

## The complaint

Mr T complains that Hargreaves Lansdown Asset Management trading as Hargreaves Lansdown (HL) requested unnecessary personal information, gave misleading information, and threatened and implemented blocks on his accounts. He says this caused him inconvenience and he wants HL to withdraw its request for information.

## What happened

Mr T had seven accounts provided by HL. The accounts operated as bare trusts. Each had a different child as the beneficiary. The beneficiaries were children of Mr T's friends.

On 19 April 2023 HL wrote to Mr T asking for information. It said it wanted to know whether Mr T's accounts were bare trusts. It asked him to respond by 8 May 2023 failing which it would restrict certain functions of his account. It said if Mr T's accounts were bare trusts then, for each beneficiary, he'd need to provide name, address, date of birth, nationality and *'National Insurance Number or National Client Identifier'*.

Mr T wrote back to HL on the same day. For each of the seven trusts he said the following:

*'Please would you identify the exact provisions of MIFID that you consider require me to give you all of the beneficiary details that you required. They exceed those required by HMRC for the Trust Registration Service (full name, date of birth, and nationality only). Beyond that, the request is excessively intrusive and I do not have permission from the child or the child's parents to share this personal data with you.'*

HL has said Mr T provided information on 25 May 2023, and on 8 June 2023 it asked him to confirm his address. Mr T confirmed his address and said he was waiting for a response to his complaint that HL asked for information that was unnecessary and excessive.

On 12 June 2023 HL wrote to Mr T thanking him for providing information about the beneficiaries and saying it had updated the names of his seven trust accounts to include that they were bare trusts for the named beneficiaries.

On 21 June 2023 HL replied to Mr T's complaint. In summary it said the following:

- HL's request was *'in line with Financial Conduct Authority (FCA) regulation'*.
- Even though the information requested was more than the information required by HMRC, HL had to request it because of the Markets in Financial Instruments Directive (MiFID II) which required it to identify which accounts were bare trusts and to hold full and up to date information about the identity of the beneficiaries and others.
- The FCA ensured HL complied with MIFID II.
- HMRC's Trust Registration Service had different requirements. HL didn't necessarily need the same information HMRC needed.

- Under MiFID II HL needed to know the National Insurance Number or other National Client Identifier of Mr T and the beneficiaries in case they would be trading listed securities in the HL accounts. But if the beneficiaries were British and under 16 years old HL didn't need their National Insurance Numbers.

On 27 June 2023 Mr T wrote to HL asking for '*the exact parts of MiFID II and any FCA regulation that HL says mandates the collection of this information by HL*'. He said no other financial services providers with which he held similar trust accounts had interpreted the regulatory requirements the way HL had.

In response HL said the following:

- Information about transaction reporting could be found on the FCA website.
- HL requested information about beneficiaries of bare trusts because of the FCA's and ESMA's '*expectations for providing a Legal Entity Identifier (LEI)*'. Because bare trusts weren't eligible for a LEI HL instead asked for details of the underlying client owner (the beneficiary) and the trustee, as the decision maker for reportable transactions. This was in line with guidance that the competent authority (the FCA) was interested in HL's clients for market abuse purposes.
- How other businesses interpreted regulations and guidance had no bearing on HL's requirements – each business was entitled to interpret them as it saw fit.

Mr T said HL hadn't cited a specific provision so he believed there wasn't one and HL had been wrong to say it was required '*by government legislation*' to request the information it had asked for. He also said the disclosure regime for customers with LEIs wasn't a sound basis for requesting information about bare trusts because bare trusts were ineligible for LEIs. He said the information HL requested was sensitive, and requesting personal information beyond what was necessary was contrary to data protection principles.

HL said its position remained the same. And Mr T referred his complaint to this service. In summary he said the following:

- He had no problem giving HL his own details and each beneficiary's name, date of birth and nationality. That information was also required by the Trust Registration Service (TRS). And if it was sufficient to allow the TRS to identify each beneficiary, it should be sufficient for HL.
- HL asked for each beneficiary's address and passport number (to stand as a National Client Identifier). Mr T didn't have and wasn't permitted to disclose that information. And he shouldn't have to ask the beneficiaries' parents for it unless there was a sound legal reason HL required it.
- Because the beneficiaries were children, information about them was more sensitive than it would be if they were adults.
- The information was excessive and incompatible with the GDPR because it wasn't required by any law or regulation and HL had no need for it.
- HL gave misleading, inaccurate information when it said it needed the information '*to comply with government legislation*', MiFID and '*FCA regulation*' but didn't identify any specific provisions other than '*expectations for providing a Legal Entity Identifier*'.
- Name, date of birth and nationality were durable, but address and passport number

were liable to change and so less useful for transaction reporting. And some beneficiaries might not hold a passport.

- HL threatened to restrict and then restricted Mr T's accounts. Although the only transactions during the restriction were receipt of dividends and interest, Mr T was denied access to account information. Whether or not HL was entitled to request information, preventing access to account information was excessive.

One of our investigators looked into Mr T's complaint. The investigator didn't think HL had done anything wrong. Amongst other things the investigator said the following:

- Given Mr T would've had to provide information about the beneficiaries when he set up the trusts, and he'd registered the trusts with the TRS, it was likely he had consent from the beneficiaries' parents to provide some information about them.
- There was no evidence HL had asked for the beneficiaries' passport numbers.
- HL had allowed Mr T to use his own correspondence address for each of the beneficiaries' addresses.
- HL had said National Insurance Numbers weren't required if the beneficiaries were under 16 years old.
- HL set up the accounts up as bare trust accounts in June 2023, and didn't impose any restrictions on them.
- The information HL asked for wasn't excessive or intrusive. The FCA required firms to hold relevant information about account holders and it was reasonable for HL to say it was responsible for how it interpreted and implemented that requirement.
- It wouldn't be reasonable to ask HL to remove the information from its records, given Mr T had used his own address for each beneficiary.

Mr T didn't agree with the investigator's view. In summary he said the following:

- He hadn't needed parental consent to provide information to the TRS because the information was required by law, so consent was irrelevant.
- Information from HL about requirements for legal entities was irrelevant because a bare trust wasn't a legal entity.
- Some of the beneficiaries weren't British so the exemption from providing a national insurance number for British nationals under the age of 16 didn't apply.
- HL did restrict Mr T's accounts. On 24 May 2023 Mr T experienced a pop-up which stopped him accessing the account until he provided the information HL had asked for. He provided a correspondence address for each trust and that allowed him to access the accounts.
- HL had simply requested the addresses of the beneficiaries. Asking for a correspondence address would've been pointless because HL already had Mr T's address. And if a correspondence address was sufficient, the original request was excessive and unreasonable.
- Mr T wanted HL to withdraw its requests for information that went beyond that

requested by HMRC, or confirm the correspondence addresses he'd provided were sufficient, regardless of each beneficiary's country of residence.

Because no agreement could be reached, the complaint was passed to me to review afresh and make a decision.

While Mr T's complaint was being considered by this service, HL issued further requests to Mr T for information. It said one beneficiary was about to turn 16 so HL needed the beneficiary's nationality and NCI – and trading on the account would be restricted without that information. And it said for another beneficiary it had reviewed the account and needed the beneficiary's NCI. Records show this beneficiary had recently turned 16.

I asked HL for further explanation of the information it requested from Mr T. In summary HL said the following:

- For beneficiaries of bare trusts who were over the age of 18 HL required identification documents to verify information for anti-money laundering purposes because beneficiaries over the age of 18 could withdraw funds from a bare trust.
- For beneficiaries under 18 but over 16 HL didn't require identification documents, but required details of nationality and national client identifier. The national client identifier was required under MiFID II for the trustees, settler and beneficiary of a bare trust for the purpose of reporting transactions to the FCA.
- HL didn't ask for national insurance numbers for beneficiaries under 16 because national insurance numbers were only provided to those over 16. For beneficiaries under 16 HL submitted a 'CONCAT' for reporting purposes which was a concatenation of certain pieces of information about the beneficiary. When beneficiaries were aged 15 years and 9 months a national insurance number would usually be issued by HMRC and HL contacted the client for details.
- The beneficiaries of Mr T's trusts had been under 16 when the trusts were opened, but some had since turned 16.

I issued a provisional decision in which I said I was minded not to uphold Mr T's complaint. I said I'd consider any further comments or evidence from the parties before making a final decision. Mr T disagreed with my provisional decision. In summary he said the following:

- The Commission Delegated Regulation (EU) 2017/590 was immaterial because any obligation for HL to report a transaction would fall under Article 7(1): '*a transaction executed on behalf of a client who is a natural person*'. Mr T was HL's client and the legal owner of the trusts' assets. So it was his details HL would have to report, not the beneficiaries'. Article 7(2) was immaterial because Mr T would make any investment decisions. And there were no transaction reporting obligations requiring HL to report beneficiaries' national client identifiers in addition to that of Mr T who was the client.
- Mr T had opened the accounts in September 2019, before HL put in place the information requirements about which he'd complained. HL didn't require the accounts to be bare trusts until mid-2023. Mr T didn't recall being told beneficiaries had to reside in the UK. But his complaint wasn't that HL misled him; it was that HL imposed excessive requirements on him after the fact.
- The 2017 money laundering regulations didn't require HL to collect the information it had demanded. Mr T was HL's customer because he was the legal

owner of the trust assets. Even if the trusts were HL's customers HL's obligation under Regulation 28(3A) was to '*take reasonable measures to understand the ownership and control structure of that ... trust*'. That didn't require the beneficiary's national client identifier, if HL had sufficient other information to identify the trustee and beneficiary. Similar points applied to any obligation HL had under Regulation 28(4).

- HL's '*flexibility*' post-dated the decision that prompted Mr T's complaint. Although HL had been prepared to allow him to operate the accounts while his complaint was unresolved, it hadn't said it was satisfied or that it wouldn't reimpose restrictions if Mr T's complaint wasn't upheld. Mr T wanted HL to withdraw its request for information and confirm in writing that his address was sufficient as an address for the beneficiaries regardless of where they resided. Mr T was concerned HL might stop him transferring assets in the accounts to another provider.

### **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 done so, I'm not upholding the complaint. I'll explain why.

The purpose of this decision is to set out my findings on what's fair and reasonable, and explain my reasons for reaching those findings, not to offer a point-by-point response to every submission made by the parties to the complaint. And so, while I've considered all the submissions by both parties, I've focussed here on the points I believe to be key to my decision on what's fair and reasonable in the circumstances.

Identifying who it's doing business with is an important part of transaction reporting for authorised financial services firms – it's a regulatory requirement. It's also an important part of fulfilling the anti-money laundering requirements of a financial services firm. So as a general proposition it's fair and reasonable that HL sought to identify the people connected to Mr T's bare trusts.

Mr T has objected in particular to HL's request for the national client identifiers and the addresses of the beneficiaries of his trusts.

The transaction reporting provisions under the MiFID regime are designed to allow competent authorities – which in the UK means the FCA – to know about changes in the ownership of financial instruments for the purpose of detecting market abuse. MiFID provisions make clear that in the case of trusts that are legal entities, identifying information about the trust must be provided when the trust is a participant in a relevant transaction. As Mr T has pointed out, a bare trust isn't a legal entity, so the beneficial owners are natural persons. While HL hasn't pointed to any specific provisions that explicitly require it to give the FCA identifying information about the beneficiaries of bare trusts – as opposed to simply reporting the details of the trustee as HL's client – the beneficiaries of Mr T's bare trusts are the beneficial owners of any instruments being transacted in the trust accounts. So I think it's reasonable for HL to have considered that, in respect of the bare trust beneficiaries, it needed to follow the relevant regulations for reporting on transactions carried out for natural persons.

Mr T has said that, if HL had any obligation to report a transaction in any of his bare trusts, it would fall within Article 7(1): '*a transaction executed on behalf of a client who is a natural person*', and so the details HL would have to report would be the client's (Mr T's) details and

not the beneficiary's details. He's said there were no transaction reporting obligations that required HL to report the beneficiary's national client identifier in addition to that of the client.

Indeed the regulations for transaction reporting didn't expressly say whether information was needed from the beneficial owner where the client was a trustee acting on behalf of a beneficial owner. So I can understand why Mr T feels it was his own information HL should've sought, not the beneficiaries' information. But if HL carried out a transaction on behalf of Mr T as trustee of a bare trust, I think it was reasonable for HL to consider that it was, in turn, acting on behalf of a further natural person – the beneficiary of the bare trust. It's also possible investment decisions in the trust could be made by beneficiaries. In any case – even if I accept that the MiFID regime doesn't require reporting of beneficial owners when HL carries out Mr T's investment decisions for the bare trusts – it remains the case that, upon reaching the necessary age, the beneficial owners will be able to take control of the trusts, and the distribution of any assets to the beneficiaries will be a reportable transaction. Taking everything into account, I don't think it was unreasonable for HL to have taken the view that it needed information about the bare trusts' beneficial owners to satisfy its obligations under the MiFID regime.

In relation to the nature of the information HL requested – Article 6 of Commission Delegated Regulation (EU) 2017/590 said a natural person shall be identified by a combination of the two-letter country code of the person's nationality and the NCI based on that nationality – which for UK nationals is a national insurance number as shown in Annex 2 of the Regulation, under the heading '*first-priority identifier*'. Article 7 of the Regulation also required firms to provide the full name and date of birth of a client who was a natural person, as specified in Annex 1 Table 2. On this basis I don't think it was unreasonable for HL to say it needed the national client identifiers of the bare trust beneficiaries as part of the information it requested from Mr T.

I'm also satisfied HL acted reasonably by asking Mr T to provide the addresses of the beneficiaries of his trusts. HL's application form for bare trusts makes clear the beneficiary of a bare trust held with HL should be a UK resident. In light of that requirement I think it's reasonable for HL to have asked Mr T for the addresses of the beneficiaries of his trusts. Mr T stressed that he didn't apply for his accounts to be bare trusts, and so he hadn't completed HL's application form. Irrespective of the fact Mr T didn't use HL's application form, the form indicates what information HL expects to see in relation to the parties involved in bare trusts. It's open to HL to decide who it will do business with. It's not unreasonable for HL to decide it will generally provide services to UK residents only and it follows that it's not unreasonable for HL to seek information about the residency of its customers, including the beneficial owners of any bare trust accounts it provides.

In addition, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 require firms to identify the beneficial owner of a trust if the owner is a natural person. And HL's application form for bare trust accounts made clear the information HL required included – amongst other things – the beneficiary's address and national client identifier. It also asked for an identity document from the beneficiary. Of course the bare trust itself can't be HL's customer because it's not a natural or legal person. But I'm satisfied the regulations gave HL a reasonable basis for concluding that it had to identify the beneficial owner on whose behalf Mr T, as the customer, was acting. As Mr T indicated, HL needed to take a risk-based approach to how it would verify the identities of the beneficiaries. Having considered what HL said it requests for beneficiaries of different ages, I don't have any basis to say its approach was unreasonable in light of the likely risks.

HL's application form for bare trusts also provided a link to HL's privacy notice. The privacy notice set out that HL would request personal information if at least one of the following circumstances applied: it was necessary for HL to perform a contract; it was in the legitimate

interests of HL (for example to run its business); HL had the customer's consent; or HL had a legal obligation to collect and use the information. I've taken this into account and I think HL's requests for information were consistent with the legal bases it set out for requiring information – in particular HL's legitimate business interests and HL's understanding of its legal obligations.

I understand why Mr T says reporting requirements for legal entities were irrelevant to the circumstances of his complaint – because his trusts were bare trusts which aren't legal entities. In hindsight it might have been unnecessary for HL to mention legal entity identifiers because bare trusts, not being legal entities, are ineligible for legal entity identifiers. But because other types of trust are legal entities, I don't think it was wrong for HL to think it might be useful to explain that what it required for bare trusts was information about the natural persons connected with the trust, rather than information about the trusts as legal entities.

Essentially, irrespective of how HL's responses to Mr T explained its reasons for requesting the information it requested, I'm satisfied HL was entitled to request the information. It's not unreasonable for HL to have decided it needed the NCIs of the beneficiaries to comply with its obligations under MiFID II (as transposed into UK law).

It doesn't follow that the information required by the Trust Registration Service will necessarily be sufficient information for HL. That's because the Trust Registration Service is a separate entity serving a different purpose. It's not subject to all of the same regulations as HL. And it's not operating a financial services business like HL is.

It's also not necessarily the case that HL's approach to satisfying its regulatory responsibilities must be the same as the approaches of other firms. But to see what the general industry standard is, I've looked at a number of other firms' application forms for bare trusts. These forms all requested the address of the beneficiary as well as a national insurance number or other national client identifier. So I'm not persuaded HL was out of step with industry practice.

Finally, I noted in my provisional decision that, in response to information Mr T provided, HL proceeded to set up the accounts as bare trusts. So I thought HL had shown some flexibility once Mr T had told HL the ages of the beneficiaries. And – even if HL had been wrong to request the information it requested – I didn't think Mr T had suffered any significant detriment as a result of that. He said he was temporarily denied access to information in the accounts while he responded to HL's request. But that was quickly resolved and I can't see Mr T suffered any impact of a kind that would warrant an order from me for further action from HL. I understand Mr T wants assurance for the future, that HL won't require information he can't provide and that it won't then prevent him transferring out the trusts' assets if necessary. I can only make my decision on what HL has done or not done and what impact that's had on Mr T. It's not the role of this service to direct the future actions of a business other than to put right any detriment it's already caused by being unfair or unreasonable. In relation to denying Mr T access to his accounts while HL waited for him to provide information, I can't conclude HL has acted unreasonably. It's required by regulation and is generally fair for HL to stop dealing with a customer if HL doubts the identity of the customer. I'm satisfied it's fair to consider the identity of the beneficiaries to be relevant here too.

Overall, I understand Mr T disagrees with HL's approach to identifying its customers. And I've weighed up his arguments and the relevant data protection rules, as well as the MiFID and AML provisions. Having done so I haven't seen that HL acted unfairly or unreasonably by asking Mr T to provide the identifying information it requested about the beneficiaries of Mr T's bare trusts.

**My final decision**

For the reasons I've set out above, 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 T to accept or reject my decision before 6 June 2025.

Lucinda Puls  
**Ombudsman**