

## **The complaint**

Mr B complains Hargreaves Lansdown Asset Management Limited unreasonably delayed the transfer of his Self-Invested Personal Pension to a new provider causing him a financial loss.

## **What happened**

Mr B held a Self-Invested Personal Pension ("SIPP") with Hargreaves Lansdown Asset Management Limited ("HLAM") since 2006, which was in partial drawdown. He managed it himself through HLAM's online platform. In late November 2019 Mr B wished to transfer his funds away from HLAM, so he opened a SIPP discretionary investment account with another provider I'll refer to as "C", administered by firm "E".

On 4 December 2019 E provided a copy of Mr B's transfer authority to HLAM, and asked that they liaise with C, to re-register and transfer the assets on an in-specie basis. E asked HLAM for a list of Mr B's holdings to be transferred in-specie so they could check permissibility.

HLAM acknowledged the transfer to Mr B by letter dated 16 December 2019, which explained transfers could take six weeks or even longer. It told Mr B while the transfer was underway he wouldn't be able to trade online, but he could use the telephone dealing service at online prices. HLAM received Mr B's completed transfer-out form on 3 February 2020 which requested that all funds in his SIPP and drawdown account be transferred in-specie. Unfortunately some of Mr B's funds couldn't be held by C, so those had to be sold and transferred in cash, after the in-specie element transferred. When Mr B tried to access his account online it was effectively frozen, and he was unable to trade. The in-specie elements were transferred to C in March 2020 and the cash element was transferred in April 2020. So instead of six weeks the transfer took around 14 weeks, although there was a further difficulty with the Schroders funds which were returned to HLAM by C and had to be re-sent.

Mr B says the transfer to C wasn't fully completed until July 2020. If it had taken the stated six weeks, it would've been completed prior to the pandemic-related market turmoil in mid-March, and C could've restructured his portfolio limiting his loss. In addition HLAM cancelled Mr B's contribution direct debit so he missed contributions for January, February and March 2020. Mr B calculates his loss at over £43,000, plus the loss of tax relief on the contributions he would've made to his SIPP had the direct debit not been cancelled. So he complained.

HLAM apologised for the transfer taking longer than expected, but as it was largely in-specie Mr B hadn't been out of the market, so there'd been no investment loss. But they offered £150 for the inconvenience the delay caused. Mr B felt this was wholly inadequate, so he referred his complaint to this service.

## **Provisional decision**

As the complaint had been considered by two of our investigators and agreement couldn't be reached, I issued a provisional decision on this case. I made the following findings:

*How long should the transfer to C have taken?*

I understand Mr B's frustration that an "in specie" transfer of his SIPP which he thought would be relatively straightforward took so long. He hadn't been warned by HLAM that some funds couldn't be transferred in specie. But some holdings had to be sold and transferred in cash as his new provider C couldn't accept some of the assets in specie. That was unfortunate but not something I can hold HLAM responsible for.

I think the timescale in HLAM's letter of 16 December 2019 was for guidance purposes, as it refers to transfers taking "*six weeks or even longer*" and that it's reliant on the "*efficiency of the new provider*". The letter also advised that Mr B was due tax relief on a number of dates, so the transfer couldn't complete until after 21 February 2020 unless Mr B agreed to the transfer proceeding without the tax relief being received. I'm satisfied HLAM did cause a delay at the outset by not sending out the right forms on 30 December 2019, which meant nothing much happened until Mr B himself chased on 3 January 2020. So while it wasn't necessarily guaranteed the transfer would take six weeks, it seems all parties accept that had things progressed as they should, the transfer would have completed by 17 February 2020.

*Was Mr B prevented from trading or switching while the transfer was in progress?*

The section of the 16 December 2019 letter headed "*Once the transfer is underway*" advised that "*during this time*" Mr B's holdings may still show in his HLAM account but he'd be "*unable to sell them online but you may be able to sell at online rates using the telephone dealing service*". Mr B says he interpreted "*during this time*" to mean that he wouldn't be able to trade online during the six weeks the transfer was expected to take. Once that period had expired, (around 14 February 2020), he logged on to his HLAM account to check his holding and received the pop-up message telling him he couldn't trade. Mr B has provided a screen shot of the pop-up message which he says is the crux of his unresolved complaint point. The message read "*Please note – you have asked to transfer out part of this holding and your request is currently being processed. Therefore, you will only be able to sell the units which are not due to be transferred*". Mr B says the pop-up didn't give him the option of trading by telephone, so he was misled.

I didn't think the pop-up message superseded the 16 December 2019 letter. The pop-up was generic as it referred to "part" of the holding being transferred when in fact Mr B's SIPP and drawdown account were being transferred in full to a new provider. I thought the pop-up would arise on any attempt to trade once a holding was in the process of being transferred, whether partial or in full. Mr B's transfer request had been acknowledged in writing and this letter clearly explained that once a transfer has been instructed and is "*underway*" regardless of how long it eventually takes to complete, those funds cannot be traded online. So there was no reason in my view for Mr B to have logged on to the HLAM platform.

Mr B may have habitually checked his holdings every few days and switched funds as appropriate, so being unable to do so while the transfer was in progress would've been frustrating. But HLAM had offered the telephone dealing service, so I didn't agree Mr B was prevented from trading, only that he couldn't do so online.

Mr B told our investigator that when he accessed the platform on 14 February 2020 it wasn't to actually trade, but just to check his holding, so presumably he could've telephoned for current asset values as well. In any event, this was at the very start of the pandemic and prior to any market turmoil which didn't have a significant impact until mid-March. So it's not certain he would've made changes then, even if he could have. Following the transfer, C has reviewed Mr B's portfolio and made a number of changes. But that doesn't mean it would be fair to compensate Mr B for the lost opportunity to sell or switch his investments, as he or C

could've made changes using the telephone dealing service. I can't hold HLAM responsible for Mr B's actions in this respect.

#### *Putting things right for the cash element*

C was unable to accept a number of funds within Mr B's holding - one of HL's funds from his SIPP and three from his drawdown account (two are HL's own funds and the other I'll refer to as "LT"). Mr B says he received a profit warning for "LT" and had he been able to trade he would've done so prior it being sold to cash by HLAM. As I've mentioned above, I think he could've used the telephone dealing service for that.

HLAM calculated that if the funds which couldn't be transferred in-specie had been sold in time for the cash to be transferred on 17 February 2020, Mr B would've been better off by just under £13,965. Had that happened I thought Mr B would've invested those funds rather than leave them in cash. It's not possible to say what Mr B would've done and it wouldn't be fair to allow the application of hindsight. So I agreed that a benchmark is the fairest way to ensure Mr B doesn't lose out on potential investment growth.

Our investigator had selected the FTSE UK Private Investors Income Total Return index, which Mr B queried as his portfolio contains some US equities. In fact this index does contain some global equities but it's heavily weighted in bonds. I don't have access to information about Mr B's attitude to risk or his current investment strategy. But as he's explained his portfolio with C is made up of equities including global, I thought a more appropriate index to reflect his investment preferences would be the FTSE UK Private Investor Growth index, as this is made up of mainly UK and global equities and a far lower proportion of bonds.

So I set out how I thought the redress should be calculated, using that index. I also said HLAM should pay Mr B £250 for the inconvenience he experienced.

#### Responses to the provisional decision

Both parties responded to the provisional decision.

#### *HLAM's response*

- HLAM accepted the transfer to C should have completed on 17 February 2020. But it thought the loss calculation should be based on the period between then and 20 April 2020, as after 20 April 2020 Mr B had access to the funds to invest as he wished.
- They didn't think there was evidence Mr B had suffered investment loss on the in-specie element. Apart from those which couldn't be transferred in specie, Mr B remained invested throughout, and by choosing to transfer in specie Mr B must've been broadly happy to stay in those same investments with his new provider. Otherwise he would have chosen to sell his whole portfolio and transfer in cash.

#### *Mr B's response*

Mr B responded at length making the following points (in summary).

- The transfer wasn't completed on 20 April 2020, as the Schroders funds were finally transferred on 2 July 2020, and C didn't actually receive them until 22 July 2020, selling them two days later;

- The 16 December 2019 letter said a transfer to a new provider would only take longer than six weeks if delays were caused by the new provider. As C caused none of the delays the transfer should have taken a maximum of six weeks, a timescale Mr B still considered excessive;
- While Mr B acknowledged an in-specie transfer meant his funds remained invested, he disagreed that this meant he hadn't suffered a loss. He said the point of the transfer to C was so a DFM could review and restructure his entire portfolio towards holdings which could resist negative market movements. Had the transfer completed when it should have, the restructuring would have completed before the pandemic-related market fall;
- The fact C hadn't immediately restructured his portfolio once it was in their hands is irrelevant to the consideration of the complaint;
- It was unfair to suggest that by not trading by phone he somehow contributed to the loss, when the responsibility lay 100% with HLAM;
- In any case, the theoretical ability to trade (by using the telephone service) didn't benefit him, as he was relying on C's expertise to make decisions about his portfolio;
- He maintained the "pop-up" message which he saw when logging on to the HLAM platform (which didn't mention being able to trade by phone) superseded the contents of the 16 December 1999 letter. He wasn't told he could trade by phone when he called HLAM on 18 February 2020 to find out what was happening with the transfer to C, or in any subsequent communications. And the pop-up message said the transfer was in progress, which he took to mean it would be completed imminently;
- HLAM hadn't made him aware certain funds couldn't be transferred in specie, so would need to be sold and the proceeds transferred in cash. It wasn't the case C couldn't accept those funds, it was that they were exclusive to HLAM's platform;
- HLAM hadn't warned him the contribution direct debit would be cancelled, and Mr B had been worried about the tax implications if he contributed to his new SIPP before the HLAM account was closed;
- He completely rejected the principle of making a notional deduction to reflect the tax due if the redress was to be paid in cash to him direct rather than to his SIPP;
- He felt the £250 compensation proposed was inadequate to reflect the stress, inconvenience and time he'd incurred.

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'd like to thank both parties for their patience while I've reconsidered this case. I assure Mr B I have read all his submissions, but I won't be addressing every point. My decision focusses on what I consider to be the key issues in this complaint.

*Transfer timescale*

It's been accepted if the transfer had happened without delay, it would've been completed by 17 February 2020. HLAM provided screenshot evidence to show the cash element of Mr B's SIPP (just over £24,285) was transferred to Mr B's new provider C on 2 April 2020 but the cash element of his drawdown fund (just over £60,929) was completed on 4 May 2020, the additional delay HLAM acknowledged was due to them sending the Drawdown Discharge form to Mr B rather than to C.

I'm aware Mr B disagrees on this point, but I don't think the timescale given in the acknowledgement letter means transfers will definitely take six weeks, unless there are delays caused by third parties outside HLAM's control. The "*six weeks or longer*" was an indicative average timescale, as some transfers encounter problems which can't be foreseen (such as C being unable to accept some of Mr B's funds in specie). Mr B recalled and relied on the six-week timescale stated in HLAM's acknowledgement letter, but not the warning that once the transfer was in progress, however long that might be, he'd be unable to use the online service. I can't agree with Mr B's interpretation that the inability to trade online only applied for the first six weeks, or that the pop-up message superseded the information contained in the letter. I think HLAM had made it clear once the transfer was underway Mr B had effectively given notice to close his HLAM account, and would no longer have access to its online service. But it provided the reasonable alternative of telephone dealing at online prices. So I remain of the view there was no reason for Mr B to access his online account once he'd instructed the transfer.

#### *Cash element*

HLAM's original calculation showed a loss of £13,965. I asked it to revisit that calculation had the units been sold on 11 February in time for the transfer to complete on 17 February 2020. This showed an updated loss of £14,180.08 (made up of £3,2180.86 in relation to the SIPP and £10,961.12 for the drawdown account). So this is the figure to which the calculation of any investment loss should be based.

#### *In-specie element*

But the outstanding issue remained what Mr B calls the "loss of opportunity" arising from the delay on the in-specie element. Mr B can't show how his portfolio would've been restructured had the transfer completed earlier, as the investment decisions would've been made by the DFM from C, based on fund values and market sentiment at the time. HLAM says the fact Mr B chose to transfer in-specie demonstrates he must have been happy with his portfolio and intended to remain invested in broadly the same stocks. Otherwise he would've asked HLAM to sell everything and transfer the funds in cash. Cash transfers tend to be quicker but being out of the market risks losing investment growth. As far as I'm aware Mr B wasn't advised on this, an in-specie transfer was his choice, so it looks like he didn't want to risk being out of the market, even if the transfer only took six weeks or less. So however long the transfer took, Mr B remained invested throughout, apart from those holdings which had to be sold and transferred in cash.

I appreciate Mr B wished to use the expertise of a DFM to restructure his portfolio, and it wouldn't be practical to take advice from the DFM and make telephone trades while his funds were still with HLAM. But I still think once it became clear the transfer was likely to take six weeks or more, Mr B had the option of giving telephone instructions to HLAM to sell some holdings (such as the LT funds) and transfer the cash to C, for the DFM to invest on his behalf. It's HLAM's process, and I think common practice, to send the cash element of a portfolio after the in-specie element has transferred, and I'm satisfied this was explained to Mr B. And he was given the option in April 2020 to have the cash element transferred ahead of the outstanding stocks, but he chose not to do this.

Our approach in a case like this would usually be to look at what someone actually did once the transfer completed, and say that if the delay hadn't happened, they would've done the same thing but at an earlier date.

Mr B says that had the transfer been completed more quickly, his new DFM would've had the opportunity to restructure his portfolio prior to the pandemic-related market turmoil, and the funds would've been "*put to work*" leading to a "*considerable increase in value by now*". However he also claims the DFM would've steered his portfolio towards holdings which could "*resist negative market movements*". It seems C didn't restructure Mr B's portfolio as soon as the funds were received, but Mr B says this is because the market had already fallen, meaning the investment decisions C made would be different than if the transfer had completed earlier. I think this is said with an element of hindsight, as fear about the impact of the pandemic on his portfolio wasn't the reason for the transfer. Mr B had specific unrelated reasons for wishing to leave HLAM.

Mr B didn't think the investigator's original choice of benchmark index reflected his portfolio's weighting in US equities, now it's with C. Which suggests it's not completely de-risked. I'm not sure Mr B's portfolio could be both protected from negative market movements and achieve considerable growth over a period where global markets were impacted by the pandemic. I understand Mr B's frustration that the transfer took place after the pandemic-related falls, but markets started to recover quite quickly, and any stock purchases after C restructured his portfolio may have been at lower prices than if the transfer had taken place earlier. On balance I think Mr B would've been somewhat exposed to the impact of the pandemic even after he moved to C. So while the transfer could've happened sooner than it did, I can't fairly say HLAM is responsible for any investment loss on the in-specie element. Mr B chose not to transfer his whole portfolio in cash, he had access to the telephone dealing service for urgent trades, and there's no evidence to show he'd have avoided the market volatility in any case.

### *The delayed Schroders funds*

HLAM corrected Mr B's assumption that only it can hold HLAM funds, as the HL Multi-Manager Special Situations Fund (in his SIPP) and the HL Multi-Manager Income & Growth Fund (in his SIPP Income Drawdown Account) were successfully transferred to C. They acknowledged the frustration the suspended funds would've caused, but that was outside their control.

With regard to the Schroders funds valued at around £65,000 HLAM explained they were originally transferred electronically in-specie on 25 March 2020 but were returned by C. This was due to a discrepancy in the number of units, which had originally been quoted as 481.4 but then increased to 482.83 due to the reinvestment of a loyalty bonus rebate which HLAM hadn't made C aware of

That element of the transfer didn't complete until 2 July 2020, due to a combination of processing delays by HLAM and the nominee details changing. I can't hold HLAM responsible for delays caused by the change of nominees, but it seems HLAM did delay the funds being sent back to C, so as this was a significant proportion of Mr B's portfolio I think HLAM should pay an additional £250 to reflect the inconvenience this caused to Mr B.

### *contribution direct debit*

I'm satisfied HLAM did advise Mr B his contribution direct debit would be cancelled as part of the transfer process. Its acknowledgement letter read "*Regular savings: if applicable, we'll also cancel any regular savings set up on this account. As these are usually collected on the*

*7th of the month, if the transfer falls close to this date it's possible your bank could still make the payment. If this happens, we'll transfer the cash to your new provider".*

And it provided a copy of the transfer form signed by Mr B on 30 January 2020 which said *".....I understand all regular payments being made to my SIPP will be cancelled on receipt of this form unless I have given written instructions to the contrary. Please accept this as my authority to contact my employer to cancel these contributions where applicable".*

It seems Mr B didn't want to start contributing to his new SIPP with C before his HLAM account was closed, as he was worried about the tax implications. But he hasn't been deprived of those funds, so may be able to make up the missing contributions if he wishes. I can't see HLAM has done anything wrong in this respect.

### *Conclusion*

In summary, while I acknowledge the whole transfer took longer than it should have, I'm not persuaded HLAM should compensate Mr B for the in-specie element, as I can't be sure he's suffered a financial loss.

HLAM should however compensate him for the delay to the cash element and uplift this to reflect the loss of investment growth (if there was a loss) while the funds were out of the market.

It should also pay a sum to reflect the inconvenience and worry the delay caused Mr B.

### **Putting things right**

#### **Fair compensation**

My aim is that Mr B should be put as closely as possible into the position he would probably now be in if the cash element of the transfer had happened on 17 February 2020. I'm satisfied that once received by C, Mr B (through his DFM) would have invested those funds. But I can't be sure how they would've been invested, or how quickly. Due to the changing market conditions Mr B says the investment decisions he actually took aren't necessarily reflective of what he'd have done in February 2020 prior to the market turmoil. And without knowing what he would've done, there's no way of knowing how his chosen investments would've performed.

So with all this uncertainty I'm satisfied that what I've set out below is fair and reasonable given what we know of his circumstances.

#### **What must HLAM do?**

- HLAM's original calculation showed a loss of £13,965. I asked it to revisit that calculation as if the units had been sold on 11 February in time for the transfer to complete on 17 February 2020. This showed an updated loss of £14,180.08 (made up of £3,2180.86 from the SIPP and £10,961.12 from the drawdown account).
- To reflect the loss of investment growth, it should then uplift that figure in line with the FTSE UK Private Investor Growth index from 17 February 2020 to the dates the cash was transferred to C (2 April for the SIPP and 4 May for the drawdown account). As from that point Mr B and his DFM had the opportunity to invest the cash as they wished. If this shows a loss then this should also be added to the redress. HLAM has carried out this calculation and advised that the index fell – by

16.8% and -11.35% respectively, so Mr B hasn't lost any investment growth over the period. So HLAM should pay Mr B £14,180.08.

- This amount should be paid into Mr B's pension plan with C, to increase its value by the amount of the compensation. 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 compensation into Mr B's pension plan, it should pay that amount direct to him as a cash payment. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr B won't be able to reclaim any of the reduction after compensation is paid.
- For the avoidance of doubt, the notional deduction to represent tax should only take place if the funds are paid to Mr B in cash, no such deduction should be made if the redress is paid to his pension plan.
- I understand Mr B objects to this notional deduction for tax, but I've explained to him separately why it's standard for our decisions to provide for redress to be paid in cash, if payment into a pension plan isn't possible or might have tax or allowance implications.
- Mr B hasn't corrected my assumption that he's likely to be a basic rate taxpayer at retirement age, so the reduction would equal 20%. However, if Mr B would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- Pay Mr B £250 for distress and inconvenience for the transfer taking longer than it should have, and an additional £250 for the delay in resending the Schroders fund (so £500 in total), deducting any compensation already paid.
- Pay 8% simple interest per year from the date of the final decision to date of settlement (if not settled within 28 days HLAM being informed of Mr B's acceptance).
- Income tax may be payable on any interest paid. If HLAM deducts income tax from the interest, it should tell Mr B how much has been taken off. On request HLAM should give Mr B a tax deduction certificate, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

### **Why is this remedy suitable?**

I've chosen this method of compensation because:

- I think Mr B wanted capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Growth index is made up of a range of indices with different asset classes, mainly UK and global equities including US. It's a fair measure for someone who was prepared to take some risk to get a higher return.



**My final decision**

I uphold this complaint.

Hargreaves Lansdown Asset Management Limited should put things right as set out above.

It should provide Mr B with a copy of its loss calculations in a clear and simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 5 September 2022.

Sarah Milne  
**Ombudsman**