

## The complaint

Mr M complains about the advice given by Hargreaves Lansdown Advisory Services Limited ('HL') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension plan ('SIPP'). He says the advice was unsuitable for him and believes this has caused him a financial loss.

## What happened

In January 2012 Mr M decided to opt of his employer's occupational DB pension scheme. Mr M decided to opt out because he wanted to have more control over his money and because he felt his employer had 'messed about' with the scheme.

In June 2012 Mr M completed an 'execution only' HL SIPP application. The application included an instruction to invest the transfer value 100% into a cash fund. HL sent the necessary transfer request documents to the trustees of Mr M's DB scheme along with a copy of his SIPP application form.

In August 2012, HL wrote to Mr M explaining that the transfer he sought to make to the SIPP was a transfer of a DB scheme and, as such, it was unable to accept the transfer unless Mr M received pension transfer advice. HL's letter also explained that if it ultimately recommended that Mr M was not advised to transfer his DB scheme, the transfer could then only proceed if he confirmed in writing that he had been advised of the advantages and disadvantages of the transfer, was taking full responsibility for the decision he was making and absolved HL of any liability.

Mr M agreed to receive advice and in August 2012, HL received information it had requested from the trustees of Mr M's DB scheme. The information showed that Mr M had 17 years and 8 months of pensionable service in the scheme and that was entitled at age 60 to a deferred pension of £11,024.37 per year increased in line with CPI. Mr M's DB scheme also had a cash equivalent transfer value ('CETV') of £148,527.21.

In September 2012, Mr M completed a pension transfer attitude questionnaire and a financial planning questionnaire for HL. The forms documented the following information:

- Mr M was aged 44, unmarried but living with his partner.
- He was in good health and had one dependent daughter aged 16.
- He was employed and earned £35,000 per year.
- He had no assets or investments and he lived in rented accommodation.
- Mr M wanted to retire at age 65. He also wanted his pension fund split between his daughter and his partner on his death.
- He no longer had the option of joining his employer's pension scheme, noting on the form that he had *'ceased payment and unable to rejoin'*.
- Mr M also noted that he had, *'ceased contributions to pension fund as unaffordable due to personal reasons – now unable to rejoin would like to invest fund to achieve high return at age 65.'*
- Mr M said he wanted to transfer his DB scheme into a SIPP to have control over his pension fund and how it was invested

In early October 2012 Mr M spoke with one of HL's advisers to discuss his proposed transfer of his DB scheme benefits to his SIPP. HL told Mr M during the call that he was preparing his suitability report and was going to recommend that he didn't transfer his DB scheme. Mr M told HL that he had a friend who was a financial adviser who would be helping him with his future investment decisions. He also told HL that it wouldn't *"make a lot of difference what you say whatsoever, I still want to do it."*

On 10 October 2012, HL sent Mr M a letter enclosing a copy of its suitability report. In the letter HL said it had considered the answers he had provided in the recently completed questionnaires and it acknowledged that Mr M was taking full responsibility for the decision he was making. HL said its advice was limited to assessing whether the transfer was suitable or not and that no advice was given in relation to any underlying fund selection.

The suitability report also recorded Mr M's objectives in seeking a transfer of his DB scheme benefits which were cited as:

- A desire to increase his pension.
- To risk his benefits in the hope of achieving good returns and early retirement.
- To take control of his pension.
- A lump sum benefit was not important to him although he would like his partner and daughter to benefit in the event of his death.
- Flexibility around how he drew his benefits in retirement
- He wanted to take control of the transfer value because the government had messed around with pensions.

The report also recorded Mr M's attitude to risk, which it noted was 'high'.

HL recommended that Mr M didn't transfer his DB scheme benefits to his SIPP. The suitability report said that the principal reason for the recommendation was that the annual investment growth needed just to match the benefits offered by the DB scheme was unlikely to be achievable. HL also recommended that Mr M re-join his DB scheme if at all possible and that opting out was something it would only recommend in the rarest of circumstances. Finally HL said that by transferring, Mr M would be exposing his pension to investment risk with no guarantees (unlike those offered by the DB scheme) about his future income.

HL also provided Mr M with a transfer value analysis report which stated that his DB scheme was forecasted to provide him with an annual income at age 60 of £16,366. It said Mr M's SIPP would need to achieve annual investment returns (also known of as the 'critical yield') of 11.5% per year in order to achieve the same level of income as his DB scheme at age 60 (or 10.4% per year if he took tax free cash and a reduced annual income).

On 12 October 2012, Mr M sent HL an email in which he said, *"Just a quick mail to say I have read and understood your advice, I would like to continue the transfer against your advice and will not hold Hargreaves Lansdown responsible for any future things you have advised against."* On 16 October 2012 Mr M sent HL another email in which he said, *"I will not hold Hargreaves Lansdown responsible for any consequences that incur [sic] due to transferring my pension"*.

In December 2012 the CETV of £148,527.21 from Mr M's DB scheme was transferred to his HL SIPP and placed on cash deposit. In December 2013, Mr M transferred his SIPP away from HL to another provider.

In July 2023 Mr M, through his representative, complained to HL that it had provided him with unsuitable advice to transfer his DB scheme in 2012. He also complained that no investment recommendation had been given to him and that his pension had been left in a cash fund.

HL looked into Mr M's complaint and issued its final response letter in September 2023. It said:

- that despite its recommendation not to transfer his DB scheme, Mr M chose to do so in any event and was, therefore, an 'insistent client'.
- it had only given advice to Mr M in relation to the transfer itself and in accordance with the instruction he had given on his SIPP execution only application form.
- Mr M's funds had remained on cash deposit until they were transferred away less than a year later.
- it had outlined the risks of transferring to Mr M and that he was likely to be financially disadvantaged by doing so.
- it had only agreed to proceed with the transfer after Mr M had confirmed he had understood the potential consequences and the advice he'd been given, and after which he said he still wished to proceed against that advice.
- HL also referred to the two emails Mr M had sent in October 2012 confirming that he would not hold it responsible for any adverse consequences.
- the 'do not transfer' recommendation was suitable, that Mr M had been properly informed of all the associated risks but that he wished to proceed regardless and contrary to its advice.
- that Mr M could complain to the Financial Ombudsman Service but that it thought his complaint had been made outside of the time limits that apply. Specifically, HL said that the events Mr M was complaining about occurred more than six years ago and that he was also complaining more than three years after he realised (or ought to have realised) there was a problem.

Unhappy with the outcome of his complaint to HL, Mr M complained to the Financial Ombudsman Service. Our Investigator looked into Mr M's complaint for him first considering whether his was a complaint that fell within the jurisdiction of this Service, which he concluded it did. Our Investigator then went on to consider the merits of Mr M's complaint but didn't recommend that it was upheld. He thought that HL had provided Mr M with a suitable recommendation and that he was an 'insistent client'.

Mr M's representative responded and asked our Investigator to send it copies of some of the documentation from the time of the sale. Having considered what was provided, Mr M said that the handwriting and the signatures on the documents weren't his. Our Investigator thought about what Mr M had said but wasn't persuaded to change his mind, noting that Mr M hadn't questioned the accuracy of the information contained on the forms or commented on the findings he had made in respect of his complaint.

Mr M asked for his complaint to be referred for an Ombudsman's 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.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Having done so, I've decided not to uphold the complaint for largely the same reasons given by our Investigator. My reasons are set out below.

*Is this a complaint I can consider?*

As HL didn't comment on our Investigator's findings in respect of this complaint falling within the Financial Ombudsman Service's jurisdiction it's reasonable to assume that it takes no issues with the conclusion reached; that is that this is a complaint that this Service can consider.

Briefly, and for the avoidance of doubt alone, I should state that I agree with what our Investigator said, namely that there is no evidence that Mr M became aware, or ought reasonably have become aware, that he had cause to complain more than three years before he made his complaint to HL in July 2023.

Like our Investigator I don't consider the transfer of the SIPP in 2013 away from HL to another provider would have caused Mr M to think he had grounds to complain about the advice he'd received from HL the previous year. I'm mindful that Mr M told HL during the advice process that he had a friend that was a financial adviser who was helping him with the investment of his pension and that he required no underlying investment advice from HL because of this. Mr M's transferred funds were held on cash deposit until his SIPP was transferred a year later. However, I am unable to agree that this sequence of events should have put Mr M on notice he had grounds to raise a complaint against HL and I've seen no other evidence that has made me think that Mr M ought reasonably have been aware prior to early 2023 that he had cause to complain to HL.

It follows that I think that it wasn't until Mr M contacted his representative in March 2023 that he first realised he had cause to complain. As he raised his complaint with HL a few months after that, it follows that this is a complaint that isn't time barred under our rules.

*The advice process*

The regulator, the Financial Conduct Authority ('FCA'), states in its Conduct of Business Sourcebook ('COBS') that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, HL should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr M's best interests (COBS 19.1.6).

There had previously been rules in place relating to insistent clients when the Personal Investment Authority ('PIA') was the Regulator and the PIA Adopted Rules applied. And the Conduct of Business rules had also contained rules about how firms should treat insistent clients. These specific requirements were not replicated in the Conduct of Business Sourcebook ('COBS') rules which came into force in 2007, although COBS 19.1.9 did say that:

*"If a firm proposes to advise a retail client not to proceed with a pension transfer or pension opt-out, it should give that advice in writing."*

Nevertheless, at the time the advice was given, I think it was good industry practice for firms to ensure that customers who wanted to go ahead with a transaction against an adviser's recommendation should have it clearly documented that the consumer was acting against the recommendation, and that they wanted to proceed in any event.

*Furthermore the COBS rules in the regulator's Handbook required HL to 'act honestly, fairly and professionally in accordance with the best interests of its client'. In addition, COBS*

required HL to provide information that was clear, fair and not misleading. So, HL's recommendation had to be clear and Mr M had to have understood the consequences of going against the recommendation.

The Principles for Businesses ('PRIN') were also in place and the following principles are also of relevance:

PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

There was no set definition of '*insistent client*' in the regulator's handbook, but a key aspect in this case is HL's categorisation of Mr M as an insistent client - this is a client that wishes to take a different course of action from the one recommended and wants the business to facilitate the transaction against its advice.

In its suitability report, HL recommended that Mr M should not transfer away from his DB scheme. It said this was because the critical yield (investment return) his SIPP needed to achieve in order to match the benefits of his existing DB scheme was too high. It said an alternative pension arrangement was unlikely to produce better benefits, nor would it have the benefit of a guaranteed income. It said too that Mr M should endeavour to re-join his employer's DB scheme.

Having carefully considered all of the evidence presented, I think there were weaknesses and failings in HL's advice process which meant it didn't necessarily act in Mr M's best interests. But despite these weaknesses, I think Mr M understood and believed overall that HL wasn't recommending he should go ahead with the transfer. I think he intended to go ahead with the transfer regardless. I'll explain why.

By the time he was advised by HL, Mr M had already opted out of his employer's DB scheme and had applied for a HL execution only SIPP. And whilst he had opted out of his DB scheme, thereby becoming a deferred member, it wasn't necessary for him to transfer his deferred benefits away. Indeed it was of course possible for him to leave his benefits with the trustees of the scheme until he was ready to draw them at retirement.

HL stated in its August 2012 introductory letter that if it recommended not to transfer, it would only then proceed to do so if Mr M stated that he had been advised of the advantages and disadvantages of the transfer, was taking full responsibility for the decision he was making and absolved HL of any liability. The introductory letter HL sent in August pre-dated the advice process yet, from this point I think that HL was explaining the steps Mr M needed to take to transfer regardless of its recommendation.

And whilst HL's suitability report did indeed clearly recommend that Mr M did not transfer his DB scheme benefits away, it also said that that he need take no further action unless he disagreed with the report's conclusions. HL said in this case he should contact HL to discuss the matter further. As I have set out above, Mr M did contact HL further by email stating that he had read the report and "*will not hold Hargreaves Lansdown responsible for any future things you have advised against*". This was followed by a second email a few days later containing a similar statement.

I think if HL was confident in the advice and recommendation it was giving, and it was acting in Mr M's best interests, it wouldn't have told him prior to delivering its recommendation how

he could readily put it aside and bypass it. I don't think it was in Mr M's best interest to go against HL's recommendation – yet I consider HL made it possible for him to do so.

From the advice process itself, I think it should have been clear to HL, based on the information available at the time, that Mr M had little knowledge or experience of financial matters. For example Mr M had no investments or assets, owned no property and there was nothing to suggest he had any prior investment experience. I think this alone should've put HL on notice that it had to be careful if it was to take matters through the insistent client route.

I also think that given Mr H's explanation about why he wanted to proceed – that he wanted to have more control over his money and because he felt his employer had '*messed about*' with the scheme – ought to have prompted HL to ask further questions and interrogate his motives and objectives. I think HL ought to have explored why he felt like he did about his employer – it may have been that his attitude to his employer was unfounded. I think though that HL should have done more to understand why Mr M was feeling compelled to transfer.

And in order to fulfil the regulator's requirements under COBS 9.2, HL needed to give Mr M advice on the overall suitability of the transaction envisaged i.e. the transfer and the choice of pension and investment. Instead, it gave Mr M advice on the transfer only. It didn't consider the suitability of the SIPP as a receiving plan for the transferred funds nor how the funds were going to be invested. If HL didn't think that transferring out of the DB scheme to a SIPP was in Mr M's best interests, it needed to ensure that it gave clear advice that the whole of the transaction was unsuitable for him - it couldn't separate out the elements.

I appreciate that Mr M told HL that he had a friend that was going to advise him on how to invest his funds but I think HL should have gathered more information from him about his intended investment plan to better understand the position – if only to suggest to him that there might be other ways he could achieve his objective (including leaving his DB scheme benefits where they were) before continuing to facilitate an irreversible transaction to transfer his pension.

I'm mindful that there were no specific insistent client rules in place at the time. But I consider the rules that were in place at the time were clear that HL had to act with due care and skill and in Mr M's best interests. And by not seeking to deeper understand or interrogate Mr M's objective or to clearly communicate that there might be other things he should consider before carrying things out, I'm not persuaded this was acting in his best interests.

So I consider there were shortcomings in HL's advice process and how it treated Mr M as an insistent client – that is, one who wanted to act contrary to the advice given. But I agree that, even if HL had done everything it should've done, Mr M would still have gone ahead with the transfer of his pension to the SIPP. I say this because it was Mr M who took the first steps towards facilitating the transfer of his DB benefits, firstly by opting out of the scheme and secondly by setting up a SIPP with HL on an execution only basis. It was his application for the execution only SIPP which prompted HL to contact him once it discovered during that process that it was a DB scheme that Mr M was seeking to transfer.

And during the advice call between Mr M and HL which pre-ceded the drafting of the suitability report I can see that HL told him that the report would be recommending Mr M didn't transfer. The adviser also explained why it would be making that recommendation – stating that his DB pension would increase each year in line with inflation, that it would be worth about £16,000 a year at age 60 and that he would need to attain annual investment

growth in the SIPP of between 10% and 11% to get anywhere near the same level of pension income. The adviser told Mr M that projecting a mid-rate of return of 7% for the SIPP meant he might achieve an annual pension of about £9,600. So HL said the numbers meant the transfer was not advisable.

I can also see from the call that HL tried to gain an understanding – in the face of the financial disadvantage to transferring it had just conveyed to Mr M – about what his wider thoughts were about transferring and why he had opted out of his employer's DB scheme. Mr M said *"I want more control basically over my money...because they seem to be...messing around with our pensions...and I'm not the only one to do it. Basically, I opted out because I've fallen out with [his employer's pension service] over a couple of things and I just want to get my money out of it and that was it really. **And it doesn't really make a lot of difference what you say whatsoever, I still want to do it**".* [My emphasis].

HL also said during the conversation that Mr M would need to *"...achieve a really high rate of return to try to make sure you're not worse off."* Mr M replied and said *"I do understand that but I know about all of those scenarios I've been through time and time again..."* The adviser asked Mr M about re-joining the new section of his employer's pension scheme which Mr M said he could do but that it *"wouldn't be as good as what he was looking into"*.

So it appears that Mr M's main reason for wishing to transfer was to be in control of his money and because he had issues with his employer. And from what he told HL, it appeared Mr M and another regulated adviser giving him advice about his investments which could potentially have been a significant factor in his decision to transfer.

Having considered the circumstances from the time of the advice I think it is reasonable to say that Mr M had already made up his mind to transfer his DB scheme before he was advised by HL. I think he was intending to proceed regardless of the recommendation HL made in the suitability report. I say this because of the steps he'd taken to opt out of the DB scheme, his application for an execution only SIPP and the comments he made both about being advised by another adviser and that it didn't make *'a lot of difference'* what HL said, he still wanted to do it and was willing to take extra steps to enact the transfer.

Overall, even though I think HL's insistent client process could have been fairer, I don't think that would have changed the outcome in Mr M's particular case. I say that because on balance, I think even if HL had made its insistent client process fairer, for example by exploring Mr M's reasons for the transfer more closely, Mr M would still have pursued the transfer and insisted on HL transferring his pension. HL's recommendation not to transfer was clearly made and the consequences of going against the transfer were clearly highlighted to Mr M. For his part Mr M made it clear in the phone call and the two emails he sent HL subsequent to receipt of the suitability report that he understood he was acting against HL's recommendation, and that he wanted to proceed in any event.

I should say I have thought too about Mr M's complaint that his SIPP remained invested in cash for just under a year until he transferred it out. It is clear that Mr M made it known to HL that he had another regulated financial adviser advising him about how to invest his SIPP and that he required no such advice from HL. That being the case, I can't fairly hold HL responsible for the fact Mr M's SIPP remained invested in cash.

Finally, whilst I have noted the comments Mr M made in response to our Investigator's findings that the signatures and the handwritten comments on the forms from the time of the sale aren't ones he recognised, I can't ignore that the signature is very similar to the one that appears on our records here at the Financial Ombudsman Service. Nor can I ignore that this

was his only comment in response to our Investigator's findings and that he made no other specific points of disagreement to our Investigator's view.

Taking all the circumstances of Mr M's complaint into account, and for the reasons I have given here, I don't think his is a complaint I can fairly or reasonably uphold.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 3 July 2024.

Claire Woollerson  
**Ombudsman**