

## The complaint

Mr K says Hargreaves Lansdown Asset Management Limited (trading as Hargreaves Lansdown ('HL')) caused him financial losses by restricting his access to (and trading in) his HL Self-Invested Personal Pension ('SIPP'). He says HL did this without his consent/authority. He seeks compensation for financial loss.

## What happened

The chronology of key events is as follows:

- On 30 September 2021 Mr K asked HL to suspend online access to the SIPP. He says this followed from a particular share purchase he had made which then lost value sharply, and from feeling *spooked* by the markets being increasingly volatile. There is also evidence that he made the request in order to safeguard against further trading/trading losses at the time (and the *gambling nature* of trading) and, in this respect, to avoid having easy online access to trading in the SIPP.
- HL suspended the SIPP on 1 October (the following day). However, earlier on the same day and before HL did this, Mr K found that it remained accessible online and active, so he made some day trades in order to recover his losses. In the afternoon, he says he attempted to close one and found that the SIPP had been suspended. He says the financial loss he seeks compensation for began from this point. He complained about the suspension on this date, 1 October 2021, as he considered that HL went beyond the online access (only) suspension he had instructed.
- HL wrote to Mr K on 4 October. It acknowledged his complaint and said it would be addressed. It also gave an interim response, in which it explained that its concern about his trading wellbeing had been prompted by the nature of his request and by its consideration of the high trading frequency activity (and associated dealing costs) in his SIPP, so its priority at the time was on providing him with support – with regards to which it made suggestions.
- Mr K wrote to HL on 9 October to say he had taken independent financial advice and that his intention was to adopt a more measured and cautious approach for longer term investing in the SIPP and to continue to use the SIPP's drawdown feature for income, and he asked for online drawdown access to the SIPP to be restored.
- Mr K wrote again to HL on 13 October, this time to elaborate on his complaint – in which he considered that HL's reaction was unwarranted and that he was being pressured to take financial advice.
- HL wrote to him on 14 October to confirm the following – with immediate effect he would be able to instruct withdrawals from the SIPP and to instruct sales (only) in the SIPP; online access remained suspended but he would be able to do both by telephone; telephone dealing was more expensive than online dealing so the decision had been made to apply the cheaper online dealing rates to his telephone

dealing instructions whilst his online access remained suspended; and, in order to consider restoring the SIPP to full functionality he would need to evidence the financial advice he said he had received. Mr K replied on the same date and said he was pleased with the access that had been restored and that, for the time being, he would not be making further investments.

- HL repeated its request for evidence of advice on 11 November and on 15 November. On the latter date, it also replied to an enquiry Mr K had made about transferring the SIPP. It said the steps it had taken did not restrict him from transferring the SIPP to a new provider and that the suspension was only in place to prevent dealing in it. Mr K's enquiry had been put to HL on 11 November, when he also repeated his temporary decision, based on advice, not to make further investments but complained that his SIPP's growth would be hindered if HL permanently prevented him from doing so. He affirmed his capability to conduct his own trading and SIPP affairs and demanded that HL lift the suspension. He appears to have written to HL earlier, on 9 November, in a similar fashion.

Mr K referred the matter to us on 25 November 2021. Shortly before one of our investigators shared his view on the case, Mr K updated us to say that because of the initial loss at the time access to and trading in the SIPP was suspended he had since been reluctant to sell the relevant holdings, so the losses in them had deepened to a total of around £1,600 (around May this year).

The investigator concluded that the complaint should not be upheld. He referred to HL's safeguarding and due diligence responsibilities in the case, which he considered to have been triggered by Mr K's initial request and by the terms and conditions for the SIPP. He mentioned a specific term in this respect, which entitled HL to suspend a client's account where evidence suggested a need to protect the client. He said this applied to Mr K and his case. He noted that Mr K's communication of 9 October conceded his need for a more measured and cautious approach, and he considered it reasonable for HL to require evidence of the financial advice Mr K had referred to. Had that been provided, he felt it would likely have led to the full restoration of the SIPP. He also noted that Mr K had been told, on 15 November, that he was not prevented from transferring the SIPP elsewhere, so if he did not wish to comply with HL's request that alternative was available to him.

Mr K disagreed with this outcome and asked for an ombudsman's decision. He maintained that HL acted beyond his instruction, without his authority and in conflict with the notion of safeguarding his interests (in contrast, he says, HL put his SIPP at risk by preventing him from trading in it). 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.

What Mr K instructed HL to do on 30 September 2021 is not in dispute. The same applies to the fact that HL went beyond the instruction to suspend online access (only). On 1 October, it did that but it also, initially, suspended the SIPP. Mr K appears to have made an issue of the fact that notice to him (on 14 October) that he could withdraw and sell from the SIPP (by telephone) was not given until a fortnight thereafter. However, available evidence does not show that, prior to this notice, he sought to withdraw and was prevented from doing so. Furthermore, his communication of 9 October did not refer to any particular and/or pressing sale(s) he needed to conduct. Instead, and as I noted above, it referred to him taking advice. His communication on 14 October also referred to what was essentially his own temporary decision to suspend trading in the SIPP – mirroring HL's suspension around the same time.

He repeated this decision on 11 November. In this overall context, and on balance, I do not consider that there is evidence of a tangible wrongdoing by HL between 30 September and 14 October, during which it suggested he should primarily consider sources of support and it considered how to manage the matter that had arisen.

There is enough evidence, mainly from Mr K's submissions and correspondence, that he was concerned about his trading (and losses) getting out of control by or at the point he made his request on 30 September; and that he shared this with HL on that date. I appreciate that his request was limited and that he neither asked for nor wanted a complete suspension. I also acknowledge that one of his core arguments is that HL's actions, in response, were without his consent and authority. Understandably, and as the SIPP was his (beneficially), he believes HL needed such consent and authority to do as it did.

As a regulated firm, HL was/is required to comply with laws and regulations in the course of its business. One such regulation, in the Conduct of Business Sourcebook ('COBS') section of the regulator's *Handbook* (and at COBS 2.1.1 (R)), was/is that "*A firm must act honestly, fairly and professionally in accordance with the best interests of its client*" – also known as the *client's best interests rule*. In addition, amongst the 'Principles for Businesses' that regulated firms must adhere to is Principle 6, which says firms are required to "... *pay due regard to the interests of its customers and treat them fairly*". Both HL and the investigator have referred to the specific term, amongst those agreed for the SIPP, that entitled HL to suspend an account in aid of protecting the accountholder.

The sum effect of the aforementioned regulations, especially the client's best interests rule, and the relevant term for the SIPP was that, upon notice of a matter that put Mr K's interests/best interests at stake and one that suggested the need to consider protecting his SIPP, HL was under a duty to consider action that could validly go beyond the confines of his instruction, consent or authority. It had a regulatory duty to discharge in terms of safeguarding his interest in the face of notice about a potential threat to that interest, and it also had a contractual basis to do so. Of course, this was not to be done arbitrarily or prematurely, so key questions to ask are whether (or not) HL had sufficient reason to trigger this duty and whether (or not) it discharged it in a reasonable fashion. On balance, I consider that it had such reason and that it discharged its duty reasonably, and my reasons follow.

HL reacted to news from Mr K about his trading and losses concerns, and about both potentially being out of his control. In his submissions to us he appears to have described this as being akin to an out of control gambling issue. I am satisfied that such news was enough for HL to consider exercising its duty to safeguard Mr K's (and his SIPP's) best interests. For the sake of clarity, I do not say or suggest that Mr K told HL that he had a gambling problem, but available evidence is that his message to HL was that his trading (and losses) were or could have been out of control at the time, and parallels could reasonably have been drawn between both.

HL reacted promptly, on the next day, by suspending the account whilst it considered the matter further. There is evidence that it kept Mr K informed on what was happening in this respect and with regards to the complaint he had made. As I said above, no tangible wrongdoing appears to have happened during the fortnight over which its considerations lasted.

By 14 October, Mr K had confirmation that he could withdraw and sell from the SIPP, that he could do so by telephone and that telephone dealing would be available to him at no additional costs. These measures were reasonable and were clearly aimed at restoring access to and relatively safer use of the SIPP, whereby sales were permitted but no new speculative trading could be conducted. It is also clear that the prohibition on new trading was intended to be a temporary measure by HL, so I do not accept the suggestion in Mr K's

complaint at the time that it was permanent. HL provided the SIPP on an execution only basis, so it did not give an investment advice service. It considered there would be a form of assurance that trading in the SIPP would be safer if based on independent professional advice, hence its request for evidence of such advice before considering its full restoration.

On balance, and for the above reasons, I am persuaded that this was a reasonable approach. It also appeared to be uncontroversial at the time because Mr K had already referred to receiving such professional advice. HL simply asked for evidence of that. Furthermore, and as the investigator noted, even if – as it appears and for whatever reason – Mr K did not consider the approach to be reasonable, he knew (from 15 November) that HL's actions did not stop him from transferring the SIPP to another provider. He would have had ample options in the market/sector for that. There is no evidence that he sought such a transfer before or after 15 November.

The complaint stems from the events in September, October and November 2021, and Mr K has explained that his current claim reflects specific losses which were created at the time and have accumulated since. As I have set out above, on balance, I do not find that HL's conduct at the time was wrong; I do not find that Mr K sought to make and was prevented from making sale trades or withdrawals during the initial fortnight; I find, as a matter of fact, that he has been aware, since 14 November 2021, that he is able to make such trades and withdrawals; so I also find that responsibility for the losses he has referred to, arising from the specific trades (from the time) that have not been closed (despite his ability to close them) does not belong to and is not shared by HL. I therefore do not uphold his complaint.

### **My final decision**

For the reasons given above, I do not uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 11 January 2023.

Roy Kuku  
**Ombudsman**