

The complaint

Mr P represents his business (a partnership held with his brother) in bringing this complaint. He says Jarvis Investment Management Limited ('JIML') has acted unreasonably in relation to the business's share dealing account, which was allowed to incur debts on overdue positions. Consequently, JIML charged interest on the debts, and also sold shares in 2022 in order to recover money owed to it. Mr P says these actions were unfair and contrary to Business C's investment terms.

What happened

Mr P and Mr A are equal business partners for their business, which I have called Business C so as not to identify it in this decision. Business C is a complainant in its own right for the purposes of bringing a complaint to this service. Through Business C, Mr P and Mr A hold a trading account on JIML's platform. The account has been operating since June 2003.

Since 2021, Mr A has experienced a number of personal and health difficulties which are known to the parties, so I won't set them out in the context of this decision. Mr P says that due to these issues, Mr A has been unable to remain active with the account from approximately September 2021. JIML has noted how at all times, both Mr P and Mr A had equal access to Business C's trading account.

In February 2022, Mr A contacted JIML regarding the overdue debit balance on the account. He explained that since September 2021 he had been liaising with JIML because he believed that JIML had made a policy change regarding charges, which meant there had been an increase to the debit interest on overdue share positions. This unduly affected Business C, because Mr A was trading in 'T' shares requiring closure within 20 days – and he had not been actively maintaining the account. Mr P said Jarvis should not have allowed other trades to take place with some share positions for T shares not being closed within 20 days. Mr P contended that £8,000 in debit interest had been charged since September 2021.

The following week, Mr P contacted JIML to arrange repayment of the debt. On 2 March 2022, Mr P sent a repayment proposal on behalf of Business C which JIML accepted. It was set out how the negative debit balance of approximately £44,000 would be cleared by June 2022. A first payment of £10,000 was made by Mr P on 4 March 2022. He confirmed a further £15,000 would be paid to JIML by 18 March 2022. JIML agreed to the proposal.

However, JIML did not receive further payment from Mr P on behalf of Business C. Mr P sold some stock in the account in the following months, but an outstanding debt remained on the account. It therefore sent chaser letters to Business C between April and June 2022.

A legal representative for Business C wrote to JIML on 10 June 2022. It said that in September 2021, the general stock market and the value of the shares retained Business C's account continued to decline due to market conditions at that time. The representative contended that at this point, JIML should have halted any further share dealing transactions from taking place. However, it did not do so for several months, and by 31 December 2021, Business C's trading account had open trades in excess of a 100% permitted margin because the value of the shares held had fallen dramatically.

The legal representative set out that JIML ought to reverse the debit interest transactions applied to the Business C account amounting to £5,979.91 and to apply a block to the account to prevent any further interest from accumulating on the account until the matter was resolved in its entirety.

JIML replied on 22 June 2022 via its legal department. It said Mr A and Mr P had been active traders through Business C holding one or more share dealing accounts since 2003 and executing transactions consistently throughout those years. Those transactions had always been conducted on an execution only basis.

JIML explained how its terms and conditions gave it discretion to refuse instructions to conduct transactions in specified circumstances, but a decision not to exercise its discretion did not mean it had breached its terms and conditions or failed in any duty of care to Business C. It also denied that Business C's trading account had open trades in excess of a 100% permitted margin (an alleged 175%) at the time of the transactions. This only occurred with the fall in value of the shares combined with the delay in settling the cash balance.

Finally, JIML said it hadn't unfairly applied interest to the outstanding debit balance. The legal representative had quoted terms relating to cash held in the trading account not being used for immediate investment which was calculated at 1%. But those weren't the right terms. In relation to the settlement monies owed, it was entitled to charge the published HSBC standard current bank account authorised overdraft rate of interest – and it had actually charged less than half that rate.

As the outstanding debit balance remained, JIML sold stock in the account to clear the debt – which by 30 June 2022 was £45,099.

In August 2022, Mr P on behalf of Business C sent a further email to JIML. He says this set out the basis of their complaint, but the matter remained unresolved.

In late 2022, Mr P and Mr A brought the complaint to this service on behalf of Business C.

Mr P said they sought both a refund of interest charged, a return of shares sold in June 2022 and £20,000 in damages for the upset caused to them and their family. Mr P explained that the crux of the complaint was that he believed JIML made a change to policy in September 2021 which allowed it to charge interest on overdue positions and sell stocks to recover debts – something it had never done before. However, Mr P contended that if JIML had decided to do this in 2021 instead of 2022, the Business C account would be in a far favourable financial position now. Mr P said had it done so, he could probably accept that Mr A had merely been unfortunate in his stock choices but by waiting until 2022 to sell down stock, they had lost approximately £50,000.

JIML said that it had not treated the matter as a complaint, because the primary issue being raised by Mr P and Mr A on behalf of Business C was the recovery of outstanding debts accrued by Business C resulting from share purchases where Business C failed to pay for or close the position by the agreed settlement date. It said that between February 2022 and June 2022 protracted discussions took place with Mr P via his nominated legal representative whereby a settlement was agreed between the parties as an alternative to court action.

On that basis, it hadn't treated the issue as a complaint or produced a final response letter. However, it maintained that it had acted fairly in the circumstances, and it did not accept or uphold any complaint made by Business C now. It specifically explained that Mr P's allegation that it had made loans or acted as a lender was incorrect; it had simply recouped

money owed to it by Business C resulting from the unpaid and unclosed share purchases.

An investigator reviewed the complaint, but he did not think it should succeed. He noted that Mr A didn't receive any advice about the trades he placed from JIML, as the account was operated on an execution only basis. He otherwise considered that JIML had acted within the terms of Business C's trading account in asking for settlement of the outstanding debt, and by applying both late settlement fees and interest. Overall, he did not believe JIML had made any errors or acted unfairly and so he couldn't ask it to do anything further.

Mr P said he and Mr A wanted an ombudsman to review the complaint. In the interim, Mr P sent in various emails and comments for consideration on behalf of Business C's complaint. I have reviewed these in their entirety, though I shan't repeat them in full here. In summary, he said:

- JIML hadn't sold down assets when settlement dates fell due.
- It could have stepped in and avoided approximately £8,000 of interest accruing.
- It arbitrarily chose the time at which it wanted to sell down shares to recover the debt – and which ones.
- Business C feels this cannot be acting within Financial Conduct Authority ('FCA') regulations.
- JIML picks and chooses which negative debit balances it chases. Mr A had his own account previously separately from Business C and was chased for a far smaller negative debit balance when Business C was not.
- He feels the investigator was merely guided by JIML and did not reach a fair, or independent view on the complaint.
- He is astonished that this service could conclude JIML has done nothing wrong.
- He (on behalf of Business C) wants to take the matter further by way of legal action or to his local member of parliament.
- At the peak of their investing, their account holdings were some £150,000.
- This had dwindled to £50,000 in August 2021 which Mr A and Mr P take full responsibility for as they were in charge of the account until then.
- Thereafter, JIML allowed debts to accrue on their trades, which had been suffering due to unforeseen stock market volatility.
- No compassion has been shown to them, despite Mr A's difficult circumstances.
- They feel the account could have been restored to approximately £50,000 had Jarvis stepped in during 2021.
- Since late 2022, the FCA has been undertaking reviews on JIML. It announced a skilled person review in 2022. And in 2023, it announced a further review on JIML's approach to uninvested client cash, interest retention and term deposits. This is relevant to how Business C has been treated contrary to fair regulatory principles.

Further communications continued between Mr P and JIML up to April 2024, some of which I cannot set out here due to legal privilege. However, the matter remains unresolved at this service. It has since been passed to me for review.

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 thank the parties for their considerable patience whilst this matter has been awaiting review by an ombudsman. I was sorry to learn of Mr A's personal circumstances and ill health. I also thank Mr P for taking the time to set out the history of this complaint in significant detail given how difficult the circumstances have been for his family. However, though I know my

decision will come as a disappointment to both Mr P and Mr A on behalf of Business C, I agree with the outcome reached by our investigator. That means I won't be asking JIML to do anything further. I will explain my reasons for reaching this outcome below.

I've included a summary of the chronology of the complaint in the 'what happened' section of this decision, including the various submissions made by the parties – primarily Mr P. However, this decision will not address every individual submission he has made in turn.

This service's role is to investigate disputes and resolve complaints informally, whilst taking into account relevant laws, regulations and best practice. In reaching my decision, I'll focus on the issues I believe to be central to the complaint to decide what I think is fair and reasonable in all of the circumstances. We are not a court; and though there are rules I may rely on in respect of complaint handling procedures, I am not required to comment on each point or make specific determinations on every submission put forward by the parties.

I realise Mr P and Mr A are unhappy that JIML didn't supply a final response letter to the complaint. However, the recourse for that is bringing a complaint to this service after eight weeks have elapsed without reply – and Mr P did this on Business C's behalf. I cannot otherwise look at concerns about the way JIML has - or hasn't – dealt with the complaint, as complaint handling is not a regulated activity in its own right, and doesn't fall within the jurisdiction of this service.

It's also important for me to point out that we do not act in the capacity of a regulator. That means our decisions don't ordinarily interfere in how a business may conduct its operations or exercise what may be commercial judgment on the provision of a particular service. That remit falls to the FCA.

I note that specifically because Mr P has highlighted how, in September 2022, the FCA announced a skilled person review was required for JIML (as a subsidiary of Jarvis Securities) followed by confirmation of an additional Phase 1c review in November 2023. This related Phase 1c review will consider JIML's approach to uninvested client cash, interest retention and term deposits. It was confirmed how the report was due to the FCA from JIML no later than 28 February 2024 (and thereafter extended to 30 April 2024). The FCA's outcome to this report is awaited. A further phase 2 review is also not yet concluded.

However, I don't agree with Mr P's conclusion that this review has a bearing on JIML's actions here. I also understand that a number of businesses providing investment platforms or acting as SIPP operators were sent an open letter by the FCA in December 2023 in respect of the retention of interest earned on customers' cash balances, given the amount of interest being earned had increased substantially in 2022 and 2023 due to rises in the Bank of England base rate. The FCA explained how this may breach its Consumer Duty, which applies to events occurring from 31 July 2023, and the matter remains under review.

However, I don't consider either the skilled person review or the open letter to be relevant to Business C's complaint. Mr P and Mr A's complaint concerns JIML's actions in relation to settling debt on their share dealing account and its application of interest on that debt – not interest on uninvested cash balances or term deposits.

Though Mr P feels that the presence of an FCA review must lead me to conclude that JIML did not have proper controls in place for their investment account – I do not agree with that logic. As I've noted above, it is not this service's duty to act as a regulator. The ongoing skilled person review or other regulatory review of JIML undertaken by the FCA has not been concluded, but I do not believe this complaint relates to the subject of the 2023 review.

I recognise that Mr P says Mr A acted on behalf of Business C for the most part – until

detrimental circumstances occurred from August 2021 onwards. I've considered that situation carefully. I am also mindful that both regulatory rules and high level principles that apply to certain complex investment products. However, I do not believe the trades previously undertaken by Mr A on behalf of Business C fell under additional appropriateness rules. And, Mr P was still able to access and operate the account at any time.

"T" related trades can require short term activity within the relevant settlement period in order for them to be meaningful; they are trades that investors could potentially take profit - or suffer losses - from within the settlement period without having paid for the initial purchase (payment for the initial purchase being due at a specific settlement deadline). It is the impact of these trades, coupled with Mr A stepping away from active trading that led to the situation where positions were not closed within the relevant period (for T20 trades, that being 20 days).

However, I've not seen any objective evidence that JIML allowed Mr A to place trades when it shouldn't have. Further, the type of account is an execution only account. That means that advice is not given and so there was no requirement to find out Mr A's attitude to risk and so on. Business C had seemingly operated the account on a continuous basis without issue since 2003. I cannot see that there is any basis for finding that such trading was wrong and should not have been allowed from September 2021 or otherwise.

Though the value of the open trades at times exceeded the portfolio permitted margin of 100%, this did not occur when the initial transactions were executed. The difference occurred because there was a subsequent fall in the value of the portfolio, combined with a delay in settling the cash balance due – which was unfortunately a consequence of Mr A relinquishing his active role in managing Business C's share dealing account.

Mr P and Mr A are entitled to hold their own view on JIML's behaviour, but I must also do the same. And from an objective standpoint, I do not find it to have acted unfairly or unreasonably in the circumstances. I say this because I have reviewed the terms and conditions that apply to Business C's account, and I believe JIML has acted within those terms.

In liaising with JIML, Mr P on behalf of Business C accepted there was an approximately £44,000 debt outstanding to JIML. The trading account on 15 June 2022 stood at £52,667.20 and the cash balance stood at -£44,376.06, equating to a net value of £8,291.15. Accordingly, JIML took action under the terms because it perceived a risk of the net value of the account dropping further to a negative net balance.

The terms (at clause 10.6) say:

"If you fail to make any payment in full on or before the due date for payment, including without limitation, payment of Settlement Monies on the Settlement Date, we may:

- i) charge you Interest (both before and after judgment) on the amount unpaid at the published HSBC standard current bank account authorised overdraft rate;*
- ii) exercise our lien over any securities held by us either in your Account or otherwise;*
- iii) charge you an administrative fee for late payment which shall be payable immediately and debited to your Account;*
- iv) refuse to accept any further Instructions from you in respect of any service to be performed by us to you, including Transaction Instructions;*
- v) sell any Investment(s) bought and/or held for you and apply the proceeds towards settling the total amount owed by you. In the case of an unsettled*

- purchase by you any shortfall between the amount realised on the sale of any Investments and your total debt will still be due from you to us. Any surplus shall be for our benefit as you will have failed to meet your obligation to pay for the investments and beneficial ownership will not have passed: and*
- vi) *charge you for any legal and/or administrative costs on a full Indemnity basis that we may incur attempting to recover and/or recovering the money owed to us and such costs shall be a debt from you to us which must be paid by you on our request."*

So, I believe JIML has acted reasonably in the circumstances. It was not responsible for the declined position in respect of the account value; Mr P accepts this. However, it was able to – in accordance with the terms – apply interest at the stated rate, and sell the holdings in order to settle the debt owing.

I recognise Mr P feels that JIML could have intervened sooner. However, it's not my role to determine how a business undertakes its commercial decisions, and I've explained previously how we cannot act in the capacity of the regulator. In any event, it seems that JIML stepped in at the point it perceived a financial risk whereby the holdings were likely to drop below the net debit value – and I don't see anything unfair in it taking that decision.

The account was operated on an execution only basis. And whilst it is very unfortunate that Business C's holdings have declined such that Mr P and Mr A have lost a considerable amount of money, I cannot attribute that to any wrong doing on the part of JIML.

JIML said it hadn't unfairly applied interest to the settlement monies. This is correct. The legal representative acting for Business C had quoted terms relating to cash held in the trading account not being used for immediate investment which was calculated at 1%. But that is not applicable policy term here. As set out in term 10.6(i), JIML can apply interest at the published HSBC current bank account authorised overdraft rate. Since November 2021, this has been 39.9% EAR. However, Jarvis exercised its discretion to charge interest at a lower rate of 19.9%. I do not find it to have acted unfairly or unreasonably in doing so.

All in all, I haven't found that JIML made any error or that it acted towards Business C (and by association Mr P and Mr A) in a way that wasn't fair and reasonable. So, there are no grounds upon which I can uphold this complaint and it follows that I can't award the redress Mr P and Mr A are seeking.

As an aside, I note Mr P has set out how he feels his complaint may be better suited to legal action. In certain instances, an ombudsman is able to determine that a complaint should be dismissed without further consideration of its merits – such as if the complaint is the subject of court proceedings. However, I've not seen any evidence to suggest that any such proceedings have been instituted. And Business C remains free to seek further legal recourse, in the event my decision is not accepted and therefore not binding on the parties.

My final decision

For the reasons set out above, my final decision is that despite my sympathy for Mr P and Mr A, I do not uphold Business C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Business C to accept or reject my decision before 26 June 2024.

Jo Storey
Ombudsman

