

The complaint

Mr H complains about the information he received from Jarvis Investment Management Limited (Jarvis) in relation to his share holdings.

He says that Jarvis, who was the custodian of his holdings, failed to inform him or his intended new broker, that it couldn't transfer his holdings to a new account with that broker and thereby caused the transfer of his holdings to be delayed. Mr H says Jarvis accepted his instructions to transfer to the new broker and didn't raise any issue until much later.

Mr H also complains that Jarvis incorrectly treated him as a new customer and as a result didn't allow his holdings to be transferred to his proposed new broker. He says he was an existing customer who had to transfer his holdings because his former broker went into liquidation.

Mr H complains that there was an additional delay in respect of one of his holdings as Jarvis didn't contact the relevant company promptly. He says Jarvis therefore caused a further delay.

What happened

Mr H held shareholdings in an account with a broker, who I shall refer to as broker 1. The custodian of those holdings was Jarvis, and Jarvis had a contractual relationship with broker 1.

Unfortunately broker 1 went into liquidation. So Jarvis wrote to Mr H on around 19 November 2022 to outline his options. One of those options was to open an account with a new broker and transfer the holdings to that new broker. Jarvis provided a form to be completed by Mr H.

On 21 November 2022 Mr H completed the form and on 22 November 2022, Mr H emailed Jarvis and informed it that he was planning to transfer his holdings to a new broker, who I shall refer to as broker 2.

Jarvis responded the next day and asked Mr H to confirm once he had been in contact with broker 2 to arrange a transfer.

Mr H responded on the same day and indicated he had already been in contact and had provided broker 2 with the relevant documents to enable the account to be opened.

On 24 November 2022 Jarvis emailed Mr H and asked him to let it know when the account with broker 2 had been set up.

On 28 November 2022 Mr H emailed Jarvis and said broker 2 had informed him that the transfer was being held up by Jarvis and it had been informed that there was a restriction on the opening of new accounts.

Jarvis responded on the same day and said it was unable to discuss the matter with Mr H and that broker 2 should advise Mr H when he was able to open an account.

On 10 February 2023 Mr H informed Jarvis that he had changed his broker and that his holdings should be transferred to that broker, who I shall refer to as broker 3.

On 20 March 2023 Mr H contacted Jarvis to raise an issue around the transfer of one of his holdings (warrants) which hadn't been transferred to his new broker.

Jarvis responded on the same day and said that as his warrants were held in certificated form (i.e. paper warrants) they couldn't be transferred quickly via an electronic transfer. It said it had to send the warrants to the relevant company so that it could re-register the holdings into the name of his new broker.

Jarvis said it couldn't control the speed at which the new company actioned the registration. In addition it said there were multiple clients of broker 1 (which had gone into liquidation) with those warrants and so there was, in effect, a queue to have them re-registered.

On 21 March 2023 Mr H contacted Jarvis and explained his difficulty was that he had been unable to exercise the warrants since November 2022. He asked when Jarvis had asked the relevant company to re-register the warrants into his new broker's name.

On 23 March 2023 Jarvis responded and said that Mr H's warrants were due to be transferred in the next tranche and sent to the company in approximately a week.

Mr H contacted Jarvis again and asked why it hadn't contacted the company a month earlier in February 2023, when it had received the transfer request from his new broker.

Jarvis responded and explained that the warrant certificate was out of the office being re-registered for other clients whose transfer requests had been made before Mr H's. It said when it had pooled holdings for broker 1, it only had one certificate to cover all broker 1's clients so when it sent the certificate it had to wait for the balance to be returned before it could send any more requests.

Jarvis said it was unable to give Mr H a timeframe because the re-registering of the certificate was being dealt with by the relevant company. However it said from experience this could take 2-4 weeks.

In June 2023 Mr H complained to Jarvis about the delay in transferring his holdings.

Jarvis didn't uphold Mr H's complaint. It said it believed his complaint should be addressed to broker 2. It said as Mr H was an existing client of broker 1 and not of Jarvis, his account transfer to broker 2 was classed as a new account opening. Jarvis said as there was a restriction by the regulator, the FCA, broker 2 was not able to onboard new clients with Jarvis and broker 2 should have made Mr H aware of this.

Mr H didn't agree and referred his complaint to our service. In summary he said he was a client of broker 1 and therefore a client of Jarvis. He said upon being told of the imminent closure of broker 1, he had received an email from Jarvis asking him to complete a form. Mr H said he had informed Jarvis promptly that he intended to open an account with broker 2, as Jarvis was also the custodian for broker 2. So, he said once that account was open, Jarvis only needed to provide a replacement account number and apply this to his portfolio. Mr H said Jarvis shouldn't have treated him as a new client.

Mr H said Jarvis had made various undertakings to broker 2 to complete the transfer between November 2022 and late January 2023 however he was only informed in February 2023 through broker 2 that there was an issue with the transfer.

Mr H said he had been unable to trade for several months as a result of the time it had taken to transfer his holdings and the value of his shares had decreased during that time. So he claimed the difference in value between December 2022 and March 2023 (when they were received by broker 3) for one of his holdings and in relation to the warrants, the difference in value if he had exercised the warrants in early December 2022 and sold the shares immediately after.

Our investigator considered Mr H's complaint but didn't think it should be upheld. He noted that Jarvis was the custodian for his portfolio but did not act as his broker, even though there had been an occasion in the past where it had allowed him to trade directly because of exceptional circumstances. The investigator also noted the situation had arisen because Mr H had needed to move to another broker.

The investigator didn't agree that the move to a new broker was simply a matter of creating a new account number and applying it to Mr H's portfolio. He said in order to create a new account number, a new account would need to be opened and the assets in his portfolio would then be moved to that new account. The investigator also noted that shares held by Mr H's broker as a nominee were held within nominee accounts with the custodian.

The investigator considered the FCA restriction and noted that Model B corporate clients referred to brokers and included broker 1 and broker 2. He thought that transferring to broker 2 would have breached that restriction, or at least risked doing so as Mr H would have been a new client of broker 2 and broker 2 would have had to open an account for him. The investigator didn't think Jarvis had acted unfairly in reasonably managing that risk and he noted that Jarvis was entitled to exercise its commercial judgment when making a decision of that nature.

The investigator also thought that broker 2 should have been aware of the restriction and warned Mr H.

Mr H didn't agree with the investigator's conclusions. He said that Jarvis had accepted instructions from him to move to broker 2 and that had caused a delay as Mr H had wasted time in trying to do this rather than moving to a different broker.

The investigator considered the points raised by Mr H but didn't think the outcome should change. He said brokers, such as broker 2, can have more than one custodian which is why Jarvis didn't initially realise that Mr H was trying to transfer to broker 2 *and* keep Jarvis as the custodian.

The investigator also didn't think that Jarvis accepted an instruction to transfer to broker 2. He considered the wording in the option selected by Mr H, and he didn't think that was a direct instruction to Jarvis. The investigator said it described Mr H having to arrange the transfer through a new broker and *that* was the party he would give the actual instruction to. He said it was then up to that new broker, in this case broker 2, to liaise with Jarvis. So he didn't think Jarvis had accepted an instruction from Mr H to transfer to broker 2.

The investigator also noted there were particular circumstances here because broker 1 had gone into liquidation so it was no longer involved, and he felt that Jarvis had acted as it did in order to speed matters up. Whereas under normal circumstances, Mr H would have filled out a transfer authority with the new broker, which would then have been passed to the old broker, and the new and old brokers would have arranged everything between themselves.

Mr H didn't agree with the investigator and in summary said once he had completed the form indicating he wished to transfer to a new broker, Jarvis had asked him which broker he wished to transfer to, and on two occasions he had informed Jarvis he intended to transfer to broker 2, which he said was accepted by Jarvis. He said this was the reason he had proceeded with broker 2.

Mr H said the fact Jarvis wouldn't have known whether broker 2 had another custodian wasn't relevant and wasn't something he should have to bear the consequences of. He said that Jarvis knew it was a custodian of broker 2 and knew his portfolio was with Jarvis.

Mr H said that we had accepted he was a client of Jarvis, so he said he couldn't be considered a new client when it came to transferring brokers. He said he was an existing client of Jarvis in a forced situation and so Jarvis should have agreed to the transfer.

Mr H said that in any event, Jarvis owed him a duty of care as a client to allow him to trade on his portfolio as it had previously done, a year or two before, when broker 1 had its trading permissions suspended.

Mr H said Jarvis had caused his loss by not allowing him to trade when broker 1 had gone into liquidation.

As no agreement could be reached Mr H's complaint was referred 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 think it is important at the outset to outline the different roles here. I consider that Jarvis had a clear contractual relationship with broker 1, who was a corporate client.

Mr H also had a contractual relationship with broker 1, as he opened an account with that broker to deal in shares and other holdings.

There was also a customer relationship between Jarvis and Mr H as it was the custodian of his holdings. However, I think the nature of that relationship was fairly limited and it came about as a result of the contractual relationship between Mr H and his broker, as the account with Jarvis was opened via his broker.

Jarvis didn't provide Mr H with advice, and it didn't (in normal circumstances) take instructions from him to execute trades to buy and sell holdings as his broker would. I note that it did execute some trades for Mr H for a short period, but this was because there were some exceptional circumstances at that particular time, namely broker 1 had been suspended from trading.

So, I consider that Jarvis had an obligation to keep Mr H's holdings secure and to engage with any valid instruction given to Jarvis by Mr H's broker to transfer those holdings to another broker and/or to another custodian.

However, with regards to the latter, I think it must be borne in mind, that the transfer process is initiated and progressed by the new broker, not by Jarvis. While Jarvis sent correspondence outlining Mr H's options, it did so because broker 1 was going into liquidation so was unable to remain as the broker, not because Jarvis was initiating the transfer and seeking instructions from Mr H.

So, I don't think that Jarvis was responsible for advising Mr H on the transfer process or in respect of which broker he should or shouldn't use. Jarvis did however have to ensure that the information it gave to Mr H was clear, fair and not misleading.

It is also important to bear in mind here, that in the same way that Mr H was not responsible for his broker going into liquidation, neither was Jarvis. I consider that was the event that started the difficulties here. And I think Jarvis then outlined the options available to Mr H in a clear way in a form sent to him in November 2022.

Mr H couldn't utilise some of those options because he wasn't a UK resident. He selected the following option on the form:

"Transfers to another broker. I have completed the paperwork of my new provider and they will liaise with Jarvis to agree trade and settlement dates for the transfer of the account in-specie. My account number has been supplied to my new provider."

I agree with the investigator that this wasn't an instruction to transfer the holdings to broker 2. It was an indication given to Jarvis of what the next step would be, with the onus being on the new broker to contact Jarvis.

Was it reasonable for Jarvis to conclude that Mr H was a new client for the purposes of the FCA voluntary restriction?

Jarvis had entered into voluntary agreed restrictions in September 2022 in accordance with section 55L FSMA (Financial Services and Markets Act 2000). That restriction was publicly available on the website of its holding company and the London Stock Exchange.

The restriction (part of) stated:

'That, for the time being, it will not without the Financial Conduct Authority's (the "FCA") consent, accept new clients from certain of its existing Model B corporate clients until the Skilled Person provides sufficient assurance about the relevant systems and controls. JIML will liaise with the Model B corporate clients affected but this should not impact existing clients.'

Broker 2 fell into that category which meant that Jarvis was unable to accept new clients from broker 2 and so broker 2 was unable to open new accounts with Jarvis.

Mr H argues that he was an existing client because Jarvis was the custodian of his holdings

As I have said, while there was a relationship between Jarvis and Mr H, the account was opened via the broker and the broker was the corporate client of Jarvis.

I consider it a reasonable interpretation of that notice to say that as Broker 2 was now seeking to act for Mr H, this was a new arrangement, and he was therefore a new client. And as the investigator has outlined, broker 2 would have to open a new account for Mr H, which would support the position that he was a new client, even though Jarvis had been the custodian for his holdings.

And, in any event, I don't think it was unreasonable for Jarvis to take a cautious approach to the notice and its interpretation, given it didn't want to risk being in breach of an agreement made with the regulator.

In addition I think it more likely than not that the broad intention behind that restriction was to protect consumers, so I don't think that Jarvis was acting in bad faith or treating Mr H unfairly, in reaching that conclusion.

Should Jarvis had raised the issue regarding broker 2 at an earlier stage?

Mr H emailed Jarvis in November 2022 and informed it that he was intending to transfer the holdings to broker 2. Again, I don't think that this could be construed as a direct instruction to Jarvis to transfer to broker 2, because that is not the nature of its role as I have already outlined. Mr H would instruct broker 2, and broker 2 would then liaise with Jarvis.

Mr H complains that Jarvis didn't then raise any issue or warn him that there would be a difficulty with this course of action.

Jarvis says that was because it wasn't aware that Mr H intended to keep Jarvis as a custodian. Jarvis has explained that brokers, such as broker 2, can use more than one custodian. So, the transfer could have taken place if the new broker was intending to use a new custodian. I consider that to be a reasonable explanation as to why it didn't raise any issue at that stage.

I note Mr H's point that Jarvis was aware of the issue with broker 2 and it didn't know which custodian broker 2 was intending to use. However, I consider it was reasonable for Jarvis to take the view that broker 2 would also be aware of the issue and therefore wouldn't have in all likelihood sought to keep Jarvis as the custodian. And I also note that the initial emails from Mr H in November 2022 didn't expressly say who the custodian would be, this was referred to indirectly by Mr H in a later email in November where he noted Jarvis was the custodian for both brokers.

So, overall I am not persuaded that in these circumstances Jarvis had a duty to inform Mr H or broker 2, that the transfer couldn't take place because I don't think at that stage that it was clear, from the information provided to Jarvis, that it couldn't take place.

I have to take into account the role of broker 2 here. I think as it was initiating the transfer, it was responsible for progressing the transfer and liaising with Jarvis.

I also think it was reasonable to expect broker 2 to have knowledge of the restriction given that information about the restriction was publicly available on Jarvis' holding company's website and the London Stock Exchange and it impacted its business. And, in any event, I think it reasonable to expect it to inform itself of any issues surrounding it acting as broker, particularly, as I have said, because it was initiating the transfer as the "new broker."

I also think that at the end of November 2022, it was apparent that there was an issue with the transfer. Mr H referred to this in an email sent to Jarvis where he said broker 2 had indicated that it had been informed by Jarvis that there was a restriction on the opening of new accounts. So I consider that Jarvis had raised the issue with broker 2. And I consider it was incumbent on the parties seeking the transfer, broker 2 and Mr H to look into this further, and as I have said, I consider broker 2 should have kept itself informed of any restrictions that applied.

Overall, and noting its role, I don't consider that Jarvis acted incorrectly or unfairly by not raising the issue of the restriction on opening new accounts with broker 2 at an earlier stage.

Was Jarvis in breach of a contractual duty to Mr H, or in breach of a duty of care, in not allowing Mr H to trade during the interim period?

Taking into account Jarvis's role here, I don't think it had a contractual duty or a duty of care to Mr H to allow him to trade his holdings directly. That activity was something that fell within the remit of the broker and it wasn't Jarvis's fault that Mr H's broker had found itself in difficulties such that it was no longer able to act.

I also don't think the fact that Jarvis had used its discretion in the past, when broker 1 was suspended from trading, to allow Mr H to place trades directly through Jarvis imposed any obligation to do so in the future. As I have said, I consider Jarvis exercised its discretion to allow something outside of its obligations to Mr H in exceptional circumstances, but I don't consider that amounted to creating a contractual right to trade, or to imposing a duty of care on Jarvis to allow Mr H to trade in the future, and in the new circumstances which then transpired. And I don't think it would be fair and reasonable for me to conclude in these circumstances that Jarvis was obliged to allow Mr H to trade where there was another reasonable alternative which was to use a new broker.

Did Jarvis cause unreasonable and unavoidable delays in respect of the transfer of the warrants?

Mr H has complained about the amount of time it took Jarvis to transfer the warrants he held to broker 3.

Jarvis has explained that there was a specific process in place where these warrants were transferred in tranches and those tranches were transferred in the order they were received by Jarvis. It said this took some time because there wasn't a quick electronic system, instead there was a paper system.

Jarvis said it had pooled holdings for broker 1 and the certificate would be sent to the relevant company for those warrants and Jarvis would then have to wait for the balance to be returned before it could send any more requests.

Jarvis has also explained that it couldn't control how long it took that company to re-register the warrants.

I think the process Jarvis puts in place to execute the transfer of warrants is a matter of commercial judgement on its part. It must however treat Mr H fairly. I don't think it is

unreasonable to have some sort of batch system for efficiency rather than dealing with each customer on an individual basis and I also note that some of this process was out of Jarvis' control because it was dealing with a third party who would re-register the warrants.

I don't think Jarvis treated Mr H unfairly as the applications in respect of these warrants were being processed in the order they were received. So, I am satisfied on balance that there would have been other consumers who made their transfer application before Mr H, and it is only fair therefore that their applications were processed before his.

I also note that as broker 1 had gone into liquidation, a number of its clients would have been impacted and as a result there would have been a sudden demand for re-registration, I think it is more likely than not that this would have caused a delay given the nature of the process.

In addition I consider Jarvis responded to Mr H's emails promptly and provided further information in relation to the process and the expected timeframe.

Summary

I don't consider that Jarvis has acted incorrectly here or treated Mr H unfairly for the reasons I have outlined. So while I appreciate his disappointment that during this period the value of his holdings fell, I don't think Jarvis caused an avoidable delay because I don't think Jarvis acted incorrectly or unfairly in the circumstances. So I won't be asking it to do anything further.

My final decision

My final decision is that I don't uphold Mr H's complaint against Jarvis Investment Management Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 5 February 2025.

Julia Chittenden
Ombudsman