DRN-4734759

## The complaint

Mr C complains Hargreaves Lansdown Asset Management Limited ("HLAM") made errors when it sold investment shares he held within his Self-Invested Personal Pension (SIPP) and he's suffered a financial loss as a result.

## What happened

Mr C had a SIPP with HLAM. As part of his SIPP he held investment units (which I'll refer to as the "G shares") within an exchange traded fund.

On 1 January 2023, he placed a "Stop Loss" Order for the G shares using HLAM's online service. His instruction was that the G shares should be sold when the price reached 12388p.

Mr C says he first noticed on 7 April 2023 that the G shares had been sold. He reviewed the trade details which showed that the shares had been sold on 14 March 2023 at a price of 12199p. He thought it looked odd that the shares had been sold. He says he checked various share price charts and as far as he could see the price of the G shares had never reached 12388p. Infact the low recorded for 14 March 2023 was recorded on the share price charts as 14900p and the intraday charts showed that the price had gapped upwards on that day. He contacted HLAM asking it to correct the matter.

Mr C says he didn't get an immediate response. He contacted HLAM again and informed it that if he'd still had the G shares he would've sold them on 21 April 2023. At that date he said he could've sold the shares for over £2,000 more than what he'd received. He complained to HLAM about what had happened.

HLAM investigated his complaint. It said that the sale of the G shares had been triggered when the market bid price had been less than the stop loss price. It said that had happened on 14 March at 12.29pm. It referred to the bid offer spread which had been observed at that time. The bid price was lower than 12388p. HLAM said it had traded the G shares as soon as that happened and had sold them at 12.30pm. It said it had achieved the best price available at that time.

HLAM acknowledged that the price rose very shortly after Mr C's shares had been sold. It said that "gapping" was an inherent risk of using its Stop Loss service. It said the risks were clearly set out on its website. HLAM said it hadn't done anything wrong.

Mr C didn't agree. He referred his complaint to our service. He raised the following issues:

- The stop loss should not have been triggered. None of the share price charts showed that the price had ever reached the stop loss trigger on 14 March 2023.
- He suspected that HLAM had not traded the G shares at all but rather had traded some sort of derivative product of its own.

In the alternative Mr C said:

- Even if the stop loss had been triggered, the trade had been unfairly executed contrary to best execution principles;
- HLAM had given insufficient warnings about the nature of the stop loss instruction. For example it hadn't provided any warning to the effect that the stop loss could be triggered more than 17% away from the lowest price of the day. HLAM hadn't done enough in any event to bring any warnings to his attention.

Our investigator looked into Mr C's complaint. He examined the evidence which HLAM provided. He was satisfied, on balance, this showed that the bid price had fallen below the stop loss price Mr C had set. As a result the trade was automatically triggered. This was not an error on HLAM's part since it was obliged to comply with his stop loss instruction.

Our investigator also looked at the warnings HLAM had provided. These included references to the risks created by "gapping" and the potential increase in the bid offer spread. And although it didn't highlight that the bid offer spread could be as much as 20% it did explain that there could be a potential widening of the spread for a very short period of time – as had happened here where the bid offer spread had widened for a period of less than one minute.

Mr C didn't accept what our investigator said. He said the warnings he'd been given were inadequate. He said our investigator hadn't mentioned the issues he'd raised about best execution practices. He didn't think HLAM had acted in his best interests and hadn't provided good outcomes for him.

Our investigator considered what Mr C said but he didn't change his view. So, the complaint has been passed to me to decide.

**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.

<u>The instruction given by Mr C</u>
I've looked at the online screen which Mr C used when he placed his stop loss instruction on 1 January 2023.

At the top of the screen the name of the G shares appears together with details of the sell and buy price on that day. Immediately below this there are 2 options – "Deal Now" and "Stop Losses & Limit Orders".

Mr C chose the Stop Losses & Limit Order option which set out the following information:

> *Current holding ..X shares*

He was then asked to select from the options – "buy limit", "upper limit to sell" or "stop loss". He selected stop loss. Under this option he had to insert his instructions:

> *Number of shares [insert]*
> *Price (p) [insert]*
> *Expires after [insert]*

Below this the following wording appeared:

> *"Before you invest please view the <u>costs and charges</u> and the Simplified Prospectus/Key investor Information Document and ensure that you are familiar with the <u>risks of investing</u>.*

*For information about the share dealing process, please refer to the <u>order handling policy</u>.*

*Please read <u>the terms and conditions of the limit order service and read the risks.</u> By submitting your order you agree to be bound by these terms and confirm that you understand the risks.*

*[Cancel]* *[Place stop loss]"*

[*Note* - I've underlined wording in the extract above where there was a hyperlink to another document within the HLAM website]

Mr C hasn't disputed that by placing the stop loss instruction he was asking HLAM to sell the G shares as soon as the bid price dropped to (or below) the price he'd input on the screen.

<u>What happened on 14 March 2023</u>

Mr C doesn't think the bid price ever dropped to the stop loss price on 14 March 2023. He relies on the information available in share price charts which he says supports his view.

HLAM however has produced evidence which shows that the bid price did fall below the stop loss price. It's provided screen shots which it says display London Stock Exchange data sourced through an independent third party platform. This data includes information about the bid offer spread on a second by second basis for the date in question.

It shows the following information for the G shares on 14 March 2023

| *Time* | *Bid Offer Spread* |
|---|---|
| *12.29.52* | *11888-15000* |
| *12.29.53* | *14378-15000* |
| *12.29.55* | *11888-15000* |
| *12.29.56* | *14376-15000* |
| *12.29.59* | *11888-15000* |
| *12.30.21* | *14291-15000* |

The share price charts which Mr C has referred to do not provide information which is as detailed as that which would've been available to the dealers on the day. As can be seen above the price changed frequently on the day – including on a second by second basis. So, I'm satisfied, on balance, having examined all of the information available to me that the bid price for the G shares did reach the stop loss price on 14 March 2023.

Once the stop loss price had been reached HLAM was obliged to comply with Mr C's instruction and sell the G shares. As a result the price obtained for the G shares was less than the stop loss price and less than what Mr C says he would reasonably have expected. I'll comment further below about what Mr C says concerning how the sale was executed.

Mr C has suggested that because of what he's observed from the share price charts, he suspects HLAM had infact traded some sort of derivative product. Having looked at all the information available to me, I've not been provided with any evidence which supports what he's said. So, I'm persuaded on balance that HLAM traded the G shares and did not trade a derivative product.

<u>What warnings were given</u>

Mr C says that even if what HLAM says about the stop loss having been triggered is true, it didn't give him clear enough warnings when he placed his instruction.

He says he wasn't told about the webpage with the warnings when he placed his order. And, in any event, the warnings did not sufficiently explain the nature of stop loss instructions and how they might behave insofar as this type of product (an exchange traded fund) was concerned. He says if he'd known it was possible for a stop loss instruction on a product which ought to be highly liquid, and thus have low bid offer spreads, to have resulted in a sale price which was 17% less than the lowest recorded price for the day he wouldn't have placed the instruction. The warnings should have been much clearer if such an outcome was possible.

I've thought about what Mr C has said here and I've looked at the warnings that were given.

First I'd just comment that the webpage with the warnings was available by clicking on the hyperlinks shown on the page where he placed the stop loss instruction. These hyperlinks appeared above the button that he had to click to submit his order. And by clicking on the "Place Stop Loss" button he confirmed that he agreed to be bound by the terms and he understood the risks. So, I'm satisfied, on balance, HLAM did do enough to bring the webpages with the terms and conditions and the associated risks to his attention before he placed his instruction.

I've then looked at the webpages available by clicking on the hyperlinks. The information explains that stop loss and limit orders allow investors to set a price which, if reached, trigger an instruction to buy or sell a particular share. It warns that before using these orders the customer should ensure that he fully understands how they work and read the terms and conditions and risks for the service.

The risks are set out and include the following:

> *"If the bid price is lower than your stop loss price when we attempt to place your deal we will continue to place your deal at the lower price. In some cases a share price that is falling could "gap" for example moving from £1.20 to £0.90; if a stop price was set at £1.19 the shares would still be sold at £0.90.*
>
> *…. Share prices can fluctuate considerably and you may see extreme price "spikes". Certain factors may also cause the bid-offer spread (the difference between the buying and selling prices) of an investment to widen. Both of these situations may only last for a few minutes or less, but they could nevertheless trigger your limit or stop order…"*

The example set out in the warning showed that the price could "gap" and if the stop loss price was triggered the actual sale price could be considerably lower than the stop loss price – even though the price had only gapped for a matter of minutes or less. The example provided on the webpage showed an instance where the sale price could be around 25% lower than the stop loss price set.

On 14 March 2023, for the reasons set out above, I'm satisfied that the stop loss was triggered. The gapping in the bid-offer spread occurred for less than a minute. The warnings had explained that this could happen.

The sale price achieved when Mr C's shares were sold was less than the stop loss price he'd set – albeit that was considerably less than what the sale price might have been at a different time on the same day. However, the fact that could happen had also been referenced in the warnings HLAM had given. So, I'm not persuaded, on balance, that the warnings were insufficient or that HLAM hadn't done enough to bring them to Mr C's attention.

Regulatory Requirements
Mr C says he thinks the sale of his shares was unfairly executed contrary to best execution principles and HLAM's duties to him as a consumer. I note that in Mr C's complaint to our service he has cited the Consumer Duty and he'd like me to consider HLAM's obligations to him with this in mind.

The Consumer Duty is a new standard for firms which was introduced by the Financial Conduct Authority (FCA). It sets a higher standard for firms in terms of their treatment of customers and it applies to events from 31 July 2023. What Mr C is unhappy with happened before 31 July 2023 – so the duty won't apply.

I would however assure Mr C that HLAM has always been subject to the FCA Principles and rules which were essentially to act in his best interests and treat him fairly. In reaching my decision I've thought about the Principles and rules which applied at the time including HLAM's undernoted obligations:

*Treating customers fairly*

Principle 6, set out in the FCA Handbook, requires a firm to pay due regard to the interests of its customers and treat them fairly. This Principle aims to deliver certain outcomes for customers including ensuring that products and services are designed to meet the needs of identified consumer groups and are targeted accordingly; consumers are provided with clear information and are kept appropriately informed and the products perform in the way that the consumer was led to expect.

The service HLAM provided here was the ability to place a stop loss order which automatically triggered the sale of the shares as soon as the bid price reached that level. Mr C hasn't disputed that he understood the service that was being offered – to sell his shares if the stop loss price he'd input online on 1 January 2023 was triggered.

It is the case that the service performed in the way that was described. The shares were sold when the stop loss price was triggered. For the reasons stated above I'm also persuaded HLAM provided clear information and risk warnings about the service.

*The client's best interest rule*

The Conduct of Business Sourcebook (COBS) set out in the FCA Handbook (available online) provides at COBS 2.1.1 R that a firm must act "honestly, fairly and professionally in accordance with the best interests of its client".

Having thought about what happened here I'm satisfied on balance that HLAM was obliged to comply with its client's specific instruction – to trigger a sale of the G shares once the stop loss price had been reached.

This was an execution only service. HLAM didn't provide any advice to Mr C and Mr C didn't seek any advice when he placed the stop loss order. When HLAM complied with the instruction, it did so in accordance with its best execution policy, which I'll comment further about below. So even though Mr C was unhappy with the outcome I'm not persuaded that was because of any error on the part of HLAM or because it didn't meet its obligations to act in its client's best interest.

*Best execution obligation*

COBS 11.2.1 R provides:

> "*a firm must take all reasonable steps to obtain, when executing orders, the best possible result for its clients taking into account the execution factors.*"

When executing a client order a firm should take into account a number of criteria as set out in COBS 11.2.6 R including the characteristics of the client order. Where a client has issued a specific instruction the firm is required to execute the order following that specific instruction. And COBS 11.2.19 (2) R provides that in these circumstances the firm satisfies the obligations set out above "*to the extent that it executes an order following specific instructions from the client*."

The stop loss order which Mr C placed with HLAM on 1 January 2023 was a specific instruction – to sell the G shares when the stop loss price was triggered. HLAM's "Best Execution and Order Management Policy" (best execution policy) provides that where a share price reaches the stop loss price it will attempt to place the deal in the market. However, it also states that because share prices can change in seconds it may be that the price has moved by the time it attempts to place the deal and it may not be executed at the price set, or at all.

On 14 March 2023 HLAM says the stop loss price was reached on three occasions:

| *Time* | *Bid Offer Spread* |
|---|---|
| *12.29.52* | *11888-15000 (for one second)* |
| *12.29.55* | *11888-15000 (for one second)* |
| *12.29.59* | *11888-15000 (for 22 seconds)* |

In line with its best execution policy it attempted to place a trade at 12.59.52 and again at 12.29.55 but on both occasions by the time the trade was placed the price had moved above the stop loss price – so the trade did not proceed. I'm satisfied that was in line with the instruction Mr C had given. He hadn't instructed HLAM to sell if the bid price was greater than the stop loss price he'd set. It was also in line with HLAM's best execution policy. As can be seen from the information set out above the price moved on the first two occasions within one second.

The stop loss price was triggered again at 12.29.59 and the trade was placed successfully at 12.30.06. HLAM says that the trade was dealt at a price which was better than the market price when the stop loss was tiggered – albeit that price was less than the stop loss price which had been set. However that was something which HLAM had warned about in its terms and conditions for the service. These stated:

> *"We [HLAM] do not accept any liability for any loss or potential loss you may suffer if there is a delay in execution of a limit or stop loss order, <u>a stop loss order is executed below the stop price</u> or there is a failure to execute a limit or stop loss order."*

(My underlining added for emphasis)

In the circumstances which applied here, I'm satisfied on balance that HLAM executed the specific stop loss instruction which Mr C had placed and it did so in accordance with its best execution policy.

Having considered everything I'm not persuaded HLAM did anything wrong or that it has otherwise acted unfairly or unreasonably. So although I know it will disappoint Mr C, I don't require HLAM to have to do anything further to resolve this complaint.

## My final decision

For the reasons given above I do not uphold this complaint about Hargreaves Lansdown Asset Management Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 25 September 2024.

Irene Martin
**Ombudsman**