

The complaint

Mr M complains that Hargreaves Lansdown Asset Management Limited (“HL”) provided misleading information about the ongoing facility to purchase a crypto-derivative exchange traded note (ETN) via its platform.

What happened

On 6 October 2020 the Financial Conduct Authority (FCA) announced its intention to ban the sale of crypto-derivatives to retail consumers from 6 January 2021.

Mr M already held one such crypto-derivative ETN – XBT Provider Bitcoin Tracker Euro (“XBT Euro”) – in his HL Self-Invested Personal Pension (SIPP). A week or so after the FCA’s announcement, on 14 October 2020, he sought clarification by email about whether he’d be able to continue trading it up to the FCA’s deadline. HL initially didn’t respond.

On 27 October 2020 Mr M chased up his previous query and HL did then reply. It apologised and said it was in the process of deciding its policy and would let customers know when an outcome was reached. Mr M then asked that HL confirm that he’d be given notice of any change and HL replied, *“If any changes are made to this policy prior to the 6 January 2020, then we will contact you directly to confirm this and what the impact of this would be”*.

On 11 November 2020 Mr M discovered that XBT Euro could no longer be purchased via HL. He questioned this and was told the facility to purchase crypto-derivatives had been removed on 30 October 2020. HL initially told Mr M it had informed customers by secure message and letter. But it transpired the letters hadn’t been sent, so as Mr M’s account was set up to receive post, he hadn’t been provided with any notification of the change.

Mr M complained, saying that HL’s reply to his request of 27 October 2020 had been misleading. He felt it had confirmed that he’d be given notice of any changes, and, as such, he’d made several sales of XBT Euro on 28 and 29 October 2020 on the understanding he would be able to make further purchases of the product. He said if he’d known further purchases wouldn’t in fact be possible, he wouldn’t have made the sales when he did, but would instead have done so later. He claimed a loss based on the price of XBT Euro in March 2021, a point at which he did make further sales of the product.

HL didn’t agree the information provided to Mr M on 27 October 2020 had been misleading. In brief, it felt it had generally acted reasonably in respect of the changes it was required to make for crypto-derivatives, and it didn’t consider that Mr M had been told he’d be given prior notice of any change. HL did, however, offer him £50 to acknowledge some of the customer service issues he’d encountered.

The complaint was then referred to this service and considered by an investigator. She also felt HL had acted reasonably in removing the facility to purchase the product and didn’t feel Mr M had been given any assurance that he’d receive prior notice of the removal. But she did think HL’s communications could’ve been clearer and that this, coupled with the failure to send him a letter about the change, along with other service issues, warranted an increased compensation payment of an additional £100.

Mr M didn't accept this. He stressed his complaint was focussed on what he'd been told on 27 October 2020 and the loss he felt he'd incurred because of what he saw as a misleading statement from HL.

The investigator wasn't persuaded to change her opinion. So as no agreement could be reached, the matter's been referred to me to 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.

Several things went wrong during Mr M's interaction with HL concerning this matter – for instance, initially failing to respond to his query, then insisting a letter had been sent to him when that wasn't the case. But it's clear from his most recent submissions that he considers the crux of the matter to be the response provided to him by HL on 27 October 2020. This is what he considers led him to incur a significant loss.

When HL replied to Mr M's chaser email on 27 October 2020 it said *"we are currently reviewing this decision to see whether we will still be offering this investment up until (6 January 2021). We will be contacting clients once this review has finished to let them know once the decision has been made. You can continue to invest into this at this time, but if there are any changes we will let you know."*

Mr M replied to this, saying *"I understand that you are reviewing policy. However, please would you confirm that you will give some notice to me, personally, before I am affected by any policy change over and above "no additional investment allowed from 6 January next year"*.

HL's reply, which was the last communication between the parties on 27 October 2020, said *"If any changes are made to this policy prior to the 6 January 2020, then we will contact you directly to confirm this and what the impact of this would be. If you have any other questions, please get back to me."*

This last communication is key. It's this that Mr M says he relied upon in making his decision to sell some of his holding in XBT Euro over the following two days, on the basis he would be given warning of the purchase facility being removed, so he'd have an opportunity to buy some more.

HL certainly failed Mr M in one aspect of the final email as it didn't contact him directly when the facility was removed - it didn't send a letter to him. However, it's said that despite this acknowledged failing, Mr M wasn't disadvantaged as the removal of the purchase facility was communicated retrospectively, even to those customers who received a secure message. This was because HL had made the decision not to communicate the change in advance to avoid the danger of customers being unduly influenced and making forced purchases.

But did HL also fail Mr M by misleading him into thinking he would be given prior notice of the change? It was clear from his email that he was seeking confirmation that he'd receive 'some notice'. But looking carefully at the response he received, while I think the wording was maybe a little ambiguous, I don't think it can be said Mr M was provided with the confirmation he was seeking.

HL's response said *"If any changes are made to this policy prior to the 6 January 2020, then we will contact you directly to confirm this..."* There was no undertaking given that Mr M

would be contacted *prior* to any change. I can see why he might have drawn the conclusion he did. But I nevertheless don't think there was an error on the part of HL. To my mind, it didn't make a statement that was incorrect.

I note Mr M feels that HL's failure to provide notice was a deliberate act of keeping its intentions secret. But I don't think there's anything that supports a finding that it was acting in bad faith when replying to him. Even if HL's response had used less ambiguous language, the most that could've been said to Mr M at that specific point, 27 October 2020, was that there was currently no definitive information available, either about the timing of any change, or whether it would be notified in advance or retrospectively. I'm satisfied that no decision had been made by HL at that point, so the staff member with whom Mr M was corresponding was simply not able to give him the confirmation he sought and, in my view, didn't do so.

Putting things right

I understand Mr M has indicated he feels the investigator's suggested increase in compensation is condescending and that HL's customer service is not the focus of the complaint. But as there were acknowledged issues with how HL handled the matter, which clearly didn't help things, I will nevertheless award the additional £100, but Mr M is under no obligation to accept it.

My final decision

For the reasons given, my final decision is that I uphold the complaint and direct Hargreaves Lansdown Asset Management Limited to pay Mr M a total of £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 June 2023.

James Harris
Ombudsman