

The complaint

Mr H complains about the time it took to reverse the process of tendering his shares so that he could sell them on the open market. He says that he wouldn't have tendered his shares if Hargreaves Lansdown Asset Management Limited (Hargreaves) had explained to him at the outset that it would take some time to untender them.

Mr H says Hargreaves should pay him the difference in the share price using the value of the share price he would've realised if he had been able to sell the shares when he contacted Hargreaves in August 2022 and instructed Hargreaves to untender his shares.

What happened

On 29 November 2021 Mr H received an offer to tender his shares.

At the beginning of December 2021 Mr H contacted Hargreaves to ask whether he could still sell his shares if he accepted that tender offer.

Hargreaves responded and said that Mr H wouldn't be able to cancel the tender once it had submitted the shares in acceptance of the tender offer, after the February 2022 deadline. However, it said that if the stock resumed trading before that time, he would be able to sell the shares and doing so would have the effect of cancelling any previous tender instruction.

On 15 December 2021 Mr H submitted his request to accept the tender offer. At the same time he informed Hargreaves that if the stock returned from suspension prior to the tender offer, he may wish to sell some, or all, of his stock on the open market.

On 5 January 2022 Hargreaves confirmed Mr H's instruction to accept the tender offer had been received. It said it would inform him once his offer had been accepted and the cash proceeds had been received.

The initial deadline for the tender was February 2022. The deadline was subsequently extended to September 2022.

In May 2022 there was a public announcement that trading in the shares would be reinstated.

At the end of May 2022 Mr H contacted Hargreaves to ask why his shares were showing a nil value. Hargreaves responded and said that as Mr H had given instructions to accept the tender offer, it was awaiting the tender proceeds. It also said as he had given that instruction, he wasn't able to sell the shares on the open market.

Mr H then asked when he would receive the proceeds and Hargreaves said it was expecting to receive the payment in mid-June.

On 22 August 2022 Mr H contacted Hargreaves and gave instructions to untender his shares as a matter of urgency, as he wished to sell the shares on that day. Hargreaves' representative said they weren't sure how long this would take but they would place a note on his account to say that Mr H wanted this to happen as quickly as possible because he wished to sell the shares. Mr H noted the potential for the share price to drop in value and result in a financial loss.

Mr H contacted Hargreaves on 23 August 2022 to say that he wished to place a trade for half of those shares. He was informed that as he had accepted the tender offer the shares weren't in his account. The representative noted he had subsequently cancelled the tender and said they would need to check with another department as to when the shares would arrive. The representative said Mr H wouldn't be able to sell the shares until they arrived back in his account.

Mr H contacted Hargreaves again on the same day to chase up his request. He said he needed to sell the shares that day. Hargreaves' representative told Mr H they would look into the status of his shares.

Hargreaves started the process to untender Mr H's shares however the tender offer was withdrawn at around that time. So, Mr H's shares were returned to his account on 1 September 2022.

Mr H complained to Hargreaves. He noted that he had received a tender offer in relation to some shares he held, and that offer was appealing to him because those shares were suspended at the time, and so he was unable to trade them.

Mr H said he sent secure messages to Hargreaves asking about the process so that he could make an informed decision about whether to accept the tender offer. He said he had contacted Hargreaves in December 2021 and asked whether he would be able to sell the shares prior to the tender and Hargreaves had confirmed he would be able to do so prior to the tender deadline, which at that time was in February 2022.

Mr H said he accepted the tender in December 2021 but noted on correspondence to Hargreaves that he may wish to sell some, or all, of the shares on the open market if the suspension of the shares was lifted.

Mr H said the deadline was then extended to September 2022 and in August 2022 he contacted Hargreaves in order to untender his shares and sell them. He said he expected his shares to be automatically available to trade but that hadn't been the case and instead Hargreaves had explained to him that it would take some time to untender the shares.

Mr H said he hadn't agreed for the shares to be transferred out of his account and if he had been made aware of the process, he wouldn't have accepted the tender offer.

Mr H said he had suffered a financial loss as he was unable to sell his shares on 22 August 2022 and the share price fell considerably after 24 August 2022.

Hargreaves didn't uphold his complaint. It noted that Mr H had contacted Hargreaves in December 2021 and asked whether he could sell the tendered shares. It said he was informed that he could still sell the shares on the open market and the effect of that would be to cancel the tender.

Hargreaves said when Mr H called in August 2022 to ask to untender and sell his shares, he hadn't been given a timeframe within which that would occur.

Hargreaves explained the process to untender the shares was manual and required the submission of a request to a third party to untender all shares held in a specific product i.e. the Fund & Share Account. It said it then had to await confirmation from the third party and submit a subsequent request to tender a new value excluding Mr H's shares.

It said this process took some time and the time required would vary based on demand from shareholders. So as it couldn't be actioned instantly Mr H had to wait for the process to take place prior to being able to trade on the open market.

Hargreaves said Mr H's request had been sent to the relevant team to be submitted to the third party but because of the withdrawal of the tender offer it had been unable to untender Mr H's shares. It said his shares had then been returned to his account on 1 September 2022.

Hargreaves acknowledged that Mr H had asked for his shares to be untendered as a matter of urgency when he contacted Hargreaves on 22 August 2022. However, it said because of the involvement of third parties it couldn't make the tendered shares available to trade immediately and it couldn't guarantee a timescale for the process.

Mr H referred his complaint to our service.

Our investigator considered Mr H's complaint and thought it should be upheld in part. He considered that Hargreaves hadn't properly explained to Mr H that the process to untender his shares wouldn't be instant or quick because it was a manual process. So, he said Hargreaves should pay Mr H £200 for the distress and inconvenience Mr H had been caused as a result.

But the investigator didn't think it was fair and reasonable to award the difference in price assuming Mr H had sold his shares on 22 August 2022 because he didn't think on balance that Mr H would have acted differently if he had been given that information at the outset. The investigator said that as the original offer was 2.5 times the market price of the shares at that time, he thought Mr H would have still tendered his shares.

Hargreaves accepted the investigator's view.

Mr H disagreed with the investigator and reiterated that Hargreaves had not fully explained the process of untendering to him and the time it would take. So he said he wasn't able to make an informed judgment as to whether to tender or not.

Mr H said the evidence showed that if the process had been explained to him properly, he wouldn't have accepted the tender. He noted that he had asked Hargreaves in December 2021 whether he could sell his shares if he changed his mind and he said that demonstrated an intention that he wished to sell the shares before the completion of the tender. He also pointed out that he did apply to untender on the 22 August 2022 expecting that to happen immediately.

Mr H said the £200 compensation recommended was insignificant compared to the loss that he had sustained of approximately £6,144.

As no agreement could be reached the complaint was referred to me for 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.

To recap, Mr H was offered the opportunity to tender his shares in November 2021.

The message informing him of the tender offer explained that he could choose to tender his shares if he wished and that he could do so through his Fund and Share Account. It also noted that the shares in question had been suspended from trading since August 2021. In addition the message expressly stated that it wasn't a recommendation.

The deadline for the tender was initially in February 2022 but was then extended to September 2022.

Mr H decided to tender his shares and submitted his application on 15 December 2021 which was acknowledged by Hargreaves in January 2022.

Prior to submitting his application Mr H had asked Hargreaves whether he would still be able to sell his shares if he tendered them. Hargreaves had confirmed he could do so up until the point his shares were submitted by Hargreaves in acceptance of the offer.

Then in May 2022 the trading of those shares was reinstated. Mr H's shares showed a nil value, so he queried this with Hargreaves. Hargreaves explained that as he had tendered the shares the value would remain as nil until the proceeds of the tender were received. It also noted that

"As you previously instructed us to sell your shares to XXXX through the tender offer, you are unable to sell them on the open market.

Once we've received the proceeds from the tender offer we will credit the cash to your account as a priority."

So I think there was some indication there, that there may be an issue with selling the shares on the open market.

I have carefully considered the telephone conversations between Mr H and Hargreaves on 22 and 23 August 2022. I am satisfied that Mr H indicated that he was looking to sell his shares immediately. However, I consider the representatives made it clear that they needed to check the situation with the shares because of the tender offer.

Information provided to Mr H about the tender process

I agree with the investigator that when Mr H contacted Hargreaves in December 2021 and asked it about the tender process, it didn't explain that process as fully as it could have done. Hargreaves did explain that Mr H could sell his shares up until the tender deadline, but it didn't inform him that it would take some time to untender his shares before he could do this. So he wouldn't be able to sell his shares immediately or quickly.

However, I also have to consider whether the outcome would have been different if Mr H had been provided with this information in response to his query.

At the point the tender offer was made the shares had been suspended from trading for several months. So, Mr H didn't have the option to sell them on the open market. Mr H has explained in his complaint that was why the tender offer appealed to him. I also take into account the price being offered for the tender was significantly more than the share price available on 22 August 2022, when he later sought to sell his shares. I think therefore that the tender offer was an attractive proposition for Mr H. So, I think it more likely than not that he still would have applied to accept the tender offer, even if it had been explained to him that he would have to allow some time to untender the shares if he changed his mind and decided to sell them on the open market.

I also note that at that point, when he made the decision to accept the tender offer, the shares were suspended from trading and Mr H didn't know when in the foreseeable future, he would be able to sell the shares. So, I think there was a significant degree of uncertainty.

In actual fact I think there were a number of unknowns here. It was not certain when the tender process would conclude and when Mr H would receive the proceeds. I note the tender deadline was extended and Mr H was informed at the end of May 2022, that Hargreaves expected to receive the proceeds in mid-June, which didn't turn out to be the case. And, as I have said, it was unclear when trading would be reinstated and the share price that might be achieved at that time.

Against this background of uncertainty, I think Mr H was reacting to the circumstances as they changed. He may well have thought that he might sell the shares if trading was reinstated but I am not persuaded on balance that the ability to sell the shares quickly, *if* trading resumed was a deciding factor.

I also note that at the end of May 2022, Mr H's contact with Hargreaves flagged up a potential problem with any sale of the shares outside of the tender process. Hargreaves had told him a nil value was showing because he had instructed it to sell the shares through the tender offer and that he was unable to sell them on the open market. At that point Mr H appears to have been content to leave matters as they were and await the proceeds from the tender offer.

Overall, I am not persuaded on balance that Mr H would have done anything significantly different which would have changed the outcome, if he had been aware that the process to untender required some time to take place.

As I consider Mr H would have still accepted the tender offer, then I don't think it would be fair and reasonable to award the value of the share price on 22 August 2022, or the difference between that price and the later share price in September 2022 when his shares were returned to his account. Because I don't think Hargreaves failed to act on his instructions. It was the nature of the process in place that there would have always been a delay while the untendering of his shares took place.

I also note there were several factors which were out of Hargreaves' control; the reinstatement of trading and the decision by a third party to withdraw the tender offer.

Distress and inconvenience

I consider Mr H would've been upset when he discovered that he couldn't sell his shares instantly, particularly as I consider he was aware of the potential for the share price to reduce, as he had mentioned this in his call with Hargreaves.

Given the circumstances and the relatively short time period involved, I think £200 is a fair and reasonable sum of compensation for that distress.

Putting things right

Hargreaves should pay Mr H £200 for the distress and inconvenience caused by it not providing a more comprehensive response to his request for information.

My final decision

My final decision is that Mr H's complaint against Hargreaves Lansdown Asset Management Limited is upheld in part and it should pay Mr H compensation as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 4 December 2023.

Julia Chittenden

Ombudsman