

## The complaint

Mr B complains about the length of time it took Hargreaves Lansdown Asset Management Limited (HLAM) to complete the in-specie transfer of his self invested personal pension (SIPP) to another provider. In particular he says that its failure to transfer the cash within the plan at the time it said it would, led to the loss of an (identified) investment opportunity.

## What happened

Mr B held a pension plan with HLAM, on an “execution-only” basis. This meant HLAM didn’t give him any investment advice it simply carried out his instructions.

On 23 April 2020 Mr B sent an instruction to HLAM to transfer the SIPP to a new provider. This was acknowledged the following day by HLAM. The following is a timeline of events thereafter that I’ve taken from the actual communication between Mr B and HLAM.

On 6 May 2020 Mr B chased up an outstanding instruction from his new provider to HLAM for a SIPP valuation.

On 11 May 2020 HLAM apologised for the delay which it said had been caused by staff shortages. It said it would process the transfer as soon as it could and gave him a link to complete a transfer out application to help expedite matters. HLAM received the form on 13 May 2020 and indicated the transfer might take around six weeks to complete.

On 24 June 2020 HLAM wrote to Mr B to set out its terms for the transfer. It confirmed the process could take around six weeks or even longer due to the current circumstances (pandemic).

On 5 October 2020 Mr B questioned why four investments within the SIPP hadn’t been transferred and wanted the remaining cash balance to be transferred to the new provider.

On 10 October 2020 HLAM confirmed its process for in-specie re registrations and confirmed that the cash element is usually sent after all the stocks are transferred. But it said, on this occasion, it would arrange for the cash to be transferred. On 12 October 2020 HLAM said it would transfer the cash “*within 3-5 working days*”.

On 5 November 2020 Mr B questioned why the cash hadn’t been transferred and in response, on 11 November 2020, HLAM confirmed the transfer was nearly complete and explained that the delay had been caused by the large number of transfer requests it had received as well as the exchange of information required between it and the receiving provider regarding the investments held in the SIPP.

On 26 November 2020 Mr B complained that the transfer still hadn’t completed and that he’d wanted to buy shares in a company based on the previous completion date of the cash element of his transfer of “*3-5 working days*” from 12 October 2020. He said the inability to buy shares had cost him an investment gain of over £8,000 and he wanted compensation for the lost investment opportunity.

HLAM confirmed that the funds were forwarded to the new provider on 17 December 2020

and that it would respond to his complaint separately.

In January 2020 HLAM responded and apologised for the length of time the transfer had taken to complete. It said it would consider redress in relation to any investment instructions that had occurred after the cash was transferred, but which might have been made earlier had the cash been transferred when HLAM suggested it should have been. But it said that, regarding the in-specie element of the transfer, as Mr B hadn't been "out of the market" no investment loss had been suffered and therefore no redress was payable. It offered £150 for the distress and inconvenience caused by the delays.

Mr B didn't accept that outcome as he said it made a "flawed" assumption that he would still invest in an investment opportunity after such a delay – regardless of the escalation in the unit price that occurred. He said he wanted HLAM to redress the clear and identifiable investment opportunity he had lost.

But as HLAM didn't change its view Mr B brought his complaint to us where one of our investigators looked into the matter. The investigator thought that the amount HLAM had offered as compensation was sufficient for the distress and inconvenience caused by the delays, but didn't think HLAM needed to compensate Mr B for the lost investment opportunity because there was no evidence that he'd tried to make the investment either before or after the transfer completed. However, HLAM had suggested that it had offered £250 in its submission to the investigator when it had in fact paid £150.

Mr B didn't agree. He said that, while he understood he hadn't suffered a loss in relation to the transfer, he had suffered a loss due to the missed investment opportunity. He made the following points in asking for his complaint to be referred to an ombudsman:

- The investigator said that HLAM referred to an "expectation" of transferring the cash in 3-5 days – not a guarantee. But he thought that it shouldn't have mentioned a timeline if it didn't think it could commit to what was a simple transaction within that time. He thought it was reasonable for any ordinary consumer to assume the transfer would have occurred in that timescale.
- The reason he didn't purchase the stock while the SIPP was still held with HLAM was because he expected the cash to be transferred within 3-5 days and also his experience of the transfer overall suggested to him that it could take many months to move the stock from HLAM if he'd bought it then.
- He didn't think it was reasonable to expect him to have purchased the stock after the cash transfer and then make a claim for redress at that point. He didn't have any confidence that HLAM would have upheld his complaint and was concerned by the time it would have taken it to look into any subsequent claim.
- He didn't think it was fair to suggest that he hadn't chased HLAM enough during the process. He pointed to the evidence he'd provided, which he thought did evidence that he'd chased HLAM and showed how infrequently he received a response.
- In response to the investigator's suggestion that, "*hindsight is a wonderful opportunity to see what investments people could have made*", he said he'd never pre warned HLAM about the investments he was going to make, and it wasn't practical to do so here when he expected his cash funds to be transferred within 5 working days.

So the complaint was passed to me for a review.

### *My provisional decision*

In my provisional decision I said that Mr B's complaint shouldn't be upheld in respect of the investment opportunities he said he missed out on, but HLAM should pay Mr B a total of

£300 for the raising of his expectations and overall impact of the distress and inconvenience he suffered. I made the following points in support of my findings:

- HLAM had made Mr B aware that he could continue to trade until the point his transfer completed. So I thought Mr B should have mitigated his investment position when it became available – regardless of when he expected the transfer to complete. I thought Mr B could have at least secured the investment gain he hoped for and then complained about any delay in transferring after the event.
- Mr B wasn't specific about the investment opportunity in his emails to HLAM on 9 October and 5 November 2020.
- There wasn't any evidence that Mr B tried to make the trade he said he missed out on, or that he was denied the opportunity by HLAM. And he had previously (9 October 2020) purchased other shares to the value of £3,700. This supported the claim that Mr B was still able to trade freely albeit not directly online.
- Mr B hadn't purchased the shares he wanted even after the transfer completed. While I understood he thought the opportunity had passed by that time, I would still have expected him to demonstrate his intention to buy so that he could have better supported his complaint position.
- I didn't dispute that Mr B would have invested at some point, but I couldn't say that he lost out on investment opportunities because of any delays that occurred with the cash transfer.
- But I thought that HLAM hadn't treated Mr B fairly in respect of the transfer delays – particularly the lack of communication after its "progression" email of 24 June 2020. It didn't provide any justification for the lack of further updates until October 2020. And I thought the information HLAM did provide in May 2020 – referencing "slight delays" – might have raised Mr B's expectations of how long the transfer would take.
- Although HLAM didn't guarantee it would transfer the cash from plan "*within 3-5 days*", it hasn't provided an explanation of why this part of the transfer took a further two months or why it didn't update Mr B.
- In addition to the impact of the delays and lack of updates or explanations, I also took into account that Mr B had spent some time chasing HLAM for updates and information. So I thought HLAM should pay Mr B £300 for the distress and inconvenience caused.

#### *Responses to the provisional decision*

HLAM accepted the provisional decision and said that it would pay Mr B a total of £300. But Mr B didn't agree. He made the following points in response:

- He accepted that he was still free to trade with HLAM during the transfer. But he said he had already ended his relationship with HLAM and had been advised that his cash would be transferred in "3-5 working days". So he thought it was reasonable to expect that to happen – especially as the transfer of cash is a relatively straightforward process - and to be able to complete the purchase of his investment when the cash transfer completed.
- He completed one trade within his SIPP on 9 October 2020, but this was before he was told the transfer of his cash would be completed within the 3 to 5 days timescale. In fact it was his first trade since May 2020 – and before that he had traded at least once or twice each month. That explained the lengths he had gone to in order to try not to trade until the transfer completed.
- As an execution only investor he didn't think he needed to tell HLAM about his potential investments. But he had signalled his general intention to invest during October and November 2020 – which was mainly in advance of the forthcoming US

presidential election results. He did tell HLAM about the specific lost investment opportunity on 26 November 2020, so that it was aware of the loss he'd suffered.

- He didn't carry out the purchase of the shares in mitigation after the transfer because the opportunity was lost as a result of price movement following the transfer delay. He didn't think it was appropriate to invest a significant amount into an investment that was no longer attractive. He thought his actions were supported by the urgency with which he chased the cash transfer from October 2020 onwards in contrast to his attitude between April and September 2020 – when it wasn't so urgent.

### **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.

And having done so, after carefully consideration of Mr B's response, I see no reason to depart from my provisional findings. I understand Mr B will be disappointed about the outcome as he feels strongly that he should be compensated for his "missed" investment opportunity. But I don't think the evidence supports his claim, although I do think HLAM needs to compensate Mr B for the impact of the transfer delays and the distress and inconvenience this caused him. So I'll explain my reasons.

There's no dispute here that HLAM did cause delays to this transfer. And I haven't seen sufficient explanation for the delays or evidence that HLAM managed the situation with Mr B by means of regular communication and updates. I'll confirm what I think HLAM needs to do to compensate Mr B for these actions later in the decision.

But Mr B's main complaint was that the delay in transferring the cash, when HLAM had told him it expected to complete the transfer in "3-5 working days", caused him to miss the opportunity to invest in some shares – the buying and selling of which would have brought him an investment gain. So I've begun by looking at the circumstances around that matter.

#### **Mr B's missed investment opportunity**

Mr B himself told us that he wasn't proactive in chasing up the transfer in April to September 2020 as it wasn't urgent during that time. But he says his urgency to get the transfer completed is demonstrated by the contact he had with HLAM in October and November 2020, and that was because he wanted to invest in a particular stock.

Mr B says the cash part of the transfer was confirmed in an email from HLAM on 12 October 2020. I've been provided with a copy of this email. It stated that, "*therefore we have arranged for the cash balance held within your account to be transferred to your new provider. We expect this to be credited to your new account within the next 3-5 working days.*" There was no guarantee contained within the statement, but Mr B says that, as a cash transfer is a relatively straightforward process, he was entitled to expect the transfer to be completed within this timescale which would have allowed him to take up the investment opportunity when it was beneficial to him.

And I can understand why Mr B wanted to wait for the cash transfer to complete before buying the shares he wanted.

But such a transaction is "time critical" and regardless of what Mr B "expected" or even "hoped" to happen, I think he should have consolidated his position and purchased the shares regardless of the situation with the transfer. Had Mr B done that he would have secured the investment gain he talked about and would then have been able to register a complaint about any transfer delay separately without affecting the investment.

Mr B says it didn't make sense to buy the shares when he had already demonstrated his intention to move away from HLAM and didn't want to buy shares, if possible, until the transfer had completed. He said he didn't trust HLAM to transfer any new shares he purchased to his new pension provider. He also thought it was reasonable to assume the cash transfer would be completed in the timescale set out by HLAM.

But, while I can understand why Mr B may have adopted that position because of his relationship with HLAM, there's simply no evidence to show that he wasn't able to trade on his account during this time or that HLAM put up any barriers to him doing so. Therefore I would have expected Mr B, if he had identified an investment that he thought was financially beneficial, to have acted accordingly to take advantage of that position, if he was allowed to do so – which in this case he was.

I say that because when HLAM set out its transfer process to Mr B in an email dated 24 June 2020, it confirmed that, *"once the transfer of your holdings is initiated they may still appear in your Hargreaves Lansdown account until we receive confirmation of the transfer. You will be unable to sell them online during this time but may still be able to sell at online rates using our telephone dealing service. Please contact us for further details. We will send a closing statement once the transfer is complete. Any cash balance on your account, including sale proceeds if you're transferring any underlying investments as cash, will be sent to your new provider once all stock holdings have been transferred. We do this to ensure any dividends or income received during the transfer process are included in the payment we make to your new provider."*

So Mr B could have continued to trade up to the point his transfer completed, albeit not online. But he had the facility to take advantage of the investment opportunity he said he became aware of in October/November 2020, and there's no evidence to show that he tried to take that opportunity and was denied by HLAM. Indeed, Mr B had previously undertaken a share purchase on 9 October 2020. I make that point to show that Mr B was aware that he could still trade during the transfer process – although I accept he was reluctant to trade after 12 October 2020 because of the suggestion that the cash transfer was imminent. But that doesn't mean Mr B couldn't have traded and I think he should have pursued the investment opportunity at that time, which would have secured his investment gain and allowed him to subsequently register any complaint he may have wished to make about the delay in transferring his cash.

If Mr B had purchased the shares he wanted to buy, even after the transfer completed, it would have better supported his claim of a lost investment opportunity. But it's difficult to tell HLAM that it should compensate Mr B for such a loss when there's no evidence that he attempted to buy the shares or that he was stopped from doing so. In his emails to HLAM in October and November 2020 Mr B did stress that, *"I have to make urgent transactions in my new SIPP account"* and, *"kindly transfer the cash IMMEDIATELY as I continue to lose opportunity to invest cash."* But he wasn't specific about the investment opportunity nor did he ask HLAM if there was a way of being able to purchase the shares while the transfer was delayed.

Mr B said he didn't buy the shares after the transfer completed as the market had changed and the opportunity had passed.

And, as with his reluctance to trade until the cash had been transferred in October 2020, I can understand why Mr B didn't buy the shares at this time. But, based on the evidence I've seen, I can't reasonably say that Mr B missed his investment opportunity simply because the transfer of cash from his SIPP was delayed. I haven't been provided with any evidence to show that Mr B tried, and failed, to purchase the shares he says he wanted to acquire – so I don't think HLAM should have to compensate him for any lost investment opportunity.

### The cash transfer delay and compensation offer

As I said above there's no dispute that Mr B's transfer was delayed, and I haven't seen sufficient explanation from HLAM regarding the delays or its failure to keep Mr B updated. I say that because Mr B's transfer application was made on 23 April 2020 and acknowledged by HLAM shortly after. But in an email from HLAM dated 11 May 2020 it was stated that, *"unfortunately have a slight delay to our processing times."* And nine days later another email said, *"I can confirm that we have received your request to transfer your HL SIPP to (the new provider) on the 24th April 2020, as well as the transfer form from yourself on the 13th May 2020. Our standard timescales for stock transfers is up to 6 weeks, however due to the current situation this may take slightly longer"*.

This email set out the transfer processing times that Mr B could expect, but he didn't receive another email to confirm the transfer was progressing until 24 June 2020, and no further progression was then confirmed until the email of 12 October 2020.

So I think HLAM raised Mr B's expectations by talking about a *"slight delay"* and *"may take slightly longer"* when the transfer took around eight months in total to complete. And I haven't been provided with any suitable explanation for the lack of progression updates between June and October 2020.

I appreciate there were other factors going on here, such as the global pandemic – but I don't think that excuses HLAM from managing Mr B's expectations in the face of such events. By not positioning that there would be longer than *"slight delays"* HLAM ensured that Mr B's subsequent expectation of the transfer of cash being *"3-5 working days"* would be adhered to. I think if HLAM had kept Mr B more updated with the situation he would have had less expectation and may have taken a different approach to his possible investments.

But I'm also mindful of the situation in October 2020 when HLAM said it *"expected"* the cash to be transferred to his new *"account"* within 3-5 working days. In fact, this transaction took a further two months and HLAM has been unable to provide a robust detailed explanation for this. I understand HLAM's usual approach is not to transfer cash until all of the in-specie assets can be transferred to the new SIPP as well. So I've taken into account that HLAM was acting outside of its normal approach when it said it would transfer the cash. But this still raised Mr B's expectations of when the money would be available in his new SIPP and there was no reasonable update to him during the delay.

So I think that, while I don't believe HLAM needs to compensate Mr B for any lost investment opportunity, it should compensate him for the impact of raising his expectations about when he might be able to trade with his new SIPP provider, failing to update him during the transfer and also for the time and effort involved in him chasing HLAM for updates and completion information throughout the transfer process. I think that for matters such as these a payment of £300 is appropriate.

### **Putting things right**

HLAM should pay Mr B £300 in total for the distress and inconvenience caused by its lack of service during the transfer process and also for raising Mr B's expectations of when his funds might be available to trade.

### **My final decision**

For the reasons that I've given I uphold Mr B's complaint against Hargreaves Lansdown Asset Management Limited in part.

Hargreaves Lansdown Asset Management Limited should pay Mr B a total of £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 27 October 2022.

Keith Lawrence  
**Ombudsman**