The complaint

Mr B complains that Hargreaves Lansdown Asset Management Limited (‘Hargreaves Lansdown’) bought the wrong number of shares for him and that caused him a financial loss.

What happened

Mr B had a number of share dealing accounts with Hargreaves Lansdown.

On 31 October 2022 Mr B telephoned Hargreaves Lansdown to purchase some shares in a company I’ll refer to as ‘Company P’. He wanted to purchase shares to the value of £5,000 in one account, and shares to the value of £5,000 in another account. He intended to spend £10,000 in total, plus any costs he would have to pay for the transaction.

At the beginning of the call Mr B said:

> ‘*Hello there. I’d like to buy some shares on the – I think you’ve got them on the Nasdaq – [Company P]*.’

Hargreaves Lansdown then took him through a security check. And it asked which account he wanted to use and told him he could make the purchase online if wanted to.

Mr B said he knew he could buy online, but he thought he might get a better price through the telephone service. He then said:

> ‘*I want to buy 5,000 through the SIPP and 5,000 through my … fund and share account.’*

Hargreaves Lansdown said Mr B would have to pay £50 commission per trade. Mr B said that was alright. And he said:

> ‘*I do want to get the best price I can*.’

Hargreaves Lansdown told Mr B the stock he wanted to buy was trading in US dollars and when he dealt the trade would be converted into pounds sterling by the UK-based market that he placed his trade with. Hargreaves Lansdown then said:

> ‘*I can get $12.90 if you want to go ahead, Sir, for the first 5,000.*’

Mr B said:

> ‘*Ah, yes, let’s do that*.’

Hargreaves Lansdown then said it was looking to make the second purchase Mr B had asked for. It said:

> ‘*You’re trying to buy 5,000 as well.*’

Mr B said:

'*Yes.*'

Hargreaves Lansdown said:

'*It was 5,000 wasn't it?*'

Mr B said again:

'Yes.'

Hargreaves Lansdown said commission would again be £50. It gave Mr B the price per share and he said he wanted to go ahead. And Hargreaves Lansdown said:

'*OK, buying 5,000.*'

But the price changed before Hargreaves Lansdown completed the order. Mr B confirmed he wanted to go ahead at a slightly higher price per share. Hargreaves Lansdown then said:

'*It only gives you a few seconds. So that's all done at $12.90. And we will email those contract notes out to you within a few minutes.*'

Mr B thanked Hargreaves Lansdown and the call ended.

On Mr B's behalf Hargreaves Lansdown bought 5,000 shares in each account. The total cost of the purchases was more than £100,000.

Hargreaves Lansdown provided contract notes afterwards in Mr B's online account, showing the purchases it had made for him.

On 16 November 2022 Hargreaves Lansdown emailed Mr B saying a quarterly investment report was available for him to read online. The report included information that showed Mr B's transactions in the period, including the purchases made on 31 October 2022.

On 2 December 2022 Mr B logged into his Hargreaves Lansdown account online. He said that while looking for something else he noticed by chance that on 31 October 2022 he'd purchased shares costing more than eleven times the amount he'd intended to invest.

Mr B complained to Hargreaves Lansdown. He said he'd wanted to buy two lots of shares to the value £5,000 each, not two lots of 5,000 shares. He believed private investors would always buy shares in monetary amounts and only trusts would buy shares by number of shares. He said that even if he hadn't specified on the call that he meant £5,000 as opposed to 5,000 shares, Hargreaves Lansdown should've known from his trading history that he meant £5,000.

In December 2022 Mr B also sold about 70% of the shares in Company P which were bought for him on 31 October 2022. He's said he sold the shares at a loss.

Hargreaves Lansdown sent Mr B a recording of the call of 31 October 2022. In response to his complaint it said the following:

- Hargreaves Lansdown is responsible for the quality of the execution of trades. When carrying out Mr B's trades it considered the relevant execution factors and tried to get the best available price by limiting the amount of time between the order being placed and the successful execution of the order.

- At the beginning of the call Mr B said he wanted to buy shares in Company P and at no point did he phrase the request differently or query the trades that were placed.

- Hargreaves Lansdown sent Mr B two emails on 31 October 2022 with details of contract notes, and an Autumn Investment Report in November 2022 with details of Mr B's holdings. Mr B could've mitigated any losses by contacting Hargreaves Lansdown sooner, given he had information provided to him which should've made him aware of what had happened.

Mr B responded to Hargreaves Lansdown. In summary, he said the following:

- Hargreaves Lansdown should've stated the total value of the trades and the error would've been prevented.

- When Hargreaves Lansdown said '*I am able to get $12.90 for the first 5,000*' Mr B naturally assumed he meant £5,000 worth at a price of $12.90 per share.

- It was normal for a client to say, '*I want to buy shares in [P]*' at the outset of the call. That doesn't mean when Mr B later said '*I want to buy 5,000 through the SIPP and 5,000 through the Fund & Share Account*' that he then meant 5,000 shares rather than shares to the value of £5,000. The natural and reasonable interpretation of buying 5,000 is buying shares to the value of £5,000.

- Hargreaves Lansdown should deal with any ambiguities by querying them with the investor, particularly retail consumers to whom it owes a higher duty of care – particularly when there was a difference of many thousands of pounds at stake.

- Mr B had been purchasing shares in round sterling amounts (with costs on top) over the telephone for many years through Hargreaves Lansdown and it never occurred to him that some investors might purchase a number of shares rather than a sterling amount. Most ordinary members of the public buy in sterling amounts.

Hargreaves Lansdown said it interpreted his request to mean 5,000 shares. And Mr B had indicated he was eager to get the best available price over the phone rather than make the trade online. So Hargreaves Lansdown was keen to achieve '*best execution*', taking into account price, cost, speed and size of the trade. Although Hargreaves Lansdown didn't clarify whether the request was for a number of shares or a monetary amount of shares, Mr B also didn't clarify his order. Hargreaves Lansdown also said Mr B must have been happy with his exposure to the stock he'd bought because after making his complaint he still kept more than £10,000 worth of the shares.

Mr B referred his complaint to this service. He said he'd been caused significant financial loss and, in summary, he made the following points:

- He'd been buying shares in round sterling amounts (with costs on top) over the telephone for many years through Hargreaves Lansdown. It never occurred to him that some investors might buy a set number of shares rather than a monetary amount. Most '*ordinary members of the public*' would buy in sterling amounts.

- Hargreaves Lansdown had admitted it didn't check whether he wanted to buy 5,000 shares or shares to the value of £5,000.

- Had Hargreaves Lansdown mentioned the total cost of either transaction Mr B would've corrected it since the amounts were much more than he meant to spend.

- Had Hargreaves Lansdown looked at his share purchase history it would've seen the purchases it was now making were out of proportion with his previous purchases.
- A reasonable person would interpret '*buying 5,000 of a company*' to mean buying £5,000 worth of that company.
- Because he had a long history of buying shares with Hargreaves Lansdown without any problems Mr B didn't feel the need to immediately check contract notes.
- Hargreaves Lansdown's November investment report was online only, not sent by post. Again, Mr B had no reason to check the figures in the report.
- The shares he decided not to sell after discovering the error were more than he'd wanted to buy, but he'd decided to keep them for longer in the hope they'd recover some of the value they'd lost since he bought them. If he had to sell them and so crystallise his loss in order to be compensated for the error then he would do so.

One of our Investigators looked into Mr B's complaint. He said:

- Having listened to the call of 31 October 2022 he couldn't fairly say Hargreaves Lansdown had made an error that it should be held responsible for correcting. Mr B had said he wanted to buy 5,000 shares in each of two accounts. He didn't mention a monetary value. It wouldn't have been clear to Hargreaves Lansdown that Mr B meant to buy shares to the value of £5,000 in each account. And when Hargreaves Lansdown said '*I am able to get $12.90 for the first 5,000*' it clearly indicated the price for each of the first 5,000 shares. Mr B had agreed to proceed on that basis.
- While it would have been good if Hargreaves Lansdown had told Mr B the total cost of the trade on the call, that wasn't a requirement. Contract notes are sent out to confirm transactions because errors can occur. And customers are given contract notes to confirm the transaction is completed as instructed. Mr B had acknowledged he didn't check his notes promptly.

Mr B didn't agree with the Investigator's view. In summary he said the following:

- Most private investors buy shares in fixed sterling amounts.
- When Hargreaves Lansdown said it could get $12.90 for the first 5,000 Mr B didn't interpret that to mean 5,000 shares. Since most people buy in fixed monetary amounts, most people would interpret 5,000 to mean £5,000 in that context.
- Hargreaves Lansdown put the onus on Mr B to check and ensure there was no mistake, but Hargreaves Lansdown owed a duty to deal with this type of ambiguity.
- Hargreaves Lansdown's contract notes are put online, not sent out. Given he'd had many years of trouble-free investing with Hargreaves Lansdown, Mr B didn't think he needed to check the contract notes.

Because no agreement could be reached, the complaint was passed to me to review afresh and make 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.

Having done so, I'm not upholding the complaint. I'll explain why.

The purpose of this decision is to set out my findings on what's fair and reasonable, and explain my reasons for reaching those findings, not to offer a point-by-point response to every submission made by the parties to the complaint. And so, while I've considered all the submissions by both parties, I've focussed here on the points I believe to be key to my decision on what's fair and reasonable in the circumstances.

To start with, I haven't seen any express requirement for Hargreaves Lansdown to clarify or confirm the details of Mr B's order before carrying it out. Hargreaves Lansdown's terms and conditions included the following:

> '*Where you give us instructions by telephone, we may repeat to you our understanding of your instructions for you to re-confirm. Unless you correct these repeated instructions, they will be accepted as your instructions and we will act upon them. You agree that you will be bound by instructions accepted by us in accordance with the above process even if they do not reflect your intended instructions.*'

So, although Hargreaves Lansdown could repeat an instruction to a customer, and the customer would then be bound by the instruction if they didn't correct it, Hargreaves Lansdown wasn't required by the terms and conditions to repeat an instruction or otherwise clarify or confirm it before carrying it out.

The rules of the regulator – the Financial Conduct Authority (FCA) – also didn't include any specific requirement for Hargreaves Lansdown to clarify or confirm the details of an order before carrying it out.

But that doesn't mean Hargreaves Lansdown has necessarily acted fairly and reasonably to Mr B when it carried out his order without seeking to clarify or confirm what he intended to purchase. I must decide what's fair and reasonable in all circumstances of the complaint. In some circumstances it might be unfair or unreasonable for a business to limit its actions to the minimum required by its formal obligations. So I've considered whether, to act fairly and reasonably, Hargreaves Lansdown still should've done more to ensure it understood and correctly executed Mr B's order.

When considering this I've kept in mind, in particular, the following two principles for businesses from the FCA which I think are particularly relevant here: Principle 6 which says '*A firm must pay due regard to the interests of its customers and treat them fairly*'; and Principle 7 which says '*A firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading*'.

Keeping these principles in mind, I think it's fair to say it was in Mr B's interests for Hargreaves Lansdown to execute the order he wanted it to execute. And, to have regard to those interests, Hargreaves Lansdown needed to be satisfied that it understood Mr B's wishes. Hargreaves Lansdown itself appears to acknowledge the importance of that by setting out in its terms that it might repeat back instructions and in what circumstances it will then bind itself and the customer to an order. Bearing this in mind, to decide if Hargreaves Lansdown has acted fairly and reasonably, I must decide whether Mr B's instruction was clear enough that Hargreaves Lansdown could be satisfied it knew what he wanted to buy. And I need to determine whether Hargreaves Lansdown had a reasonable basis to think Mr B knew what he was getting when Hargreaves Lansdown proceeded with his order.

I've listened to the recording of Mr B's call with Hargreaves Lansdown. Mr B indicated he wanted to buy '*some shares*' in a particular company which he named. After being taken through security he then said he wanted '*to buy 5,000*'. In general, a reference to '*5,000*' without any other qualifying information (such as a monetary denomination) can reasonably be taken to mean simply 5,000 in number. In this case that would mean 5,000 shares. So on the face of it I don't think Hargreaves Lansdown had reason to think Mr B meant anything other than 5,000 shares. I'm further persuaded on this point by the fact Mr B said he wanted to buy '*some shares*' and '*to buy 5,000*'. He didn't say, for example, that he wanted to '*put in 5,000*', '*spend 5,000*' or '*invest 5,000*'. Such phrasing would've indicated he was thinking of a monetary amount rather than 5,000 shares. Rather, the phrasing Mr B used – in particular '*to buy 5,000*' – can reasonably be taken to mean Mr B wanted 5,000 shares.

When Hargreaves Lansdown carried out the order it also used the term '*5,000*'. At one point it checked with Mr B, saying, '*It was 5,000 wasn't it?*' In hindsight it's easy to see that it would've been helpful for Hargreaves Lansdown to check whether Mr B did indeed mean 5,000 shares. It's clear in hindsight that he didn't mean that. But I don't think I can fairly say that Hargreaves Lansdown had reason at the time to think Mr B might've been expecting to purchase shares to the monetary value of £5,000. The key point here is that Mr B didn't qualify the '*5,000*'. And, as I've said, without any qualification '*5,000*' simply means 5,000 in number. And, in addition to that, Mr B's phrasing around the '*5,000*' tended in my view to indicate that he meant a number of shares rather than an amount of money.

Mr B said he didn't know retail investors sometimes bought shares by number rather than by monetary value. But Hargreaves Lansdown will have known that retail investors do sometimes buy shares by number. Online share trading platforms usually offer investors both options. I'm satisfied that retail investors will give instructions both ways, and it wouldn't necessarily follow from the way Mr B expressed his request that he meant to specify a monetary amount. And Hargreaves Lansdown had no reason to know Mr B had assumed all purchases by retail consumers were done by monetary amount. So, again, it's not unreasonable for Hargreaves Lansdown to think Mr B asked for a number of shares when he asked '*to buy 5,000*' and that Mr B understood that to be the order it was executing.

I've considered whether there was anything sufficiently out of the ordinary in Mr B's order that should've given Hargreaves Lansdown reason to pause and check whether he really intended to buy 10,000 shares and whether he understood that's what was happening.

I've already said I don't think it was significantly unusual for a retail customer to seek to buy shares by number. So, to Hargreaves Lansdown, the order wouldn't have seemed unusual on that basis, and Hargreaves Lansdown wouldn't have had any reason to think Mr B didn't mean to make the order or didn't know what was being ordered.

I also don't think the total cost of the trade shows Hargreaves Lansdown was at fault. I acknowledge it's a significant amount for the average retail investor. But I note that the trade was successfully settled. And I don't think the amount was sufficiently unusual that Hargreaves Lansdown should've suspected an error.

Mr B has, many times previously, used Hargreaves Lansdown's service to purchase tranches of shares by monetary amount. I consider this relevant for understanding what was in his mind during the phone call with Hargreaves Lansdown. I don't consider that it means Hargreaves Lansdown should've known that Mr B's habit was to buy amounts of shares by monetary value rather than by number of shares. It wouldn't be reasonable to expect Hargreaves Lansdown to check each customer's dealing history before executing the customer's orders. So I don't think Mr B's dealing history should've caused Hargreaves Lansdown to question his order to '*buy 5,000*'.

Overall, having carefully considered all the evidence and arguments in detail, I can't conclude that it was unreasonable for Hargreaves Lansdown to think during the phone call with Mr B that he wanted to buy a total of 10,000 shares. And I can't conclude that it was unreasonable for Hargreaves Lansdown to think Mr B knew it was executing an order for 10,000 shares. Following on from that, I conclude that it was fair and reasonable for Hargreaves Lansdown to execute the order on that basis. I can't say Hargreaves Lansdown failed to pay due regard to Mr B's interests or his communication needs. And I'm not satisfied I can say that it was otherwise unfair or unreasonable for Hargreaves Lansdown to proceed as it did with Mr B's order.

Hargreaves Lansdown mentioned that Mr B could've acted sooner if he'd checked his contract notes after the order was completed. Its terms and conditions said a customer had to contact it '*immediately*' if a contract note contained an error or a transaction that the customer didn't recognise. I know Mr B had never before had a problem with trades via Hargreaves Lansdown. And so he didn't see a need to check the order was carried out as he intended. And that meant he didn't discover the problem with his order until some weeks later. Having considered this point I don't think Mr B could've stopped the order once the contract notes were issued, even if he'd checked them straight away – I think it would've been too late for that. But I accept that, if he'd checked the contract notes after the order was executed, he could've mitigated loss by selling the shares back almost immediately.

Despite not upholding this complaint, I very much empathise with Mr B in this situation. He's found himself in a position he never intended to be in. He's had a substantial amount of money tied up in an investment he didn't want to make and which lost value after he bought it, which meant Mr B couldn't, at that time, recover all of the money he'd invested. I certainly don't think the fact that Mr B didn't immediately sell all of the shares when he discovered the problem meant that he was happy with the investment. I understand that since discovering the problem Mr B has simply tried to mitigate loss as best he can. And, as I've said, I very much empathise with him over the situation he's found himself in. But, having considered all the evidence and arguments very carefully, I can't conclude that his situation is the result of a failure by Hargreaves Lansdown.

My final decision

For the reasons I've set out above, my final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 1 April 2024.

Lucinda Puls
Ombudsman