

The complaint

Mr T complains that Hargreaves Lansdown Asset Management Limited (“HLAM”) failed to process an instruction to transfer his pension savings to another provider in a timely manner. As a result he says that the value of his pension savings fell and so he has suffered a loss.

What happened

I issued a provisional decision on this complaint in April 2021. In that decision I explained why I thought the complaint should be upheld. Both parties have received a copy of my provisional decision but I include an extract from it below for completeness. I said;

Mr T held pension savings with HLAM in a self-invested personal pension plan (“SIPP”). He decided, in February 2020, that he wished to transfer those pension savings to a SIPP that he had opened with another provider. The new provider informed HLAM of Mr T’s request to transfer his pension savings via the Origo Options automated system on 14 February 2020. Mr T required the transfer to be made in cash, so HLAM needed to sell his pension investments before sending the funds to the new provider.

HLAM acknowledged Mr T’s transfer request but didn’t provide him with any indication of the likely timescales for the transfer to be completed. HLAM’s records show that it instructed the sale of Mr T’s pension investments on 16 and 17 March. The last of the sales settled on 23 March and the cash funds were sent to the new provider on 25 March. HLAM confirmed the completion of the transfer to Mr T on 27 March.

Mr T was unhappy with the time it had taken HLAM to complete the transfer. He said the market values of his investments had fallen significantly in the time that it had taken for the transfer to complete. HLAM explained that it would generally allow up to 30 days for a transfer of this nature to be finalised, and so the time it had taken wasn’t unreasonable. It said that Mr T had been able to manage his investments during the whole transfer period so he could have moved them into cash far sooner if he’d wanted. It thought his complaint was being made with the benefit of hindsight after the adverse market movements around that time.

I agree with HLAM that its processing timescales appear to have met those set out in the relevant law. That law is contained in the 1993 Pension Schemes Act and requires that transfers generally take place within six months from the start of the transfer process. But I think it only reasonable to point out that legislation dates back almost thirty years to a time when automation was significantly less advanced than now. I don’t think it would be reasonable for me to consider the maximum time set out in the legislation thirty years ago should provide me with any fair indication of what might be reasonable today.

The transfer of Mr T’s pension savings was regulated by the Financial Conduct

Authority. Its rules require that a transfer request of this nature be executed “within a reasonable time and in an efficient manner.” But that requirement provides me with little concrete grounds to determine what timescale I think should have applied to this transfer. What might be considered reasonable and efficient in one circumstance might be considered unreasonable and inefficient in another.

So I think it is reasonable to base my conclusions here on what I would consider to be best industry practice. And coincidentally the guidance I am referring to here is the most contemporaneous of my three considerations – the law, any relevant regulatory rules, and good industry practice at the time. What I consider to be best industry practice was issued in June 2018 by the Transfers and Re-registration Industry Group (“TRIG”). The Group was formed to review current transfer and re-registration processes, and comprised of ten participating trade bodies and their nominated member representatives.

I think there are two key aspects of that document – titled “Industry-wide framework for improving transfers and re-registrations” – that underpin my consideration of this complaint.

Section 25 of the document deals with the time taken for the transfer to complete. Here the transfer instructed by Mr T was for his pension savings to be passed over in the form of cash. So that is the relevant part of section 25 that I repeat below. It says;

For transfers between two counterparties involving cash assets, the TRIG believes that providers should adopt an end-to-end good practice standard timescale, from when the acquiring provider receives a completed instruction from the client, to the receipt of the transferred funds.

- For pension cash transfers between two counterparties, this standard should be 10 business days, including BACS timescales. As existing industry practice is often measured in calendar days, 14 calendar days can be taken to be 10 business days for the purpose of this SLA.*

And Section 26 further elaborates;

These timescales represent good practice for automated processing. In practice, pension cash transfers will take longer in some circumstances, particularly where additional due diligence is required on unfamiliar or suspicious schemes.

I have already briefly mentioned that HLAM sent Mr T a letter confirming his transfer request. But I also noted that letter didn’t contain any information about how long he should expect the transfer to take. Customer communications are dealt with in section 27 of the document which says;

Providers should set customers’ expectations about the process by providing the following information to customers prior to or following the initiation of a transfer or re-registration.

- An outline of the process from the customer’s perspective, including an indication of timeframe.*

But I do note that section 27 goes on to say;

Responsibility for communicating with the customer around the timing of the

transfer should rest with the acquiring provider, though this does not mean they should be held responsible for delays caused by others in the process.

So, based on the above, I think it reasonable that Mr T should have expected his transfer to complete within 14 days of the instruction being received by HLAM. It seems to me that HLAM did little to process his request until a significant period of time had elapsed. The transfer was being made to a SIPP held with another mainstream provider. So I don't think that HLAM should have had any concerns about, or needed to conduct due diligence on, an unfamiliar or suspicious scheme. So the first step in the process was the sale of Mr T's pension investments to produce the cash it needed to transfer.

From the timescales that HLAM has produced it sent the cash to the new provider nine days after it started the sale of Mr T's pension investments. So that would lead me to conclude that the timescales set out as best practice were easily achievable. I can accept there might be a short period beforehand whilst HLAM set up the transfer request on its systems – although since the instruction was received electronically I'd expect that delay to be minimal. And so I will allow the entire 14-day period as a reasonable time for the transfer to have been completed.

HLAM has said that Mr T was able to continue to manage his account in the lead up to the transfer. And if he had been concerned about moving his pension savings into cash he could have instructed that whilst the transfer was underway. But I am not persuaded by that argument for two reasons.

I think Mr T had a reasonable expectation that the transfer would proceed relatively quickly after he had given the instruction to the new provider. I can see from the instruction that was sent to HLAM that the new provider expected it to complete by 26 February – twelve days later. It is likely that expectation might also have been shared with Mr T.

The letter that HLAM sent to Mr T, acknowledging his transfer request didn't provide him with any indication that those timescales wouldn't be met. In fact the letter was entirely silent on timescales. Although I appreciate best practice might have been for the new provider to manage the communication with Mr T, once HLAM had written to him I think it would be reasonable for him to be told if the new provider's expectations wouldn't be met in terms of the transfer date.

In many cases providers actively discourage consumers from instructing transactions on their pension investments whilst a transfer is underway. It is possible that Mr T might have been reluctant to make any changes to his investments for fear of delaying the transfer. And since he had a reasonable expectation the transfer would be concluded in a timely fashion I don't think it is fair to expect him to have moved his investments into cash to mitigate any delays caused by HLAM.

So I currently think that HLAM should have completed the transfer of Mr T's pension savings by at most 14 days after the instruction had been received. I think that the entire delay it caused took place before it instructed the sale of Mr T's pension investments. So applying the same timescales as the actual transfer I think HLAM should have started the sale process on 19 February 2020. I currently intend to direct HLAM to revalue the sale of Mr T's pension investments based on that date.

I asked both parties to let me have any further comments and evidence in response to my provisional findings. Mr T has said that he has nothing more to add. HLAM hasn't said whether or not it agrees with my provisional findings but has said that it was willing to agree

to the revised date in the interests of resolving matters. But it asked me to consider whether it would also be reasonable to look at backdating the reinvestment of Mr T's pension savings given they would have reached the new provider far sooner.

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.

Both parties have indicated that they accept my findings regarding the effective date that should be used for the start of the sale of Mr T's pension investments. So I don't see any reason to alter the conclusions I reached in respect of that matter. So that only leaves the additional comments made by HLAM about whether I should also consider the likely date of the reinvestment of Mr T's pension savings with the new provider.

The arguments that HLAM has put forwards are entirely logical. I have found that Mr T lost out because the value of his pension investments fell during the delay. So it would be reasonable to assume that if the reinvestment took place around the same time as the initial sale of the pension assets then the market conditions for both events would be similar. HLAM's argument is that by me asking it to bring forward the date of the sale, any reinvestment would be at a different stage of the market cycle.

But that argument is entirely predicated on Mr T immediately reinvesting his pension savings once they were transferred to the new provider. So I've gathered further testimony from Mr T about what actually happened.

Mr T explained that his original intention was to leave the assets in cash in a drawdown account. He intended to use periodic withdrawals to fund a retirement project. However he says that the substantial reduction in the value of those pension savings caused him to reconsider his options. So, he says, he decided to reinvest the pension savings on 4 May 2020, and they remain invested to date.

HLAM actually completed the transfer on 25 March 2020, although I have now directed it should have been completed around a month earlier. It seems to me that, if the transfer had been completed in a more timely manner, it is quite plausible that Mr T wouldn't have reinvested his pension savings at all. But even so, given the significant period that elapsed between the transfer completing and the pension assets being reinvested, I cannot reasonably say that moving the transfer date forwards would have corresponded in a similar forward shift in the date of the investment.

So, although I have some sympathy for the argument that HLAM has presented, there isn't sufficient proximity between the transfer of the pension savings and their reinvestment for me to reasonably conclude the two events should be linked in the redress that I am asking the business to pay. All I can reasonably do is reflect what actually happened in respect of the reinvestment of Mr T's pension savings. So I am not persuaded that I should change the redress I set out in my provisional decision.

Putting things right

I think that the time taken by HLAM to complete the transfer of Mr T's pension savings was unreasonable. I think that HLAM should have commenced the sale of Mr T's pension investments on 19 February 2020 (rather than 16 March).

To put things right I direct HLAM to;

- Revalue Mr T's pension investments based on its instructions for a sale to cash being placed on 19 February 2020.
- Compare that value to the amount it transferred to the new provider. If the revalued amount is higher Mr T has suffered a loss and the difference should be paid to him.
- Any compensation should be increased to reflect any investment growth enjoyed by the initially transferred assets from the date of transfer to the date of Mr T's acceptance of my final decision.

The compensation should be paid into Mr T's new SIPP. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If HLAM is unable to pay the total amount into Mr T's SIPP, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to notionally allow for any income tax that would otherwise have been paid.

The notional allowance should be calculated using Mr T's actual or expected marginal rate of tax at his selected retirement age. I have assumed Mr T is likely to be a basic rate taxpayer so the reduction should equal the current basic rate of tax. However, as Mr T would have been able to take an additional tax-free lump sum, the reduction should be applied to 75% of the compensation.

My final decision

My final decision is that I uphold Mr T's complaint and direct Hargreaves Lansdown Asset Management Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 1 June 2021.

Paul Reilly
Ombudsman