

## The complaint

Mr A complains that Hargreaves Lansdown Asset Management Limited (HL) delayed the distribution of assets to him as the sole beneficiary of his late brother's self-invested personal pension (SIPP).

## What happened

On 21 January 2021, Mr A's brother, who I'll refer to as R, passed away at the age of 71. He held an individual savings account (ISA) and SIPP with HL. On the SIPP, Mr A had been named as sole beneficiary in an expression of wish dated November 2013, which provided his full contact details at that time. HL acted as trustee of that SIPP.

The solicitor handling R's estate wrote to HL on 12 February informing it of the death. The letter asked for details of all investments held in R's name and their type. It didn't distinguish between assets that fell to the estate or that were payable from the pension. This complaint relates only to how HL dealt with the distribution of benefits from the pension.

HL's SIPP department responded on 4 March 2021 confirming that all future correspondence would go directly to the solicitor unless it was told otherwise. The letter also explained that the proceeds of the SIPP were payable under a discretionary trust, and HL would need to decide who the beneficiary(ies) would be. So it asked the solicitor to provide a copy of the will along with details of anyone who might have a potential interest in the proceeds of R's pension. It added that if all the beneficiaries of R's estate signed a letter confirming this, HL would permit assets in the SIPP to be sold down to cash – to protect them from market fluctuations – prior to HL's decision confirming which beneficiary(ies) it would pay benefits to.

I note that this letter clearly states, with my emphasis: *"Once the decision has been made, we'll contact **the beneficiaries** to explain the tax treatment of their inherited benefits and their options."*

The solicitor responded on 25 March 2021, confirming that R didn't leave a surviving spouse or civil partner, nor any children or other dependants. They named Mr A as the only other family member who was close to R, but did not provide any contact details for him.

HL then wrote to the solicitor on 26 July 2021 confirming its decision to pay 100% of the death benefits to Mr A. The letter enclosed a valuation of the SIPP and explanations of the various death benefit options available. It also explained that the SIPP's benefits should be paid before 15 February 2023 (the two year anniversary of HL receiving notice of the death) in order not to be subject to inheritance tax. It suggested that Mr A may wish to take advice on what to do with the benefits. And in order to avoid potential delays in verifying the payment, HL explained it would assist if the solicitor could forward a recent bank statement for the account into which benefits were to be paid. Specifically, the letter said:

*"I have enclosed a short form which shows the options available and allows [Mr A] to choose how benefits should be paid.... I would be grateful if [Mr A] could complete and return the enclosed form in the enclosed envelope as soon as possible."*

Mr A has obtained a copy of this letter from the solicitor date stamped as received on 28 July 2021. On 31 July a quarterly investment report valued the SIPP at £141,239. (Separately, the ISA was worth £203,190.)

HL didn't hear back from the solicitor, so it wrote to Mr A directly more than a year later on 16 September 2022. The letter noted it hadn't yet received confirmation of the benefits he would like to take from R's SIPP – and enclosed a further copy of the same form. It asked for this to be completed and returned as soon as possible.

HL got Mr A's statement of benefits form back on 15 October 2022. The then-available proceeds of the SIPP were paid into his bank account on 27 October, totalling £133,608. The SIPP's holdings in the former Woodford Equity Income fund (which couldn't be sold) were transferred into Mr A's own HL share account. Since that point about £740 of further residual dividends from the SIPP's former investments have been paid to Mr A.

(Naturally the settlement of proceeds from the ISA has had to be handled by the solicitor as it forms part of R's estate. I understand there were eight beneficiaries of the estate including Mr A. Earlier in 2022 Mr A had contributed a further £214,100 into his own HL share account, some or all of which may be related to this.)

Mr A had complained to HL on 8 February 2023. He felt that because R had signed an expression of wish form, the death benefits should have been paid right away – just as HL was willing to do 14 months later without recourse back to the solicitor. He had discussed this with the solicitor who suggested that the fault and loss was HL's responsibility.

I note that in an email dated 5 May 2023, the solicitor acknowledges receipt of the letter from HL dated 26 July 2021 but maintains *"In this letter they confirmed that they had verified your identity and so it is not clear why they did not write to you directly as this SIPP was not part of the Estate"*.

HL didn't uphold the complaint. It said that it informed the solicitor it would pay death benefits solely to Mr A in July 2021 and was awaiting instructions from that point onwards. It said it concluded at the time that it the beneficiaries' preference was for contact to go via that party, adding that its correspondence had made it clear funds could be sold into cash with the beneficiaries' consent. HL agreed that it had caused delays in the early stages of the process and offered £250 for any trouble and upset caused, but it did not feel that those delays would have impacted the overall time it took to distribute the SIPP proceeds.

Mr A rejected this offer, saying that it was *"not commensurate with my actual injury and loss and shows no proper contrition for [HL]'s legal failures to act in a way that would benefit me under the Trust."*

When the complaint was with our service, Mr A said that:

- During the 14 month delay the investments in the SIPP devalued by £7,500.
- HL was in breach of its legal responsibilities to the trust.
- Its responsibilities and obligations as trustees of a SIPP are to communicate directly and promptly to beneficiaries, and these cannot be transferred to a third party.
- As the SIPP, unlike the ISA, was *not* part of R's estate, why was it necessary for HL to communicate with the solicitor – who wasn't representing him but R's estate.
- Whilst the solicitor could have acted more responsibly, it didn't have the same obligations to him as HL did for the same reason.
- He's age 82 and has found the whole process caused him much stress and anxiety.
- HL had his address from the expression of wish form – otherwise how could they

- check he was the same person R had nominated as his beneficiary?
- HL didn't chase for a response to its 26 July 2021 letter soon enough, and was inconsistent in approaching him directly if its 'policy' was to deal with the solicitor.

I issued my Provisional Decision on this complaint on 25 September 2024. I explained why I was minded to uphold the complaint on the basis that better communication from HL to Mr A would have resulted in the his death benefits being paid out in August 2021. I will repeat my reasoning in full in the section below. However, there was an inadvertent omission from my proposed award to put things right. I wrote to both parties again on 10 October 2024, explaining how I thought any loss which had crystallised in December 2022 (when Mr A actually invested the HL death benefit payment) to the present day.

I summarise both parties' responses to my Provisional Decision below. Mr A said that he thought the decision seemed balanced and fair. But he added that he hadn't considered HL might have been continuing to make administration charges on the SIPP for the 62 weeks he says it remained with them unnecessarily. He wanted me to take those costs into account in my award.

HL said that:

- Given that it had been liaising with the solicitor, it wasn't unreasonable of HL to contact them and to anticipate they would pass the information to Mr A.
- It wasn't correct to say that by this point the solicitor had served their purpose as *"[they] were employed by [Mr A] to assist with the distribution of assets"*, there was no indication that their engagement had ceased, and HL was acting in Mr A's interests by continuing to deal with them.
- It was inconsistent to say that the solicitor was representing the estate rather than Mr A's interest in the SIPP death benefits, if they had dealt with HL up to that point.
- It is common practice for solicitors to see the process through until completion.
- HL accepts that it could have chased sooner, and it did reach out to Mr A directly when it didn't receive a response.
- But the entirety of the delays could have been avoided if the solicitor had simply passed on one letter to Mr A. Any losses were caused by their negligence.

### **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 considered both parties responses to my Provisional Decision, I haven't been persuaded to depart from my earlier reasoning, with the exception of the amendment to redress that I already made on 10 October 2024. I'll explain why.

I agree with HL that it was entitled to respond to the solicitor when, firstly, it was the solicitor who notified it of R's death. Secondly, these can obviously be sensitive matters, and the involvement of a neutral party such as a solicitor can be beneficial in the early stages. And thirdly, because HL was obliged to gather information not only about Mr A, but also other potential beneficiaries that it may need to consider who weren't necessarily named in R's expression of wish. So HL wasn't to know at that stage how long it might need to remain in contact with the solicitor (for instance if it was having difficulty tracing other beneficiaries).

But from the point that HL made its discretionary decision onwards, however, I don't agree that HL's arguments remain valid – and I think Mr A's case is more compelling. HL says that it was Mr A who had originally engaged the solicitor but I'm not satisfied that's correct. Whoever engaged the solicitor (whether that's Mr A or anybody else) was doing so on the

understanding that the solicitor's role was to represent the interests of R's estate, and not the person who instructed them in any personal capacity.

Mr A confirmed to us during the complaint that he became aware R had an HL pension when going through his papers after he died. But he maintains (and I accept) that he had no understanding that these benefits fell to be dealt with outside the estate. So I fail to see how the solicitor was being instructed to represent his own interests – as opposed to being responsible for arranging the orderly distribution of benefits from the estate.

I note HL suggests it's common practice for solicitors to see the process (of distributing a pension death benefit) through until completion. It hasn't provided any specific evidence to support that argument and I'm not persuaded by it. One of the things I'm required to take into account here is what I consider to have been good industry practice at the time (DISP 3.6.4R in the regulator's handbook).

At the latest by the time HL was getting no response from the solicitor, I don't agree it would have been good industry practice for HL to continue corresponding with the solicitor – and certainly not good practice to do nothing for an extended period of time, which is what it actually did. HL simply couldn't know whether its correspondence was still sitting with the solicitor or Mr A – and if it was the former, what obligations the solicitor actually had to Mr A personally as opposed to the estate.

Clearly in this case, it was expeditious for the solicitor to initially contact HL to notify it of R's death because in respect of at least part of the benefits R held with HL (an ISA), the proceeds *would* form part of his estate and it was already the solicitor's responsibility to distribute those benefits. That doesn't amount to an undertaking that the solicitor would see the distribution of all of R's investments to completion, even those that fell outside the estate.

HL also says that the solicitor gave no indication that they would cease to be involved in distributing the pension assets. But I don't think that's relevant given in its own acknowledgement letter HL had already signalled to the solicitor that once it decided who the beneficiary(ies) was/were, it would write to them directly. That therefore conflicts with what HL now claims was its policy to continue to deal with whichever party notified it of the death.

Separately, HL points out that this doesn't mean the solicitor had entirely served their purpose. I accept in some circumstances that could be right – for instance if Mr A failed to respond when HL sent the statement of benefits form to him directly (as I think it should have done). Or if HL hadn't been able to verify Mr A's contact details for some reason, as I suggested in my Provisional Decision. It would make sense for HL to keep the solicitor's details on its file in case something like this happened.

But clearly in this case it's very unlikely that Mr A would have failed to respond to direct contact from HL informing him it had decided he would receive the death benefit. I say this given that HL had already verified his contact details, as he had an existing HL share account. It also held R's expression of wish form, from which it would have been apparent that the Mr A it currently dealt with as a customer was the same Mr A that R had nominated on the expression of wish (and had not moved address).

I'm therefore satisfied that HL should have contacted Mr A directly at this point, but even if for some reason it had not, there is a second point to make here. This is that HL should also have chased the solicitor significantly sooner than it did. In my view Mr A makes a good point that the focus of the solicitor's work was to act in the interest of the estate, so they may have deprioritised dealing with correspondence that didn't relate to the estate – certainly where it wasn't chased for over a year – and I think HL should have been mindful of this.

HL suggests to this service that its process is to contact the representative of the estate once with Mr A's statement of benefits form and then send one chase letter in sufficient time before the two-year tax deadline. That strikes me as aiming very much for the minimum level of attention to the matter. Bearing in mind that HL stands to benefit (in terms of charges, etc) from R's funds remaining invested, there seems to be a conflict here with the expectation that it will act in the interest of the beneficiary of the trust (whose funds, by definition, cannot remain in the SIPP).

So in my view, leaving matters to shortly before the two-year deadline doesn't demonstrate that HL was seeking to expedite the payment of the sum to which Mr A is entitled. Rather, it was placing undue confidence in being able to pass blame onto the solicitor for not contacting him sooner. Nevertheless, what HL actually did in chasing Mr A later on, rather than the solicitor, simply shows that its approach was not inflexible and it could have contacted Mr A much sooner.

Whether HL wrote to Mr A directly on 26 July 2021, or wrote to the solicitor and then chased both Mr A and the solicitor (say within a month), then either way I think Mr A would more likely than not have then been prompted to get back in touch with HL. That would have been as a result of this direct contact from HL and/or as a result of the solicitor being reminded by the chaser to pass the information on to him. In that way HL could have ensured it both acted in Mr A's interests and also respected the chain of correspondence that had until that point come from the solicitor.

I'm therefore going to assume, as an outer limit, that Mr A would have begun acting on HL's request to fill in the statement of benefits form one month after it *should have* been sent. I say 'should have' as HL has already admitted that it delayed sending this form. It told us that there was an initial two-week delay in issuing the request for information form to the solicitor, and then a further five-week delay in adding the form to its internal agenda for processing.

I've looked further into what HL's said here. Bringing forward its initial response to the solicitor by two weeks means it would have replied on 18 February to the notification of death which it had on 15 February – that is, three working days later. It's reasonable to say HL should have responded much more quickly than it did and I see no problem with adopting this timescale if it represents HL's desired service standard. That means a total of seven weeks' time would have been saved. HL therefore ought to have been able to communicate the result of its discretionary decision on 7 June 2021 rather than 26 July 2021. In line with what I've said above, therefore, I consider as an outer limit Mr A would have begun acting on HL's request one month later – on 7 July 2021.

In the actual chain of events, HL received Mr A's completed form back just short of one month after it wrote to him directly, on 16 September 2022, and the proceeds were paid out within two weeks of HL hearing back from him. I consider that part of the timescale was reasonable on HL's part – and I've also looked at how long it then took Mr A to reinvest the proceeds of that payment.

Having received a lump sum from HL of £133,608, he contributed £94,000 into his HL share account from 14-25 November 2022. Over roughly that same period he invested about £42,000 within this account into the following stocks/funds:

|                                        |                                |
|----------------------------------------|--------------------------------|
| BT Group plc                           | <i>UK single company share</i> |
| BNY Mellon Global Income               | <i>global shares</i>           |
| Scottish Mortgage Investment Trust     | <i>global shares</i>           |
| Royal London Sterling Extra Yield Bond | <i>corporate bonds</i>         |
| Columbia Threadneedle American Select  | <i>US shares</i>               |
| iShares S&P 500 ETF                    | <i>US share index tracker</i>  |
| Ashoka India Equity Inv Trust Plc      | <i>Indian shares</i>           |

Fundsmith Equity  
Lindsell Train Global Equity

*global shares*  
*global shares*

Mr A completed this tranche of investing by moving £30,000 of the cash surplus in the HL capital account into a one-year cash deposit (also within the HL platform) on 28 November. So he had promptly invested all but £22,000 of what he'd added to the platform at that time.

Separately, Mr A invested about £30,000 outside of HL in easy access cash with a savings provider on 23 November 2022.

Mr A then made a further tranche of investments with some more of the remaining cash surplus in the HL capital account the following month: between 19 & 20 December he invested just over £35,000 in the following stocks:

|                                      |                                |
|--------------------------------------|--------------------------------|
| BT Group plc                         | <i>UK single company share</i> |
| Lloyds Banking Group plc             | <i>" "</i>                     |
| GSK plc                              | <i>" "</i>                     |
| BlackRock World Mining Trust         | <i>global mining stocks</i>    |
| Pershing Square Holdings Ltd         | <i>N American shares</i>       |
| India Capital Growth Fund Ltd        | <i>Indian shares</i>           |
| VinaCapital Vietnam Opportunity Fund | <i>Vietnam shares</i>          |

(To the extent that this exceeded what Mr A had recently added to the capital account, he made up for this with a further contribution of £15,000 on 31 January 2023). The total of the above investments in stocks and deposits just exceeds the amount of the death benefit, and they were all made within two months of Mr A receiving the payment from HL.

That means, if Mr A had begun acting on HL's request on 7 July 2021, it would likely have paid out his settlement about six weeks later on 18 August 2021, and he would likely have reinvested all the proceeds of that payment in two main tranches – on around 17 September and 18 October 2021.

I need to consider the sort of investments Mr A might have made around 14 months earlier than he actually did. Here I'm mindful of his comment that stocks and shares are a long-term investment, and that he would have selected individual stocks and shares that were performing better in the market rather than just mirror the average of all his existing holdings. He considers the market was volatile at that time, so he may have sat on some of what he received as cash.

I think the markets are unlikely to have been viewed as especially volatile at that time to someone who was looking to invest for the long term – and bearing in mind the relatively disappointing cash returns on offer then. By the point Mr A chose to make two £30k cash investments about 14 months later, the Bank of England base rate had risen from 0.1% to 3% and was expected to continue rising – so the situation was somewhat different to before. Furthermore the global instability that followed Russia's invasion of Ukraine would not have been apparent before that happened on 24 February 2022. Nevertheless I've also noted what Mr A has said about his age meaning he's concerned to ensure he can generate income from investments and not just capital growth.

Taking all of this into account, I think it is reasonable to assume Mr A would still have held some of the death benefits back in cash, but not as much as the 45% he did in 2022 (based on the above figures). I'm going to make a broad assumption that Mr A would initially have kept 30% of the death benefits in cash – not primarily for its investment characteristics but because I accept his argument that he would have wanted to weigh up other investment opportunities in the medium term. The rising interest rates after February 2022 would then have meant that Mr A would likely have continued to hold that component in cash.

In terms of the other investments, I consider that the *type* of assets Mr A invested in (if not the *actual* assets) provide a reasonable indication of the amount of risk he was willing to take and the sectors he was prepared to invest in. I note that most of the shares or funds which Mr A bought in November/December 2022 that concentrated in specific global regions (UK / N America / East & South Asia) *hadn't* featured in his ISA in around October the previous year. (I refer mainly to the ISA, as Mr A's share account was relatively small in Autumn 2021.) Only the global share funds Mr A chose in 2022 seem to have been 'staple' features of his portfolio from the previous year.

Taking this into account I consider that the FTSE World Index on a Total Return basis would fairly represent the broad range of investments Mr A might have made with the 70% of the SIPP death benefits that I've concluded he would have been willing to put at risk. This index is a benchmark representing a range of investments in shares across the globe, including some in developing countries. It doesn't mean that Mr A would have been aiming to buy exactly the same shares that make up this index. But I think it's broadly reflective of the type of return that he might have received had he sought to invest an earlier settlement of death benefits from the SIPP, bearing in mind the investments he typically made in 2021 and 2022.

### **Putting things right**

In order to calculate if Mr A has suffered a loss, I intend to require HL to take the following steps:

1. Calculate the death benefit that would have been payable from R's SIPP had it been paid to Mr A on 18 August 2021.
2. 30% of (1) represents the sum Mr A would have placed on cash deposit. Calculate what this component would have been worth if it had been invested one month after the death benefit would have been paid (on 17 September 2021) in line with the average return on fixed rate bonds\* up to 25 November 2022 (the mid-point of when Mr A actually made his cash investments the following year).
3. Assume that another 35% of (1) would have been invested one month after the death benefit would have been paid (on 17 September 2021), and add on the return in line with the FTSE World Index on a Total Return basis up to 21 November 2022 (the mid-point of when Mr A actually made the first tranche of his share investments).
4. Assume that the final 35% of (1) would have been invested two months after the death benefit would have been paid (on 18 October 2021), and add on the return in line with the FTSE World Index on a Total Return basis up to 19 December 2022 (the mid-point of when Mr A actually made the second tranche of his share investments).
5. Calculate the total of (2) + (3) + (4).
6. Subtract (5) from the actual death benefit of £133,608 paid to Mr A. If the answer is negative, this is the amount of the loss.
7. Update the amount of any loss from (6) up to the date of this Final Decision in line with the return on a composite benchmark comprising: 30% average return on fixed rate bonds\*, 70% FTSE World Index on a Total Return basis. For ease of calculation this return should be applied from 5 December 2022 - being the midpoint of when Mr A actually invested the separate tranches of his death benefit.
8. Pay any resulting amount to Mr A in cash.

Mr A has asked me to take into account the further charges HL has levied on R's SIPP after August 2021. In effect, the above calculations will do so as the notional return is not reduced by any charges applying to HL funds (or the SIPP itself). Only the actual death benefit Mr A received in October 2022 might have been subject to further charges. So the comparison between the notional and actual position ensures that charges unnecessarily deducted from the SIPP and its funds are also refunded to Mr A.

For the avoidance of doubt, the value of the Woodford Equity Income shares transferred directly to Mr A's share account can be ignored as their value is unaffected. The value of any notional stray dividends that would have been received by Mr A after the earlier death benefit would have been paid can also be ignored – if HL is unable to determine these. But if it ignores them, it must also ignore the value of stray dividends that were *actually* received by Mr A. If HL doesn't ignore the notional stray dividends it must add the *actual* value of stray dividends received to the death benefit of £133,608 before carrying out step 6.

\* The return on fixed rate bonds provides a benchmark for notice savings accounts. To arrive at this return, HL should obtain the monthly average rate for fixed rate bonds as published by the Bank of England in each month from the start date to end date given above – and apply those rates to the sum invested on an annually compounded basis. The rate to be applied for each month is that published at the end of the previous month.

HL has already made an offer of £250 to Mr A for the distress and inconvenience caused by the initial (approximately seven week) delay in communicating with the solicitor. Whilst I give credit for HL's willingness to make this offer, it has said it doesn't think the delay here will have altered the eventual timescale for payment of benefits. I disagree, for the reasons I've already given – and the calculation proposed above will factor in the impact of this delay.

HL's offer doesn't take into account the much longer period of delay caused by it only communicating with, and failing to chase, the solicitor to R's estate. I understand the argument that the solicitor could, separately, be blamed for causing this delay – indeed Mr A accepts this. But Mr A hasn't formally complained to the solicitor on the basis that he thinks HL had a greater responsibility to him and I think that's right, in terms of any losses he's suffered.

I can only consider the complaint in front of me and, in any event, a solicitor is not in my jurisdiction. Taking into account that the solicitor's actions in failing to pass on correspondence will have made some contribution to the overall distress and inconvenience Mr A has suffered, I'm not going to suggest a large increase to HL's offer is necessary, but I do consider £400 instead of £250 better reflects the amount of upset HL caused in this case.

### **My final decision**

I uphold this complaint and require Hargreaves Lansdown Asset Management Limited to calculate and pay redress to Mr A as set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 21 November 2024.

Gideon Moore  
**Ombudsman**