

## **The complaint**

The estate of Mrs S complains that when Mrs S's late husband passed away in 2018, HBOS Investment Fund Managers Limited (HIFML) didn't give her any advice in relation to what should happen to his stocks and shares Individual Savings Account (ISA) and so the investment was transferred to Mrs S. It says as a result Mrs S took on the risk associated with that investment.

The estate also complains that despite having provided a Lasting Power of Attorney (LPA) to HIFML, it continued to send correspondence to Mrs S instead of to the attorneys and it says this prevented the attorneys nominated under the LPA from acting and giving advice and from moving Mrs S out of investments that posed risk.

The estate of Mrs S also says that once it had notified HIFML of Mrs S's death, HIFML didn't act promptly to disinvest the funds in her investments, which it says resulted in a financial loss as the value of those funds decreased during the relevant period. It said HIFML had stated on its website that it would disinvest funds within 72 hours.

## **What happened**

In 2003 Mrs S and Mr S both took out a stocks and shares ISA, and a Collective Investment Plan (CIP).

In 2004 Mrs S and Mr S each took out a Guaranteed Investment Plan (GIP).

Further top-ups were made into their ISAs in the following years.

Mrs S and Mr S surrendered their GIPs in 2009.

HIFML was responsible for the administration of the remaining investments.

Mr S sadly passed away in February 2018. His ISA investment was then transferred to Mrs S.

A lasting power of attorney (LPA) was registered for Mrs S in March 2018 with two attorneys appointed (they are also the executors of her estate).

In October 2018 the attorneys notified HIFML that a lasting power of attorney had been registered for Mrs S and applied for the power of attorney to be applied to her accounts. They received a confirmation receipt for the power of attorney which confirmed one of the attorneys could access Mrs S's accounts.

Mrs S sadly passed away in March 2023.

In April 2023 the estate of Mrs S notified HIFML of her death.

On 7 April 2023 HIFML sent a letter to the estate setting out its claim requirements and enclosing a claim form.

The completed claim form was received by HIFML on 16 August 2023. HIFML disinvested the investments and made the payment for the value of Mrs S's investment to the estate on the same day.

In October 2023 the executors of the estate complained to HIFML. They said investments had been mis-sold to Mrs S and Mr S, and those investments had been poorly managed.

The estate also complained that when Mr S had passed away in 2018, no advice had been provided to Mrs S or to her attorney, and HIFML hadn't carried out a re-assessment of her circumstances. The estate said the investment was transferred to Mrs S and she therefore took on the risk associated with that investment.

The estate complained that it had provided HIFML with a Lasting Power of Attorney for Mrs S in 2018 in order to access her accounts, but that HIFML had continued to send correspondence to Mrs S. It said this had prevented the attorneys from acting in Mrs S's best interests and closing her investment.

The estate also said that HIFML had delayed disinvesting Mrs S's investment and closing her account. It said it had notified HIFML of her death in April 2023, but the investments hadn't been disinvested until August 2023. It said the value of her investments had decreased during that time, so there had been a financial loss.

HIFML didn't uphold the complaint brought by the estate of Mrs S.

It said that it previously had in branch advisers who could provide information and advice on products however a business decision had been made to remove its investment in-branch advisers following regulatory changes brought in in 2012. So at the time Mr S passed away, in 2018, it didn't have in branch investment advisers.

HIFML said that if customers were concerned about risk, they had other options available to them, such as switching the funds their investment was invested in, transferring their investment or seeking independent financial advice.

HIFML said when a LPA was registered, the individual appointing the attorneys, in this case Mrs S, would need to be able to understand and make decisions for themselves. So HIFML would not therefore automatically start sending annual statements and correspondence for that individual's account to an attorney unless it was requested by the customer.

HIFML said that it hadn't found any record on its system to indicate that it should have stopped sending information and statements to Mrs S.

HIFML said it had reviewed the letter forwarded by the executors in November 2023 and that letter stated that the account holder should still have access to their account.

HIFML said the section on the website referred to by the estate related to the timeframe for disinvesting following the receipt of instructions. It said it had been notified of Mrs S's death in early April 2023 and it had sent its requirements and a claim form to the estate in response. HIFML said it hadn't received the required documentation and completed form containing the instructions until 16 August 2023, and it was at that point that it was able to act on the instructions and disinvest. It said the units were disinvested and settlement occurred on the same day, so it had carried out the instructions within the 72-hour timescale mentioned on its website.

HIFML upheld a complaint about its response to the complaint being sent to an incorrect address and paid £200 compensation to the estate.

HIFML also said that the sale of the investments between 2003 and 2006 was the responsibility of another business which was a separate entity within the same banking group. So it had referred that element of the estate's complaint to that business.

The estate of Mrs S didn't agree with HIFML's conclusions and referred its complaint to our service. Our investigator considered the complaint but didn't think that HIFML had acted incorrectly or unfairly in the circumstances.

The investigator noted that the Retail Distribution Review (RDR) came in force in 2012 and at that point HIFML took the commercial decision to stop offering investment advice to its

customers. He said at the time Mr S passed away, in 2018, HIFML was no longer offering that service however it did give existing investors the option to seek independent advice if they required advice.

The investigator also noted that the transfer in 2018 had taken place on the written instructions of Mrs S and one of the attorneys who was also one of the executors of Mrs S's estate. So he didn't think HIFML had acted incorrectly.

The investigator considered the contents of the LPA which had been provided to HIFML and whether any specific instructions were recorded. He noted the section entitled "Preferences and Instructions" was crossed through and blank and the attorneys were able to make a decision for Mrs S, but while she still had mental capacity they could only act with her consent.

The investigator didn't think there was any evidence to confirm that HIFML had been given specific instructions to only contact the attorneys. The investigator didn't think there was any supporting evidence demonstrating HIFML had been informed by the attorneys that Mrs S had lost capacity. Overall, he didn't think HIFML had done anything wrong.

The investigator also considered whether HIFML had delayed the disinvestment following notification of Mrs S's death. He considered the correspondence from the time and noted that HIFML had sent a letter setting out its requirements and a claim form to be completed. That documentation hadn't been completed and returned until 16 August 2023, so he didn't think HIFML had delayed disinvesting and he was satisfied it had disinvested within the 72 hour period quoted on its website.

The estate of Mrs S didn't agree with the investigator's conclusions.

As no agreement could be reached the complaint was referred to me for review.

### **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.

#### Should HIFML have advised Mrs S in respect of her late husband's ISA?

Mr S's husband passed away in 2018. The estate of the late Mrs S complains that she wasn't given any advice about what should happen to his ISA, and that ISA was therefore transferred to Mrs S. The estate said that meant Mrs S took on the risk associated with that investment. It said Mrs S would have received a better return if the monies had been placed on deposit instead.

I have considered HIFML's explanation that at the time when Mr S passed away, it no longer had in-branch advisers following on from regulatory changes that had come into force. I consider that was a business decision which I think it was entitled to take as an exercise of its commercial judgment. And as it didn't have advisers, I don't think it would be fair and reasonable for me to conclude that it had to provide Mrs S advice upon the death of her husband, as this was a service that it didn't offer.

I also think that there were other options available to Mrs S and those acting on her behalf at the time. They could have sought to switch the fund the ISA was invested in, cashed in the fund, switched to another provider or they could have sought advice from an independent adviser.

I also note that this wasn't an automatic transfer of the ISA to Mrs S, HIFML could only act on instructions and those written instructions were given by Mrs S and one of her attorneys who was also an executor of Mr S's estate.

So, while I acknowledge that it would have been a very difficult time for Mrs S and I take into account what has been said about her health at that time, leading to an LPA being registered shortly after, I don't think that changes the fact that this simply wasn't a service that HIFML were providing at that time to *any* of its customers regardless of their particular circumstances.

I don't think therefore that HIFML acted incorrectly or unfairly here.

Did HIFML act incorrectly by continuing to send Mrs S correspondence after an LPA had been registered?

A lasting power of attorney was registered for Mrs S in March 2018, whereby two attorneys were appointed who are also the executors of Mrs S's estate.

Then in October 2018, an application was made to HIFML for representative access to her accounts. The estate of Mrs S has explained that it attended an appointment with HIFML to discuss this. A confirmation of receipt of the power of attorney was then issued to the attorneys. The estate of Mrs S explains that this was issued on the date of the appointment.

That confirmation indicated that one of the attorneys would have access to Mrs S's accounts.

The confirmation also stated that the account holder, Mrs S, would retain access to her accounts and it said:

*"We will continue to send all mail to the Account Holder."*

I note the estate has explained that there was an appointment in branch because Mrs S's health had deteriorated, and it has said that a clear instruction was given to HIFML at that meeting, that correspondence should be sent to one of the attorneys, as Mrs S no longer had capacity to make decisions.

However, there is nothing in HIFML's records to demonstrate that a specific request was made for that correspondence to be sent to the attorneys and as HIFML has explained, that wouldn't happen automatically when an LPA was provided because at the time the LPA is registered the person making it still has the capacity to make their own decisions. It has said the onus was on the attorneys to indicate that Mrs S could no longer manage her affairs and therefore correspondence should be sent to an attorney or both attorneys.

This application and appointment took place several years ago, and in the absence of any supporting documentary evidence, I am not satisfied on balance that a specific request was made to HIFML for correspondence to be sent to one or both attorneys instead of to the account holder, Mrs S. I don't consider the document provided by the estate demonstrates that such a request was made, as that document stated that mail would continue to be sent to the account holder. And I consider a specific request would have been needed because I don't think HIFML could assume lack of capacity and I note the default position, as set out in the confirmation of receipt, that correspondence would continue to be sent to the account holder.

I also note that the confirmation receipt referred to the ISA investment and the attorneys were aware that Mr S's ISA had been transferred to Mrs S, as the document instructing the transfer had been signed by one of them, so if they were expecting correspondence relating to the ISAs to be sent to them and that wasn't happening, I think it was open to them to go back to HIFML to query this.

Did HIFML wrongly delay disinvesting investments following notification of the death of the account holder?

The estate of Mrs S complains that it sent HIFML the death certificate in April 2023, but Mrs S's investments remained invested and therefore at risk of fluctuations in value until August 2023.

HIFML has said that when it is notified of the death of an account holder, it issues documentation including a claim form that advise the relevant parties what is required to disinvest the investments held in the account.

I can see that it issued a letter to the executors on 7 April 2023, setting out those requirements in a section entitled "What we need from you" and enclosing a claim form.

That letter said:

*"I have enclosed a valuation detailing the shares we hold for the account holder and the value as at 26<sup>th</sup> March 2023. The value given is not guaranteed. The shares in the account are still affected by ups and downs in the stock market, so you may notice the value increase or decrease until the account is closed. "*

I am satisfied on balance that asking for a claim form to be completed and requirements to be met was a business process used by HIFML, and I consider it more likely than not, that the reasons behind using that type of process would be to ensure the parties contacting HIFML had authority to act on the account holder's behalf, that clear instructions were received as to what should happen to the account and that any payment or transfer was made to the correct person. And I think HIFML set out those requirements clearly at an early stage and responded promptly to the notification.

I am satisfied its correspondence also set out clearly what would happen to the investments in the interim until that documentation was received. I also note it sent a reminder to the estate asking it to return the documentation. So, I am not persuaded on balance that HIFML acted incorrectly or treated the estate of Mrs S unfairly.

I also take into account that once HIFML received the completed paperwork, it acted promptly disinvesting and making payment on the same day. I note what has been said by the estate about the 72-hour time period however I am satisfied from the wording referred to that the 72 hours runs from the time instructions are received. On the website it says:

*"Selling or Transferring funds.*

*If you decide to sell, we will do this within 72 hours of receiving instructions."*

And I think it is fair and reasonable to construe that instructions are received only when they are properly supported by documentation demonstrating those giving the instructions had the relevant authority to do so and the requirements of HIFML were met.

#### Complaint response sent to incorrect address

I can see that HIFML has paid the estate of Mrs S £200 for sending its response to the complaint to an incorrect address. I consider that to be fair and reasonable compensation taking into account the impact caused; namely the concern that personal data may have been disclosed to a third party and the fact this happened on one occasion.

#### Summary

I don't consider on balance that HIFML has acted incorrectly or unfairly in the circumstances except for the sending of a letter to an incorrect address for which it has paid compensation to the estate of Mrs S. Accordingly, I am not asking it to do anything further here.

#### **My final decision**

My final decision is that I don't uphold the estate of Mrs S's complaint against HBOS Investment Fund Managers Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs S to accept or reject my decision before 14 March 2025.

Julia Chittenden  
**Ombudsman**