DRN-4622114

The complaint

Mr and Mrs C complain that they were given insufficient advice by Hargreaves Lansdown Advisory Services Limited ("HL") about how to invest cash into their investment portfolios.

What happened

In 2010, following advice from HL, Mr and Mrs C invested in HL's Portfolio Management Service ("PMS") and met with a HL adviser to invest further over the years. On 16 December 2021 Mr and Mrs C met with an adviser by phone, following a request to invest £10,000, split equally between their ISAs. The adviser found the portfolio remained suitable for them, so the investment was made on 21 December 2021. The adviser should have issued a suitability letter setting out their advice but did not.

In February 2022 Mrs C got in touch with HL to utilise the remainder of their ISA allowances for that tax year, which had been discussed in the call in December. Due to there being no recent suitability letter on file, HL insisted on a further review session prior to the investment being made, to check it would be suitable.

Mrs C was frustrated by this, as she'd gone through a review so recently, and in December had already agreed investing the further £15,000 each. She was also concerned by information she was provided with by various staff members at HL about the performance of their investments. Specifically, she was told that they had gone down by 2%, but she feels she wasn't given enough information to enable her to understand the context of that 2% loss. The £30,000 was invested in March 2022, but the value of the investment almost immediately fell. Mrs C felt she shouldn't have been advised to invest, as the investments hadn't been performing well since the advice was given.

In reply to her complaint, HL paid Mr and Mrs C a total of £900 for the service experienced, which was a mix of compensation and refunds of fees. Mrs C remained unhappy with this and brought her complaint to our service – she still felt she should have been advised not to invest, given the performance of the investment.

An investigator at our service looked into the complaint. HL told us that £850 was paid to Mr and Mrs C. The investigator found that £850 was fair and reasonable for the problems HL had caused. Mrs C didn't agree, as she feels HL should have done more to provide her with information about the markets. The investigator wasn't persuaded to change his mind, and as no agreement could be reached, the complaint was passed to me for a decision.

I issued a provisional decision, in which I said:

"There are two main points on which I need to decide here – firstly whether it was suitable for Mr and Mrs C to invest in 2022, and secondly whether the compensation offered by HL is fair and reasonable for the inconvenience caused. I'll look at these issues separately for clarity.

Suitability of the advice to invest

As HL were providing a discretionary managed service, it's not unusual that prior to investing, HL needed to give an opinion as to whether further investment would be suitable. This was the purpose of the meeting on 16 December 2021. As HL was giving advice, they had certain obligations towards Mr and Mrs C, including making a suitable recommendation, based on Mr and Mrs C's circumstances, objectives, investment experience and attitude to risk. Also, any information supplied by HL about the investments needed to be clear, fair and not misleading, in order for Mr and Mrs C to make an informed decision.

I've listened to a recording of the December 2021 meeting, which began with a discussion of the performance of the ISAs over the last two years. The adviser then asked Mr and Mrs C various questions to confirm whether any changes had taken place to their income and assets. They also had a discussion about the risk involved in the two main assets in the portfolio – equities and fixed interest securities (government and corporate bonds) – and the weighting of those assets within the portfolio.

During the course of this discussion, Mrs C explains they have a fixed term investment coming to an end in February 2022, which they'd like to invest in the ISAs to utilise their ISA allowance. They discussed how much Mr and Mrs C should retain as cash in their bank accounts, and whether their income is sufficient and the adviser explained, in detail, the pros and cons of taking income from the ISAs.

It's clear from this conversation that Mrs C is reliant on the adviser's opinion as to what is suitable for them to do – at one point she said expressly says they were reliant on the adviser's expertise to make the decisions and that they tend to trust HL to make the right decisions. The meeting concludes with the adviser explaining that he thinks it would be suitable for Mr and Mrs C to reinvest the money into their ISAs, once the fixed term account has matured.

It's also clear from the recording that Mr C had more knowledge and understanding of investments than Mrs C, but Mrs C does actively participate in the conversation and appears to understand the adviser's explanations of risk. I'm glad to hear there is a conversation around the assets involved, and what the benefits and risks are of increasing the percentage of equities in the portfolio. I'm satisfied this conversation gave Mr and Mrs C enough understandable information to make an informed decision both about keeping the level of risk the same, and to invest further.

I'm also satisfied that Mr and Mrs C had the attitude and capacity to take the level of risk involved here with their portfolio. Overall, I consider the advice in December to be suitable.

I appreciate that the majority of Mrs C's complaint goes to whether it was still suitable in the February/March to invest, given the decline in the value of the investments by 2% since December. I don't think the decline in and of itself made the advice unsuitable. This is because the purpose of the portfolio is to hold a long-term investment. The markets fluctuate over time and that allows for investments to be made at both low and high points in the market, which helps to smooth out the purchase price of units or shares within the portfolio.

Sometimes it's not necessarily a bad thing that the investment dips temporarily – it allows for more units/shares to be bought, as happened here. If the investment value had dropped significantly, I would have expected HL to reconsider the suitability of the portfolio. However, given the relatively small percentage of the decrease in value, I don't think it ought to have caused concern.

This is particularly because of part of the call in December, where the concept of investors panicking and surrendering investments when they see the markets dip was discussed. Mr C in particular was of the opinion that it was better to remain invested during turbulent times.

This is not an unusual opinion and is generally shared by much of the industry, regarding the types of investments Mr and Mrs C hold.

Based on everything I've seen, I'm satisfied the advice wasn't unsuitable, despite the slight decline in the portfolio's value prior to investing in February/March 2022.

The distress and inconvenience caused

It's agreed that HL's initial error was not issuing the suitability letter and if they had Mr and Mrs C would have easily been able to invest in February 2022. So, I've considered the impact of that error – both on the time Mr and Mrs C had to spend resolving the situation, and whether they were caused any financial loss.

From looking at the timeline and performance figures, it seems that by investing later, the decline in the market allowed Mr and Mrs C to buy more units or shares within their ISAs. So, I'm satisfied they haven't been caused any financial loss by HL's errors.

Mrs C has also explained that HL caused her concern by not properly answering her questions about the performance of the investment or letting her invest in a timely manner. HL supplied some calls Mrs C had with HL and I asked HL for call notes showing all the other calls. I don't think every call has been detailed in the evidence so I can't be sure of the exact number of calls Mrs C has to make. But I'm satisfied that Mrs C had to have a large number of calls with HL before she was able to invest, and only one or two of those calls ought to have been necessary, given the review in December 2021.

I also think Mrs C's frustration about the lack of information anyone could give her regarding the performance figures was reasonable – no one was able to put the 2% loss in context for her, as she rightly pointed out she didn't know whether the investment had gone up prior to going down. All that was needed was the values to be given to her, which I can see weren't supplied until late in March. HL has said this information wasn't readily available to the call handlers and was available online for Mrs C. I don't think it's unreasonable to expect the call handlers to be able to give her more information around this – but if clear performance information couldn't be given over the phone (except by a financial adviser or following an investigation) then Mrs C ought to have been directed to the online service when she first asked about this on 8 February 2022 - at the latest on 23 February 2022 when she raised a complaint.

I've considered what would have happened if the information Mrs C was given about this had been more detailed prior to her investing. I'm persuaded she would have gone ahead with the investment, given the conversation that took place in December. This is because in that conversation both she and Mr C show an understanding of the long-term nature of investing. So, I don't think this loss, if fully understood, would have dissuaded her from going ahead with what had been agreed in the December.

Having listened to the call on 23 February 2022, I'm not surprised at Mrs C's obvious frustration at HL. She had begun trying to deposit this money at the beginning of February – which had already been agreed as suitable in December. It's explained in the call that they can't arrange for the investment to be made until 1 March 2022 at the earliest, due to a new process coming in at that time. The new process will mean customers invested in PMS would no longer need to wait to speak to an adviser before investing, and would instead be able to run through some compliance checks with the other members of the team, speeding up the process.

HL has not confirmed whether there was an attempt to book Mrs C in with an adviser earlier than this, or provided any evidence to support that a meeting with an adviser couldn't take *place before 1 March. Even if that evidence was available, the additional meeting would have been unnecessary and unjustified – not just because the suitability had already been agreed in December, but also because I don't think it's reasonable that HL doesn't have enough staff to keep up with demand for their own processes. So, I don't think it was reasonable to put Mrs C's investment off until March.*

I've carefully considered the offer HL has made for this. When they provided their file to our service, HL said they'd offered a total of £850, and the investigator found that this amount was fair. However, having gone through the responses HL sent to Mrs C, as well as the payment confirmation screenshots that HL provided with their file, I can see the total is £900:

- *28 March 2022 - £150 compensation plus £50 refund of fees for the investment in December 2022, for each of Mr and Mrs C*
- *30 March 2022 - £100 compensation per person*
- *8 June 2022 - £150 refund of fees each, for the investment in March 2022*

So, in total, they've received £400 in refunds of the advice fees paid, plus £500 compensation for the distress and inconvenience caused.

Bearing in mind my findings above that it wasn't unsuitable for Mr and Mrs C to invest this money, I don't think it would be fair to say compensation ought to be payable for the disappointment caused by the loss experienced within the portfolio either pre or post the March investment. Mr and Mrs C were willing to accept risk and knew it was possible. So, I haven't included that disappointment in my consideration of compensation here.

Overall, I'm persuaded the distress and inconvenience caused to Mr and Mrs C was unreasonable. I agree it's fair that the advice fees have been refunded, given the failure to issue the suitability letter causing the subsequent problems here.

I'm satisfied that £500 in recognition of the inconvenience caused is in the range of the amount I'd have awarded if HL hadn't offered it. I think it reflects the confusion Mr and Mrs C naturally would have felt and the delays they experienced. As a result, I'm satisfied the amount paid is fair."

Replies to my provisional decision

Mrs C replied and said, in summary:

- If she had been told the full extent of the loss in monetary terms, she wouldn't have invested. She pointed to the turbulence in the markets caused by the war in Ukraine, which she felt was a higher risk than they were willing to take. If that had been fully explained to her in February 2022, a different route would have been taken.
- She was under the impression that the meeting arranged on 1 March 2022 when she eventually was able to invest had been with an adviser, who was the same person she'd been speaking to during February, but who had just been promoted. Mrs C argues that he wasn't qualified to properly advise, and nor could he give any further detailed information about the decrease in the value of their portfolios since December.

HL didn't reply to my provisional decision.

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 reassure Mrs C that I've carefully reviewed her comments – though I hope she won't take it as a discourtesy that I may not reply in as much detail.

My aim is to put Mr and Mrs C back in the position they'd be in, if HL hadn't made any errors. The initial error here was not issuing a suitability letter in December 2021 – and if that had been issued, then Mrs C ought to have been able to invest relatively easily in February 2022, when she got in touch with HL initially to invest the proceeds of the matured investment. The main impact on the financial markets caused by Russia invading Ukraine happened towards the end of February. So, if everything had gone to plan, the full impact of the invasion wouldn't have been known by HL when Mrs C should have been able to invest.

I accept that from Mrs C's perspective with hindsight it doesn't look like the best investment decision, due to the decrease in the values of their portfolios. However, I have to be mindful of not using hindsight when considering what's happened here and have to consider the suitability of the advice, without the knowledge of what later happened with the performance of the investment, after the advice was given.

Having reconsidered the advice in December 2021 with Mrs C's comments in mind, I remain satisfied that the advice wasn't unsuitable. With the amount they were investing, and the level of risk they were happy to take (which I agree was suitable for them to take), I don't think it was unreasonable for them to invest. The particular comments made in the call in December persuade me of this, as there was clearly an appreciation from Mr and Mrs C of remaining invested throughout periods of uncertainty in the markets. So, the further comments haven't changed my findings on this complaint point.

Mrs C has said that she thought the person she spoke to on 1 March 2022 was an adviser. To clarify – they weren't a qualified adviser. Instead, HL changed their processes – prior to 1 March 2022 it was necessary that before adding money into a PMS account, an investor needed to speak to an adviser. From 1 March 2022, HL had a new process in place, which they say simplified the process for investors, and meant a meeting with an adviser wasn't necessary, provided certain criteria were met. It was the normal call handlers who could go through that criteria with investors – which is what happened to Mrs C.

From my perspective, it seems Mrs C got caught up in the change in process and was effectively forced to wait until 1 March to invest, as no advisers were able to meet with her prior to that date. As I set out in my provisional decision, this wasn't good enough - I don't think it's reasonable that HL doesn't have enough staff to keep up with demand for their own processes. So, I took this confusion and delay into account when considering the case in my provisional decision.

Overall, having reconsidered what's happened, I remain satisfied that the offer made by HL is fair and reasonable, for the reasons given above and in my provisional decision.

My final decision

Hargreaves Lansdown Advisory Services Limited has already made an offer to pay £900 to settle the complaint and I think this offer is fair in all the circumstances. As this has already been paid, my final decision is that while I uphold this complaint, Hargreaves Lansdown Advisory Services Limited doesn't need to do anything further to put things right.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr and Mrs C to accept or reject my decision before 13 March 2024.

Katie Haywood
Ombudsman