

## **The complaint**

Mr C has complained about the actions taken by Hargreaves Lansdown Asset Management Limited ('HL') when it backdated a trade within his Individual Savings Account ('ISA') after it established the holding wasn't eligible to be held in an ISA wrapper.

## **What happened**

Within his ISA account Mr C held 1,610 units in a Canadian based closed end mutual fund trust which I shall refer to as 'Trust A'.

Mr C contacted HL by phone on 21 July 2020 as he had wanted to buy additional units online but found he wasn't able to. During the subsequent phone call with HL, Mr C was told units in Trust A weren't eligible to be held within an ISA wrapper. So, it was no longer possible to purchase more units in Trust A within his stocks and shares ISA.

During the call it was discussed with Mr C that potentially he had three choices – hold the units and not add to his holding, sell the units or transfer the holding into a HL Fund and Share account. HL's representative said he would find out what options were open to Mr C and would come back to him the following day. Mr C made clear he wanted to be updated as soon as possible.

After further communication with HL, during which time Mr C chased for a response and an update about what action he could take, he remained dissatisfied and raised a complaint on 11 August 2020.

In its final response to Mr C's complaint dated 30 September 2020 HL said:

- It apologised for the fact that Trust A wasn't eligible for being held within an ISA. It advised that Mr C could either sell the holding and retain the proceeds within the ISA or transfer the holding out of the ISA into a HL Fund and Share account.
- It said the holding could have been sold earlier.
- It offered £100 for the distress and inconvenience caused by the delayed responses. And said that if Mr C did want to sell his holding it would backdate the price to the date he first informed HL he was looking to make a sale, 11 August 2020.

Mr C sold 1,610 units on 30 September 2020 at 1420.24p raising £22,865.86 (£22,709.24 net). To put the matter right HL reversed the sale made on 30 September and a new sale reinstated on his account backdated to 11 August 2020 at which time HL says Mr C would have sold his units for 1537.73p (or US\$20.12999) and raised, £24,757.45 (£24,593.06 net). On 1 October 2020 Mr C contacted HL:

- Mr C wanted compensation of £4,786.50 which he said was for the fall in value of his holding between the date of his complaint and the date of sale. He provided a screenshot of HL's app taken just after the close of the Canadian Stock Market on 10 August which showed the value of his holding and the loss on that day.
- He also wanted an additional £329.65 for the sale costs of Trust A and reinvestment

into a different investment with another investment platform. He said this wasn't something he had wanted to do but was forced into it because of HL '*locking*' his holding and not giving him an indication of when he would have access to his funds again.

- He didn't think the offer of £100 as a gesture of goodwill represented fair treatment considering the failings of HL and the impact those failings had on him.

Mr C had used the proceeds of the sale to reinvest into another investment with a different platform. HL said it didn't believe it was liable for the sale and reinvestment costs as Mr C didn't inform it that he was looking to sell the investment and withdraw the sale proceeds to reinvest with another provider.

Mr C remained dissatisfied with the outcome and brought his complaint to this service.

Our investigator who considered the complaint thought HL had correctly reversed the trade in light of what was known but that the offer for the distress and inconvenience Mr C had been caused should be increased to £300.

In response to the investigator, HL accepted the recommendation to increase the gesture of goodwill to £300.

Mr C didn't agree with the investigator:

- He said HL didn't allow him to sell his holding at any point between 21 July and 30 September.
- HL had told him he wasn't able to sell his stock so he questioned why he would have got in touch with HL to say he had an intention to sell when he knew this wasn't possible. His request to reimburse his losses backdated to 10 August was because this was the date before the losses that were incurred on 11 August.
- He said if the normal procedure to reverse the trade was to be the best available then this would need to be the best between 21 July (the date he first contacted HL about the holding) and 11 August.

As the complaint remains unresolved, it has been passed to me for 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.

#### *Trust A's eligibility for a stocks and shares ISA*

HL told us that as a result of an internal review by its technical team it was identified that Trust A was not an investment type that was eligible to be held within an ISA as it consisted of units issued by a trust and it started making enquiries in May 2020. It said HL had been informed by HMRC that that the trust '*is not a company [and] any unit that it may issue are*

*not 'shares issued by a company' – and therefore they are not a qualifying investment for ISAs*'. HL said it made the decision that Trust A units was ineligible on 27 May 2020 and the subsequent investigation into which clients were impacted, and how, was still ongoing on 21 July 2020 which was after Mr C had contacted HL.

HL said it was to write to all its affected clients in October 2020 but by this time Mr C had sold his investment. So as at 21 July 2020 the review hadn't been completed and HL has said it wasn't in the position to update all of its affected clients until 7 October 2020 as, it said, its due diligence process involved with ascertaining whether an investment can be held within an ISA isn't a straightforward process. So, in order to not misinform Mr C about his options it said it couldn't have updated him about his choices any earlier than it actually did.

HL is a provider that allows ISAs to be held on its platform. And as such, it has a duty to make sure any investment it does allow is eligible to be held within an ISA wrapper in accordance with HMRC guidelines and rules for it to be identified as a 'qualifying investment'.

HL hasn't told us of any change to the corporate structure of Trust A or anything else that would have caused it to become non-eligible to be held within an ISA since its inception in January 2018. And HL accepts that it failed in its duty to correctly identify that Trust A's units couldn't be held within an ISA prior to Mr C's purchase in March 2020. As this point is clear, I have to then go onto consider what impact this had on Mr C and whether he has been financially disadvantaged because of HL's error. And given the action Mr C subsequently took – selling the holding rather than transferring it out of the ISA wrapper – suggests, on balance, it was likely Mr C only wanted to invest in this holding within an ISA wrapper for tax purposes.

HL has said it was regrettable that the eligibility status of Trust A wasn't identified prior to Mr C making his investment on 30 March 2020. While I accept what HL has said about its due diligence process after deciding that Trust A wasn't eligible to be held within an ISA on 27 May but, the impact of this meant there was a six month delay before it was able to update its affected customers in October. It could be argued that Mr C was better off – when he was told in July rather than October – about what his options were as I note that between May and the backdated sale date in August the unit price continued upwards so if Mr C had been told earlier and sold his holding, he wouldn't have obtained the price that he did. And the price he would have obtained in October was lower than the August price.

I don't think it's unreasonable to assume that if Mr C hadn't been allowed to invest in Trust A within an ISA wrapper, he would have done something different. But for me to conclude that Mr C has lost out financially, I'd have to be persuaded that the – 'something different' – whatever that alternative investment could potentially have been – would have been better for him in order to evidence that he did suffer from a financial loss.

Mr C made a profit of £4,611.66 at the point of (the backdated) sale. So, while I accept at the time this would have been frustrating and disappointing for Mr C, like I've said above, in order for me to conclude Mr C suffered a loss, I'd need to be persuaded he'd have invested in something else that would have produced a better return. Given the range of things he could have invested in, and the chances they could just as likely have performed worse or better, I don't think that's likely on balance. Therefore, the position HL has put him in now is

one I think fairly and reasonably compensates him for the real original error of allowing him to invest in this holding inside his ISA.

*The backdated date of sale – is it fair?*

HL identified the 11 August 2020 as being the first time Mr C indicated that he wanted to sell his holding. HL used this date to back date Mr C's actual sale made on 30 September 2020. It calculated what Mr C would have received if he had sold on that day by using actual sale trades it had carried out for other customers. Mr C didn't agree with HL and he provided a screenshot of HL's platform which indicated a closing value of the holding at £27,495.74 at 10 August 2020.

The email chain between HL and Mr C shows that on 11 August 2020 Mr C said '*Please can you escalate this as a complaint please. It's been weeks now since I brought this to your attention...and I'm getting no feedback whatsoever. My inability to sell this stock in a falling market today has cost me dearly. This is not acceptable in my opinion.*'

It can't be known for sure when Mr C would have sold his holding. When he first contacted HL on 21 July 2020, he indicated that he wanted to add to his holding. So, between then and 11 August the situation had understandably changed, and Mr C told us that once it became clear the holding was no longer eligible to be held in an ISA, the only option was to sell the holding. Mr C has said he was waiting to hear from HL about what his options were and as a consequence of its letter of 30 September, he later understood he could have sold his holding sooner.

The email of 11 August is the first date there is a record of Mr C's firm intention to sell the holding. While I sympathise with Mr C's position, I don't think it's unreasonable for HL to have chosen this date as the first clear indication that Mr C wanted to make a sale.

I say this because while it later became clear what Mr C's options were, and the subsequent actions he took to sell the units, it's not possible to know for certain what action he would have taken, and when. In response to the investigator Mr C said it wasn't right to use the 11 August as the known sale date – he wasn't in a position to advise HL of his intentions prior to that date as it hadn't told him what his options were.

Mr C sold the units on the same day that he was advised by HL what his options actually were which does suggest that he would have sold them earlier if he had that information sooner.

But, and as I have said above, it simply isn't possible to know what date Mr C would have sold the units if he had been made aware of the options earlier. It was only after HL had carried out its review that those options were known. Mr C did sell his units once he was aware of his options, but equally there's no reason to assume that Mr C wouldn't have chosen the alternatives and transferred the units outside of the ISA wrapper and retained them, or bought additional units as suggested in his phone call of 21 July. So, I don't find what HL has done is unreasonable. It needed to fix a date point for when it was identifiable that Mr C would sell his units and the only *known* date for that was 11 August as evidenced by Mr C's email to HL.

When we uphold a complaint, or a business acknowledges an error has been made, we would expect the business to put the customer in the financial position – or as near as possible – they would be in if an error hadn't been made. And the investment couldn't have been sold sooner than when the markets opened on 11 August so I don't agree it would be reasonable to use the closing price of the units for 10 August as proposed by Mr C. And it's

only with the benefit of hindsight that we now know the value of the units was higher on 10 August than the 11 August.

HL has given us evidence of its sale trades in Trust A for other customers. And it gave Mr C the best price of the day – 1537.73p (US\$20.12999). And I note that the unit price on 21 July (when Mr C first made contact with HL) was just below \$18 and rose to over US\$21 in the first week of August. I don't think it would be reasonable for HL to use either the best or the worst price during that period. That wouldn't be fair to either party and would only be with the benefit of hindsight. The window in which the price was higher than the price Mr C got was a small one – so on balance it feels unlikely that across all that time, we'd say he'd probably have picked those few days to sell. I am of the view that what HL has done is fair and reasonable in the circumstances of this complaint and in the absence of knowing for certain what Mr C would have done if he had been aware of his options sooner and when he would have given his sale instruction.

#### *Reimbursement of the costs for the sale of the units and reinvestment*

Mr C has asked for additional redress of £329.65 for the costs of the sale and the reinvestment he made through another product provider. But while Mr C's decision to sell the units was most likely prompted because they were no longer ISA eligible, it doesn't necessarily follow that the proceeds of that sale were to be removed from the ISA and reinvested elsewhere. I think that was Mr C's own decision and not one that was imposed on him. So, I don't agree that it is for HL to recompense Mr C for those costs.

#### *The distress and inconvenience caused to Mr C*

Mr C initially contacted HL on 21 July 2020. And he didn't receive any advice about what options were available to him until 30 September 2020. During this time Mr C couldn't take any action and was understandably concerned about any losses that he may have incurred. I've considered Mr C's points and I am aware he feels strongly about this issue. But I have also borne in mind our long-standing approach to awards for distress caused. Clearly, it must have been worrying for Mr C not being able to take any action with his holding, but I've also considered that despite the frustration he experienced, it seems likely he was better off overall.

#### **Putting things right**

HL initially offered £100 but taking all of the above into account, I think the £300 as recommended by the investigator is a fairer reflection of the distress and inconvenience caused to Mr C. In its response to the investigator HL confirmed that it would be willing to increase its offer as recommended by the investigator. So, it is now for Mr C to decide whether to accept it.

In conclusion, while HL should not have allowed Mr C to hold Trust A's units within an ISA wrapper at the outset, I don't find that overall Mr C has lost out financially. I think HL's decision to backdate the trade to 11 August 2020 is fair and reasonable in the particular circumstances of this complaint. And the updated offer of £300 for the distress and inconvenience caused to Mr C is a fairer reflection of the impact on him.

I know Mr C will be disappointed with my decision, but I hope I have been able to explain to him how I have reached it and why.

### **My final decision**

For the reasons given above, I do not uphold Mr C's complaint about the date used by Hargreaves Lansdown Asset Management Limited for the backdated trade. I do find that the increased offer of £300 for the distress and inconvenience he suffered is fair. It is for Mr C to decide if he wants to accept that offer.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 14 July 2022.

Catherine Langley  
**Ombudsman**