

The complaint

Mr M complains that Hargreaves Lansdown Asset Management Limited trading as Hargreaves Lansdown (Hargreaves) allowed him to purchase ineligible stock into his Stocks and Shares Individual Savings Account (ISA) but wouldn't then reimburse his fees for purchasing that stock when it was forcibly sold.

What happened

Mr M brought shares in a stock, which I will refer to as Stock A, in the period from April 2021 to March 2022 within his ISA wrapper.

On 16 December 2022 Hargreaves wrote to Mr M to inform him that there was a difficulty with Stock A, as HMRC rules didn't allow that stock to be held within an ISA wrapper. It provided him with two options which were either to transfer the holding to his Fund and Share Account for free, or to sell the stock and the cash would remain in his ISA.

Hargreaves said if no option was selected then the stock would be automatically sold.

On 6 January 2023 Stock A was sold.

Shortly after Mr M complained to Hargreaves and asked that it reimburse the brokerage commission and the foreign exchange fees he had incurred when he bought Stock A.

Hargreaves responded to Mr M's complaint on 13 January 2023.

It acknowledged that it had made an error by offering an investment to Mr M within his ISA account which was ineligible because it did not comply with HMRC rules. Hargreaves said once the error was identified, it had acted promptly to notify HMRC and pay the resulting tax charge.

Hargreaves said it was Mr M's decision to purchase Stock A and it didn't think that purchasing within the ISA wrapper was intrinsic to owning this stock. So, it didn't agree that it was liable for the dealing costs incurred in the multiple purchases of the stock. Hargreaves said if Mr M did want to repurchase the stock within his Fund & Share account, it would credit any fees back to Mr M.

Hargreaves said it had credited Mr M's account with £200 to acknowledge its error.

Mr M disagreed with Hargreaves and referred his complaint to our service.

Our investigator considered the complaint and didn't think it should be upheld. He noted that Hargreaves had acknowledged its error and concluded that its payment of £200 for the inconvenience it had caused Mr M was appropriate compensation.

The investigator was of the view that there was no financial loss to Mr M. He said the dealing fees were always going to be applied whether the shares were held in an ISA or not, and the fees were the same within the ISA and the Fund & Share Account. He noted that Mr M had

paid approximately £12.50 in annual management charges over the 29 months he had held this stock within his ISA.

The investigator noted that the fees had been paid for by tax-free funds, but he didn't think the loss of the tax shelter for the funds was a financial loss that Hargreaves could or should make right. The investigator said the compensation paid by Hargreaves addressed the inconvenience of having to find a solution.

The investigator said it wouldn't be right for Mr M not to pay fees for the service Hargreaves had provided.

Mr M disagreed with the investigator's conclusions. He took issue with the period of time identified as he said he had initially bought Stock A and then sold it, after which there was a gap of six months before he bought Stock A again, in April 2021, and that was the stock which was the subject of this complaint.

Mr M said that the options available were to sell the stock, which meant he had paid fees for stock that he wasn't allowed to retain, or to transfer the stock to another account. However, that would mean moving a significant amount of money out of a tax-free area. So, he said that wasn't a reasonable option for him.

Mr M reiterated that he had paid fees to buy stock which he had intended to hold for the long-term but which he couldn't retain. He said he had tried to purchase the same stock within his Self-Invested Pension Plan (SIPP) but he hadn't been able to replace all 1700 shares and he had had to incur the fees associated with buying the stock for a second time.

As no agreement could be reached Mr M's complaint was referred to me for review.

I issued a provisional decision where I concluded that Mr M's complaint should be upheld, and Hargreaves should reimburse Mr M for the fees he had incurred in purchasing Stock A together with interest on that amount at eight percent simple per year from the point of the enforced sale.

Mr M acknowledged and accepted my provisional decision.

Hargreaves accepted my provisional decision but said that account should be taken of the gains Mr M had made while Stock A was invested, and he shouldn't therefore be awarded interest on the fees.

In summary it said:

- It believed the gains made by Mr M were a significant factor when redressing loss in this instance.
- It was impossible to say whether Mr M would have received greater gains on an alternative stock, and to say that he may well have done so was a hypothetical line of argument.
- It said there was clear evidence to demonstrate that Mr M made a £3,408.97 gain on his holding in Stock A, and Hargreaves had evidenced this throughout the process.
- It attached evidence of the return made on the stock and said as a result Mr M shouldn't be awarded interest on the reimbursement of fees.

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.

Having carefully considered the representations made by the parties, I still remain of the view set out in my provisional decision, an extract of which is reproduced below and forms part of this decision.

Provisional decision

“What I’ve provisionally 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.

It is accepted by Hargreaves that it made an error here. Mr M shouldn’t have been allowed to purchase Stock A through his stocks and shares ISA and the reason he was able to do so was that Hargreaves didn’t carry out all the necessary checks.

So the key question for me to determine is whether that error had a financial impact on Mr M and if so, how should Hargreaves compensate Mr M to put him back in the position as if the error hadn’t occurred.

What investments did Mr M make following the enforced sale of his stock?

Mr M used the cash from the enforced sale of Stock A, to buy other stock within his ISA over the next two months or so. I think it is more likely than not that he would have paid dealing fees in order to purchase that stock using the cash within his Stocks and Shares ISA.

Mr M wasn’t able to hold Stock A within his ISA, so instead he purchased Stock A within his Self-Invested Personal Pension (SIPP) although the quantity of shares he purchased was less than he had previously held in his ISA. He held 1700 shares within his ISA and only purchased 1300 within his SIPP. Mr M purchased those 1300 shares over a few months starting in February 2023 and finishing in May 2023.

I think the fact that Mr M went on to purchase Stock A through his SIPP, a relatively short period after he had been forced to sell that stock, demonstrates his intention to hold Stock A for some time. However, he was unable to hold the stock within his ISA, through no fault of his own. And the knock-on effect of the enforced sale was that he had to re-purchase Stock A elsewhere. I note that in order to purchase Stock A in his SIPP, Mr M would’ve had to incur a new set of dealing fees and Mr M has provided details of the fees he incurred.

Was it fair and reasonable to expect Mr M to transfer Stock A to his Fund and Share Account?

Mr M also had the option of transferring Stock A to his Fund and Share Account and if he had done so, he wouldn’t have incurred any additional fees. I have to consider therefore whether that was a fair and reasonable expectation of Mr M in the circumstances.

Mr M purchased these shares through his ISA wrapper which meant they were in a tax-free environment. While I note Hargreaves’ point that being held within the ISA wrapper wasn’t intrinsic to owning the shares, I don’t think that is the only consideration here. I think where those shares were held was a relevant factor, and I will explain why.

If Mr M had chosen to transfer the stock to his Fund and Share Account, he could’ve retained his shares without incurring any immediate cost. But I don’t think it was

unreasonable for Mr M to decide against this option. He held a significant amount of money, around £213,000, in this stock, which would equate to several years of annual ISA allowance. So, if Mr M moved them from his ISA, it would have taken him several years to build his ISA pot back up and in the meantime, he would be paying tax on any gains and on any dividends paid on the stock held within the Fund and Share Account.

So while having these shares in the ISA wasn't intrinsic to owning the shares, of itself, I don't think they were being held within a tax-efficient wrapper by accident. I consider tax efficiency was an important factor to Mr M, particularly given the sum of money involved. I note he had a relatively small amount of equities held within his Fund and Share Account. In addition I note that he re-purchased 1300 shares of Stock A through his SIPP, which also afforded a tax advantage.

So I think a key issue here is, if Mr M hadn't been allowed to purchase Stock A within his stocks and shares ISA, what would he have bought in his ISA.

I also bear in mind that Mr M was put into this situation by Hargreaves.

The second option available to Mr M was to sell Stock A and retain the cash in his ISA. That would mean he would no longer hold the shares and he would have limited choice about when they would be sold. There was a small window between the letter being issued on 16 December 2022, informing him of the problem and the enforced sale date of 6 January 2023.

However, I think that Mr M wanted to invest this sum of money in equities which is evidenced by his actions in purchasing new stock within his ISA in the following months. And, as I have noted, purchasing new stock would have resulted in Mr M incurring new fees. So, selling the shares and keeping the cash in his ISA, wouldn't be putting him back in the position he would have been in if the error hadn't occurred, because he had paid fees for shares he could no longer hold.

I think it more likely than not that if Mr M had been told he couldn't purchase this stock within his ISA, he would have purchased other stock at that point and he would have been able to keep that stock or sell it when he chose to.

So, I think fair and reasonable compensation would be to refund the fees Mr M incurred in purchasing Stock A between April 2021 and March 2022. He would therefore have the same amount of money that he started with prior to the purchase, as he has already received the cash value of the stock and reinvested it.

Gains made as a result of holding the shares and the enforced sale of the shares

Hargreaves has pointed out that Mr M made a gain on Stock A while it was held within his ISA, and then he re-purchased Stock A within his SIPP at a lower price. So, it says he has made gains, which it says should be taken into account in assessing any loss.

I agree with the principle that Mr M shouldn't gain from Hargreaves' mistake however I am not persuaded on balance that there is clear evidence here to show that he made a gain. I think it is more likely than not, that if he hadn't been allowed to purchase Stock A, that he would have purchased other stock within his ISA at that time. Mr M may well therefore have made gains on that alternative stock and so I can't now say whether he would have been

better off or not. So, I don't think any gain he made on Stock A, while he held it, is relevant here.

I also note Mr M re-purchased the stock within his SIPP at a lower price, but he wasn't able to equal his holding. He was only able to purchase about 75% of what he previously held, and he wasn't able to purchase it all immediately. So, again it is difficult to determine whether he was actually left better or worse off. What is clear however, is that he would have had to pay a second set of dealing charges when purchasing stock A through his SIPP.

Fees

I acknowledge that Hargreaves was entitled to charge the fees associated with purchasing the stock in accordance with its terms and conditions and that Mr M would have been aware of those fees. I consider that Mr M was content to pay those fees to purchase the stock but with a view of holding that stock for the period that he wished to hold it, rather than being forced to sell it or forced to move it out of a tax- efficient environment.

I also acknowledge that Hargreaves didn't charge Mr M fees to sell Stock A. However I don't think that went far enough to compensate him, as he would still need to incur new fees on whatever stock he purchased, be it new stock within his ISA or Stock A within his SIPP.

I also note that Hargreaves paid the tax charge applicable as a result of Stock A being ineligible to be held in ISA.

Summary

Mr M has calculated the brokerage commission and the foreign exchange fees he paid on Stock A held between April 2021 and March 2022, as £1,392 and has provided details of the individual fees. I am minded therefore to say that Hargreaves should pay compensation of that amount together with interest at eight percent simple per year from the date of the enforced sale to the date of any final decision.

Hargreaves may of course respond with any representations in respect of that figure if it disagrees.

Hargreaves may also deduct any compensation it has already paid Mr M from the compensation I have outlined."

I have considered the points raised by Hargreaves in relation to the return made by Mr M on Stock A while it was held within his ISA. I agree with Hargreaves that there is clear evidence that Mr M made a return on Stock A of about £3,400, during the relevant period.

Hargreaves is asking me to take that return into account when awarding compensation and accordingly reduce Mr M's compensation. I have to consider whether it would be fair and reasonable to do so in the circumstances.

So, I have to consider what it is more likely than not, would've happened if Mr M had been prevented from investing that stock in his ISA. While he wouldn't have made the gain on Stock A within his ISA, I don't think the matter ends there, as I think it more likely than not, that he would have instead invested in other stock within his ISA, for the reasons I have already outlined in my provisional decision. It is difficult to say now, some three years later,

exactly what he would have invested in and accordingly what level of return may have been achieved.

The point I made in my provisional decision, is that while Mr M made a return on his investment in Stock A, I couldn't reasonably conclude that he was better off, than if he had instead invested that sum in some other stock. In other words, I couldn't reasonably conclude that he had made a bigger return than he would otherwise have made, if the error hadn't occurred. So, taking that into account, I didn't think it was clear that he had benefited from Hargreaves' mistake.

Mr M invested over £200,000 for a period of approximately 9 to 20 months (as it wasn't all invested in one instance) and it made a return of approximately £3,400. So, I think it was entirely feasible, and noting market conditions over that period, that he could've reasonably achieved a comparable return if he had invested in other stock. And I note Hargreaves hasn't produced any evidence to show that Mr M couldn't have otherwise made that level of return on his capital and that the only reason he was able to make that return was that he invested in Stock A.

I don't think therefore that the only reason Mr M was able to make a return on his capital was because Hargreaves made an error in allowing him to invest in Stock A, and that he couldn't have otherwise reasonably made a return on that money. Mr M tied up his money and put it at risk over that period. So I consider he was reasonably entitled to that return. Overall, I don't think that it would be fair and reasonable therefore to reduce his compensation for incorrectly being allowed to purchase stock that was then forcibly sold.

I also note when considering what is fair and reasonable compensation, that Mr M was put into this situation by Hargreaves by being allowed to purchase the stock within his ISA.

In any event, even if I am wrong about that, I don't think that the return Mr M made on the capital he invested is sufficiently linked to the interest I am awarding on the fees he paid, to warrant removing that interest, and I will explain why.

I have concluded that Mr M's fees should be reimbursed for the reasons I have already outlined. I have also concluded that interest should be added to that sum. The basis for adding interest is that Mr M's shares were forcibly sold in January 2023, and it was at that point, in my view, that his fees should have been reimbursed, as he was no longer able to hold his shares, through no fault of his own. So the interest relates to Mr M not receiving that sum from January 2023 until the present time. And on that basis, I think the return he made on Stock A shouldn't reasonably have any impact on that award.

Putting things right

Mr M has calculated the brokerage commission and the foreign exchange fees he paid on Stock A held between April 2021 and March 2022, as £1,392 and has provided details of the individual fees.

Hargreaves should pay Mr M compensation of that amount together with interest on that amount at eight percent simple per year from the date of the enforced sale in January 2023 to the date of this decision.

If Hargreaves considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Hargreaves may also deduct any compensation it has already paid Mr M from the compensation I have outlined.

My final decision

My final decision is that Mr M's complaint against Hargreaves Lansdown Asset Management Limited trading as Hargreaves Lansdown is upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 14 June 2024.

Julia Chittenden
Ombudsman