly. Mrs B's actual shareholding in Company D, was sold shortly after the error had come to light.

Mrs B complained to Jarvis. She felt it'd confused her during the phone call in April. She didn't think it was fair she should have to pay the cost of reconciling the error. Jarvis rejected Mrs B's complaint. It argued it wasn't responsible for the error because it'd only followed the instructions Mrs B gave it. As Mrs B was unhappy with Jarvis' response, she referred the matter to our service.

Our investigator upheld Mrs B's complaint. They argued Jarvis should've understood that Mrs B presented to its call handler as being vulnerable. Had Jarvis understood this, our investigator argued it ought reasonably to have taken greater care when processing Mrs B's request, and if it'd done so, it's most likely the error in question would not have happened. Our investigator recommended Jarvis should reimburse Mrs B for the cost she'd paid following the reconciliation of the error.

Jarvis replied to our investigator's assessment to say that it accepted it could've done more for Mrs B. So whilst it didn't agree to fully reimburse Mrs B, it felt that offering her a 50% reimbursement was fair in the circumstances. But Mrs B didn't accept Jarvis' offer, so the matter's been referred to me.

I provisionally upheld Mrs B's complaint. My findings were as follows:

"As a regulated firm, Jarvis is required to treat its customers fairly. And as part of treating its customers fairly, Jarvis' regulator has specified that the firm must be vigilant for signs of vulnerability in its customers. Where it finds them, Jarvis' regulator expects it to take practical action to ensure those who are vulnerable, aren't unfairly left at risk of harm or disadvantage because of their vulnerability."

Jarvis has provided our service with a document which outlines the firms' internal policy on identifying and assisting customers it regards as being vulnerable. The document acknowledges that it exists in response to the regulator's requirements I've referenced above. The document establishes that:

"All staff that directly interact with customers are provided with regular call handling training. This training leads staff to use appropriate communication skills (particularly listening skills) and to treat each customer as an individual".

It goes on to say that:

"During interactions with customers and their accounts, staff should be [sic] look out for potential 'triggers' that could indicate that a customer is vulnerable in some way... Some examples are given below but the list is not exhaustive..."

...On the phone:

- *Signs of agitation*
- *Asking for repetition (a sign that the customer is not retaining information)".*

So mindful of the subject matter of this complaint, I must decide whether, in its dealings with Mrs B, Jarvis has treated her fairly and in line with the guidance it issued to its staff. If I was persuaded it'd failed to treat Mrs B fairly, I must decide what it must do to fairly and reasonably redress her complaint.

I've begun by listening to the call which lies at the heart of this complaint. In April 2021 Mrs B called Jarvis to dispose of the Company D shares she'd purchased from it the year before. Having listened to this call extensively, it's my opinion that:

- *Mrs B struggles to keep pace with the speed Jarvis' call handler is setting when propelling the conversation forwards.*
- *There are multiple occasions where Mrs B is audibly struggling to understand what is being asked of her and asks the call handler to repeat information.*
- *On occasions where Mrs B appears to be struggling, Jarvis' call handler presumptively suggests what they think Mrs B means, which further confuses her.*
- *Mrs B correctly mentions at the beginning of the call that she's looking to sell the shares in Company D she purchased from Jarvis the year before. She begins to waiver on this point as a result of the call handler mis-hearing her, and the call handler's subsequent presumptive questioning.*
- *Given the risks associated with inaccuracies in certificated dealing instructions, it is concerning to hear how Jarvis' call handler disregarded Mrs B's apparent confusion and maintained the pace of the call.*

Having studied the call, I'm satisfied the call handler ought to have recognised that Mrs B showed signs of vulnerability. In my opinion, Mrs B sounds agitated, in that she seems anxious and unsure of herself throughout the call, even on occasions when she's answering in the affirmative. She also asked for questions and information to be repeated to her on a number of occasions. Jarvis' own internal guidance identifies these points as being triggers which could indicate that Mrs B was vulnerable in some way. Jarvis' guidance also stresses the importance of listening skills and treating its customers as individuals, and I'm not persuaded its call handler demonstrated much of either of these traits during the call in question.

If the call handler had established Mrs B presented as vulnerable, as I'm persuaded they reasonably should have, Jarvis should've acted to ensure Mrs B wasn't unfairly left at risk of

harm or disadvantage. I've considered what a fair and reasonable interpretation of this expectation could mean in the circumstances of Mrs B's complaint.

I think it's significant that during the call, Mrs M mentions early on that Jarvis had sold her the shares she wanted to sell a year earlier. I think therefore that when Jarvis' call handler was confronted with Mrs M's obvious confusion, it's reasonable to expect the call handler should have looked up the details of that transaction. This would've enabled the call handler to be more certain about precisely what it was Mrs M was looking to sell and avoided the mistake entirely.

If technical limitations meant the original instruction couldn't be recalled by the call handler in the way I've described, I'm still satisfied there's more Jarvis could've done to protect Mrs B from harm in these circumstances. It strikes me that the call handler seeks to maintain a pace which Mrs B consistently struggles to match. In my view, slowing the call down is likely to have made things much easier for Mrs B. For example, there's a moment where it's established that Mrs B is in possession of a share certificate, and the call handler makes the assumption that it's a certificate for Jarvis' own shares despite the confusion at the start of the call. Had Mrs B been given the opportunity to read aloud the content of the share certificate, it would've dispelled the ambiguity around what Mrs B was looking to sell, and avoided the mistake entirely.

I can appreciate that beyond the early exchanges, Mrs B appears to accept Jarvis' assertion that she's looking to sell its own shares. Jarvis' call handler then propels the transaction forwards based on this understanding. I have considered that, had Mrs B been more assertive, it may have been possible to halt the call handler's progress and avoid the error that occurred. But whilst I accept that Mrs B could be argued to have some responsibility for this, I'm satisfied that this was vastly outweighed by Jarvis' own obligations to her. As I've mentioned above, the content of the call persuades me Jarvis' call handler should've identified Mrs B's vulnerability here. And had they done so, I'm satisfied that in spite of Mrs B's confusion, it would've been possible for the call handler to uncover the truth about what shares she was actually looking to sell.

The evidence in this case persuades me that if Jarvis's call handler adhered to the relevant guidance, that the error in this case could likely have been avoided. With this in mind, I've moved on to consider what Jarvis should fairly and reasonably do to redress Mrs B's complaint.

Putting things right

When putting things right, broadly my aim is to return Mrs B to the position she would've been in, had she been treated fairly by Jarvis. I think that if Jarvis had followed its own and the regulator's guidance, it would've handled its phone call with Mrs B quite differently. And if it had done, the likely outcome would've been:

- An instruction to sell Jarvis shares would never have been placed, meaning no debt would ever have been created, and Mrs B would never be out of pocket as a result.*
- Mrs B would have been able to sell her shares in Company D and benefit from the price available to her on the day she called.*
- Mrs B wouldn't have experienced the upset and inconvenience caused by having to settle the debt arising from correcting the Jarvis transaction.*

In my view, it is both fair and reasonable to require Jarvis to address each of these points when settling Mrs B's complaint.

Firstly, Jarvis must fully refund the costs it charged Mrs B in relation to the settlement of the transaction involving Jarvis shares. As it's my opinion that Mrs B shouldn't ever have paid this cost, I require that Jarvis must calculate and pay simple interest at 8% on the amount due back to Mrs B. This interest must be calculated from the date Mrs B paid the cost, up until the date of settlement. If Jarvis considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs B how much it's taken off. It should also give Mrs B a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Next, I've considered the potential that Mrs B may have been worse off financially as a result of having disposed of her Company D shares later than she'd intended. I sought the comments of both parties on this point prior to making my provisional decision. Mrs B was concerned that she had been left worse off. But Jarvis has provided data which shows the price she ultimately received for her Company D shares was better than she would've achieved if it'd correctly sold her shares during the initial phone call. As I think Mrs B has ended up slightly better off here, I don't intend to make any award for this.

Finally, I've considered that, in my opinion, the events outlined above all flow from an instance of Jarvis failing to treat Mrs B fairly. A result of this has been that Mrs B has been caused unnecessary upset and inconvenience. She's had to settle a debt which she felt was unjust in the circumstances, and she's had the disappointment and inconvenience of not being able to conclude her transaction at the first opportunity. To fairly recognise the impact of this, I require Jarvis to pay her the sum of £100".

Mrs B accepted my decision. Jarvis did not comment on it.

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.

As neither party has contested the findings I made in my provisional decision, I'm not persuaded to depart from them.

For the reasons given above in my provisional decision, I uphold Mrs B's complaint about Jarvis. I now require Jarvis to calculate and pay redress to Mrs B in accordance with the section titled "*Putting things right*".

My final decision

My final decision is that Jarvis Investment Management Limited must calculate and pay redress to Mrs B as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 30 August 2023.

Marcus Moore
Ombudsman