

## **The complaint**

Mr F complains Hargreaves Lansdown Asset Management Limited ('HL') didn't sell rights he acquired from a corporate action and about the information given prior to purchasing the affected shares.

## **What happened**

Mr F has a Stocks and Shares ISA with HL which he had used to purchase shares in an overseas company I'll refer to as 'B'. In June 2023, B announced that it would be initiating a rights issue to existing shareholders.

HL became aware of and received the rights as well as a copy of the relevant prospectus on 15 June 2023. Mr F contacted HL on 23 June 2023 about the rights issue. HL explained as Mr F was a UK retail client, it couldn't exercise those rights for him as the corporate action wasn't able to be communicated to or taken up by UK retail clients. In another call later that day, Mr F queried selling the rights as he thought, as his broker, HL should be able to. HL attempted to sell the rights but couldn't and as they weren't sold, they lapsed with no value.

Mr F, unhappy with what happened, complained to HL that it didn't participate in the rights issue on his behalf and subsequently didn't sell the rights. Mr F believes HL has caused him a loss of around £450 for what would've been the proceeds of the sale.

HL considered Mr F's complaint but didn't agree it'd done anything wrong. In summary it said:

- HL couldn't take part in the rights issue because it wasn't approved by the FCA for retail investors.
- HL tried to sell the rights but the actions needed by CREST to facilitate that weren't completed in time.
- HL has no control over the acts or omissions of CREST to make the arrangements needed to be able to sell the rights.
- HL's terms and conditions set out the sales of rights issues aren't guaranteed.

Mr F didn't agree, in summary he said:

- He acknowledges that he might not have been able to participate in the share issue.
- B told him that his broker should be able to sell the rights on Mr F's behalf.
- It wasn't fair to cite terms and conditions Mr F didn't know he had agreed to.

As Mr F remained unhappy with HL's answer, he referred his complaint to our service. One of our Investigators looked into what happened, but he didn't think the complaint should be upheld. In summary he said:

- The prospectus prevented HL from exercising the rights,
- It isn't unreasonable firms can't exercise every corporate action received,
- HL had contacted other parties to try to facilitate the sale of the rights but those firms

- weren't able to do so and,
- While other firms may have been able to complete the transactions, that doesn't mean it is unreasonable HL couldn't.

Mr F didn't agree. He explained to our Investigator that while he agrees HL couldn't receive the shares, his concerns were more around the lack of communication about such issues. Specifically, information provided prior to buying shares which could involve corporate actions HL might not be able to action or participate in. He felt such communication didn't meet HL's obligations under the rules around communicating clearly and the consumer duty. And that had he known HL would've had these issues, he wouldn't have used HL to purchase B's shares in the first place.

As an agreement wasn't reached, the complaint has been passed to me to consider.

### **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.

#### Taking part in the rights issue

While Mr F may not dispute this now, for completeness I've considered whether Mr F was someone this rights issue could be communicated to and whether HL ought to have done more to exercise them.

The prospectus for B's rights issue, which HL says it had seen, opens with an 'important notice', which in summary says for those resident in the United Kingdom ('UK'), they would need to be someone who would be a 'Qualified Investor'. Which is then set out to be either a:

- Professional Investor
- High Net Worth Entity
- Person to who [the offering] may be lawfully promoted to

The share rights issue Mr F complains of relates to a non-UK company based in an EU member state and at the time of this corporate action, the UK was no longer an EU member state. That had the impact of the prospectus relating to B's share rights issue not being able to be 'passported' into the UK and as the issuer wasn't regulated in the UK that meant the above restriction would apply.

HL sets out in its terms and conditions under 'A1 – information about us' that it provides its service to 'retail clients'. The FCA define a 'Retail Client' in *COBS 3.4.1R*, as someone who isn't a professional client or eligible counterparty – which are broadly speaking the requirements for a 'Qualified Investor' set out above.

I've not seen evidence Mr F should've been categorised in such a way and so, he would meet the definition of a 'retail client' as HL categorised him. It follows then that HL wouldn't be treating him unfairly by not exercising or communicating the corporate action relating to B's share rights issue with him, as he wasn't entitled to receive it.

#### Issues relating to selling the rights

Rights by their nature can hold value on the open market for the period prior to the deadline to action them, at which point they expire with no value as they can't be exercised anymore.

HL received the rights on Mr F's behalf and in treating him fairly, I would expect it to take some action to attempt to sell them.

The terms and conditions between Mr F and HL set out under 'A18 – Corporate Actions' include the following:

“We cannot guarantee that we will be able to sell any rights you receive and may aggregate your rights with those of other clients when attempting to sell.”

HL needed CREST to facilitate the transaction to be able to sell these rights – which HL use to carry out trade and settlements. HL provided email exchanges between itself and Euroclear, which operates the CREST depository system. The day after HL received Mr F's rights, HL said it couldn't see an 'event' within CREST to use to sell the rights and asked if Euroclear would make the arrangements for that to happen. Euroclear responded the same day telling HL that the details of the subscription hadn't been confirmed for it to carry out the due diligence it needs to before the functionality to sell these rights can be put in place.

Five days later HL asked Euroclear for an update, to which Euroclear responded to say it had no update as the details remain unannounced. During this time, HL also contacted a firm it uses as a market maker, I'll refer to as J, to see if it could facilitate the sale of these rights given the uncertainty around when the CREST event could be arranged. J told HL that given CREST hadn't set up the arrangements to facilitate the sale of B's rights, it would be difficult for it to sell on HL's behalf. In other words while J could buy the rights off HL, it didn't think it would be able to sell them on to eligible investors until CREST's arrangements were complete, a risk J wouldn't accept and so refused HL's instruction.

As the rights issue lapsed prior to CREST being able to carry out the arrangements needed for HL to sell Mr F's rights, those lapsed causing them to have no value.

In my opinion, HL reasonably attempted to sell Mr F's rights by contacting Euroclear directly as well as J in a reasonable time prior to the expiry of the rights issue. CREST wasn't able to make the arrangements needed to enact the sale, and J didn't want to be involved in the trade at that time. It follows then the reasons for the sale not being able to take place were outside of HL's control. And so on balance, I don't find it unreasonable HL couldn't sell Mr F's rights given those issues, particularly when I've identified HL made provision such sales aren't guaranteed and set that out with sufficient clarity.

I've also considered what Mr F said about HL using an alternative depository and having done so, I'm not persuaded HL would be required to enter into new commercial relationships to attempt to progress this sale. While other firms might have been able to trade through other depositories and HL could've looked into other depositories, I can't agree HL would be expected to, given the steps it took to sell the rights were reasonable.

Mr F says HL fell below its obligations under consumer duty and to communicate in a clear, fair and not misleading way when he bought B's shares, around future corporate actions which might not be possible for him to partake in.

While I've not seen what HL would've shown Mr F when he first bought B's shares, even if HL made no comment around the applicability of future corporate actions, by it providing an execution-only service, doesn't need to. Under an execution-only arrangement, the responsibility for understanding whether there could be future corporate actions Mr F may not be able to partake in lies with Mr F, and not HL. HL caters for these such eventualities in its terms by setting out that there may be occasions where the benefit of corporate actions might not be realised or executed. This is set out clearly with sufficient prominence in the terms and so it follows that HL fairly communicated such possibilities to Mr F. At the time of

the event Mr F complains of the consumer duty rules hadn't been implemented, and as they don't apply retrospectively I won't comment further on them.

I appreciate Mr F feels he hadn't seen or agreed to such terms, but I'm persuaded that he has likely done so. In order to open an account with HL and to be able to use its services, he would've had to agree to HL's general terms. Additionally, HL says it requires fresh agreement each year when a payment is made into the account. While I've not seen the account opening documents, or any subsequent agreement, on balance I think it's likely Mr F agreed to these terms given HL would only provide its services to Mr F if he had.

I'm sympathetic to the situation Mr F has found himself in in this case. But the decision I make here must be fair to all parties in this dispute. In my opinion, the failure to sell Mr F's rights was a result of matters beyond HL's control. The evidence in this case persuades me the firm did all it reasonably could to achieve the sale of Mr F's rights. And the firm makes no guarantees it'll always be able to complete such transactions, a stance that's supported by the terms Mr F agreed to at the outset of becoming an HL client.

As a result of this, I'm not persuaded HL has treated Mr F unfairly in the circumstances of his complaint.

### **My final decision**

For the reasons given above, I don't uphold Mr F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 20 November 2024.

Ken Roberts  
**Ombudsman**