DRN-2968597

The complaint

Mr L says Hargreaves Lansdown Asset Management Limited ('HL') has not done enough to repair and redress its breach of service/duty of care to him, arising from breach of its data protection obligation towards him – with regards to his Self-Invested Personal Pension ('SIPP'). He has also referred the matter to the Information Commissioner's Office ('ICO').

What happened

The details of Mr L's case include confidential and sensitive personal information, which will not – and do not need to – be set out in this decision. The reason being to safeguard said confidentiality and to maintain his anonymity, given that this decision will be published. The background summarised below is enough for the purpose of addressing his complaint.

- Mr L held his SIPP with HL at the time of the relevant events.

- In 2018 a third party presented to HL a Letter of Authority ('LoA') granting access to Mr L's SIPP. The LoA was dated in 2017.

- In 2020 the third party sought specific information about the SIPP. HL concedes that, in response, it provided more information than was required. However, it says it did nothing wrong in responding to the request – and in doing so without prior notice to or authority from Mr L at the time – because the LoA remained valid/active and it had no reason to consider otherwise. It apologised for providing information that was surplus to requirement and offered Mr L £100 for the trouble and upset this caused, but it does not accept that what it did amounts to a significant data protection breach.

- Mr L says the opposite. He says HL committed a serious data protection breach in his case and that it had a minimum obligation to give him notice at the time of the third party's request and to seek (and obtain) his authority prior to any disclosure to the third party. He also says HL could not reasonably have thought the 2017 LoA remained valid/active because the circumstances it related to were no longer relevant in 2020; and that HL compounded its wrongdoing in the matter by making misleading references to an LoA from him at the time that did not exist and to another non-existent document. Mr L also asserts that HL mishandled his enquiries and complaint about the matter, and that its £100 offer was/is derisory given the seriousness of its wrongdoings.

One of our investigators looked into the case and concluded that HL's offer to Mr L is reasonable. She found that HL had admitted it provided the third party with more information than required; that it has subsequently asked that party to delete the excess information from its records; that it does not accept its action amounted to a significant data protection breach, but that is a matter for the ICO to investigate; and that it is evident Mr L was caused trouble and distress in the matter but the £100 HL offered is consistent with what she would have awarded in the circumstances.

Mr L said he retained his view that the offer is inadequate in the context of the seriousness of HL's wrongdoings, but he would accept it on the condition that HL provides evidence of its

request to the third party that the excess information be deleted and evidence that the third party has complied with the request and has deleted the excess information – or evidence that HL has, at least, applied its best efforts to ensure its request was carried out. Thereafter, he cited a delay in HL's provision of this evidence as grounds on which he had decided to withdraw his conditional acceptance of the offer. He also said (or at least suggested) that HL must be held to account and, essentially, punished for its actions. The investigator then updated him to say she had received and listened to telephone recording evidence that showed HL had contacted the third party to delete the excess information, and that she was satisfied with the evidence.

The matter was referred to an ombudsman.

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 commend Mr L's referral of the matter to the ICO, as that is a natural forum for concerns and issues about data protection breaches. I also understand why he referred the matter to us, given that it relates to HL's service to him as his SIPP provider. However, as the investigator explained, we do not have a punitive remit so the punishment for wrongdoings that he appears to seek is beyond what we can provide. As he will be aware, we are also not the industry regulator, so if he has concerns about his case for which he seeks, specifically, regulatory treatment, such treatment is also beyond our remit.

Mr L has helpfully shared with us what appears to be a determination by the ICO on the referral he made to them. It is not clear if the contents are or are not confidential, so I will not set them out. However, it is sufficient to say that the ICO's determination appears to have been given and it has referred to the next steps Mr L can consider and/or take independent legal advice on. I will not be duplicating the ICO's role in this matter, so I make no finding to repeat, add to or substitute what the ICO found.

HL concedes that it provided more information than required. Mr L appears to say that was its second wrongdoing and that its first wrongdoing was that it should not have provided *any* information to the third party – but did – because the 2017 LoA was insufficient to justify such disclosure. Then he says HL mishandled his enquiries and complaint about the matter.

The question of whether (or not) HL was right to disclose information on Mr L's SIPP based on the 2017 LoA was a key part of what the ICO addressed so, like I said above, I make no finding on it. I also do not consider that I need to make such a finding because the complaint that has been referred to this service now has its focus mainly on the excess information that HL provided to the third party. As I said above, Mr L was prepared to settle the complaint with the £100 payment proposal on the condition that HL's actions in repairing the excess information matter could be evidenced.

I too have listened to the recording that HL has shared with us. On balance, and like the investigator, I am satisfied it stands as evidence that HL pursued deletion of the excess information (by the third party) as it undertook to do. It is not reasonable to expect HL to police the steps taken by the third party, at the third party's end of the matter, but I agree with Mr L's assertion that HL's efforts in the matter should at least be meaningful and that it should be following through on its request to the third party. The recording I have listened to shows that HL's efforts were sincere and meaningful, and that it followed through on its request to the third party.

The balance of available evidence is that HL provided the excess disclosure because it

applied its standard disclosure process to the third party's request. That was clearly an error and HL accepts that it was. Mr L was quite prompt in raising his enquiries and complaint about the matter, he appears to have started this around a week after the disclosure. Some erroneous comments from HL appear to have misled him, but I do not consider that they were of grave consequences. I can also see that HL made a few equally inconsequential mistakes in its engagement with him, such as sending him copies of the wrong documents.

Overall, I consider that the key consequence Mr L was concerned about was the disclosure (and the excess disclosure), so whilst HL's responses to his queries were somewhat clumsy in parts, I am persuaded that HL sincerely sought to meet his enquiries, that it did not act in bad faith and that only a small degree of trouble and upset was caused by its mistakes. The main trouble and upset to Mr L appear to have been caused by the disclosure itself.

Overall, on balance, for the above reasons and in terms of the excess disclosure and HL's mistakes in addressing Mr L's enquiries, I am not persuaded that £100 is an unreasonable amount to compensate him for the trouble and upset caused. The effect of the excess disclosure appears to have been limited by HL's reasonable efforts to have the excess information deleted by the third party and the few mistakes in its engagement with Mr L were not of a serious type. I do not consider that HL should have to offer him more than what it has offered.

Putting things right

I order HL to pay Mr L £100 for the trouble and upset caused to him as addressed above.

My final decision

For the reasons given above, I uphold Mr L's complaint. I endorse (and order) Hargreaves Lansdown Asset Management Limited's offer to pay him £100 for the trouble and upset caused to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 18 May 2022.

Roy Kuku
Ombudsman