

## **The complaint**

Mrs S and Mr S complain about Hargreaves Lansdown Asset Management Limited (HL). They said they were not given relevant information by HL before a corporate action event took place about a company that they both held shares in. They said this meant they were unable to make an informed decision, and subsequently they incurred losses.

Mrs S and Mr S said they would like HL to compensate them for this and also for the distress and inconvenience it has caused them.

## **What happened**

Mrs S and Mr S both have trading accounts with HL, and both held shares in a company that was called Spectral MD.

On 22 August 2023 they both received a secure message from HL about their Spectral MD shares. The message from HL said that a merger would take place involving Spectral MD and gave some details about this. Shareholders were able to vote on whether the merger would go ahead or not. If the merger did go ahead then shareholders would receive shares in the newly formed company Spectral AI.

In this message, HL also informed Mrs S and Mr S that Spectral MD would delist from the London Stock Exchange on 8 September 2023 and that the last day that they could sell these shares would be 7 September 2023. It said the new company would be listed instead on an American exchange, NASDAQ, and that they would receive the new shares around 8 September 2023.

Mr S called HL on 24 August 2023. He said he sought assurance from HL about what would happen. He said as it turned out, HL did not provide the relevant information about what would happen, and so they could not make an informed choice about whether to sell their shares or not on 7 September 2023.

Mr S has said this, because after the shares in Spectral MD delisted on 8 September 2023, the new shares in Spectral AI did not show up or were tradable in his or his wife's account until 2 January 2024. There was a long period of time of around 4 months from the delisting of their old shares on 8 September 2023, where they couldn't take any action with the shares, before they could again on 3 January 2024.

Mr S said if HL had given him relevant information during the phone call on 24 August 2023, about what would happen with their new shares, they would have sold their holding on 7 September 2023, and banked the healthy profits that they had made at that time. Mrs S and Mr S said instead they had to endure a long delay before they received the new shares, after which they had suffered a loss. They said, due to HL's mistakes made with its secure message on 22 August and during the phone call on 24 August 2023, they have incurred a loss. They think HL should compensate them for this and also pay an amount for the distress and inconvenience they said it had caused them.

HL didn't agree with Mrs S and Mr S, in the main. HL provided a number of replies, but in its final response before the investigator looked into matters, it made the following points:

- Upon reviewing its secure message made on 22 August 2023, it could see it did not guarantee a timeframe for when the shares would be received. It said however, it did provide a deadline for the last day of trading in Spectral MD, this being 7 September 2023.
- It reviewed the call made by Mr S on 24 August 2023 and at no point was it queried about the ability to trade the shares from 8 September 2023. It said it was more a conversation about whether the stock line disappeared and, whether it would impact their ability to track and monitor the shares.
- During a call between it and Mr S on 14 September 2023, it provided incorrect information about the shares, and that these would be applied to their accounts by the end of that week. It said this was incorrect and it provided £100 for this error.
- It sent a secure message to Mrs S and Mr S on 19 September 2023, confirming completion of the merger. It said it told them a contra line had been added to their accounts, but the shares were not immediately tradable. It said it provided an explanation at this time about why this was the case, about how the new shares were sent to it.
- During a call on the same day, it said it provided the correct status of the corporate action and explained that it was yet to receive the new shares. It said it was unable to provide a timeframe for when they were due. It said the delay was outside of its control, as it was relying on another company, HSBC, to transfer the shares to it and then put on CREST in order for them to then be able to apply them to their accounts.
- It said in summary it was satisfied Mrs S and Mr S were aware of the deadline to trade in the shares which was up to 7 September 2023. It said it has not seen any misinformation in contact with them prior to this date.

HL then went on to explain what happened after the shares were delisted from the London Stock Exchange. It said it was expecting the new shares to be sent to it through the electronic system CREST. It said if this had happened it would have expected the transfer of the new shares to have taken between 3 and 5 days to load onto its clients accounts, including Mrs S and Mr S and their shares. It said this didn't happen and it was sent shares in a direct registration share (DRS) format. It said it had to initiate a transfer on 19 September 2023 to HSBC, its custodian, so it could convert them and load them onto CREST.

HL said HSBC told it the shares were eligible for transfer on 10 October 2023. It said it was then in regular contact with HSBC between 12 October 2023 and 6 December 2023, with it attempting to provide them with the relevant details to proceed. It said there were several delays with it awaiting responses from HSBC, and it was required to chase it throughout. It said it was unable to identify any delays caused by HL.

HL continued that following the delays, it received the shares from HSBC, via CREST and applied them to Mrs S and Mr S's accounts on 2 January 2024. It said it was sorry it took longer than expected however, it said, HSBC's timeframes were outside of its control. It then said it was sorry for the delay in responding to Mrs S and Mr S's complaint and offered a further £100 in addition to the £100 it had already paid, to apologise for this.

Mrs S and Mr S were not happy with HL's response and referred their complaint to our service.

An investigator looked into Mrs S and Mr S's complaint. He said he didn't think HL needed to take any further action. He made the following findings:

- He found with the message sent by HL on 22 August 2023 that although part of the message about selling shares was specific, part was not, around when the shares would be credited. He said he felt no guarantee was provided.
- He said he had listened to the call on 24 August 2023. He said after doing so, he was not persuaded HL did anything wrong. He said the representatives answered the questions they were asked, about how the shares would show on Mrs S and Mr S's account and how they would replace the old shares. HL did not provide a timeline about when Mrs S and Mr S could trade them.
- He explained what happened and why there was ultimately a delay. HL expected to receive the new shares through CREST and if this had happened, it would have taken it 3-5 working days to deal with. Instead, it was sent the shares in a direct registration share format. It had to involve a third party: HSBC, its custodian. So, HL needed to send the shares to HSBC, who would put them on CREST, before they could then be applied to Mrs S and Mr S's account.
- He then explained what he felt happened between the parties. He said, after doing so, he didn't feel HL could be held responsible for the delay. He said the shares were sent in a format that it wasn't expecting. He said HL wouldn't have known on 24 August 2023 when Mr S called, that there was an issue here.
- He also concluded HL tried to provide answers for Mrs S and Mr S. He concluded events occurred that were outside of HL's control, and it did all it reasonably could to resolve matters.
- He said that HL did provide Mrs S and Mr S with incorrect information on 14 September 2023, and it has offered them £200 by way of an apology. He said he felt this was a reasonable offer.
- He said he recognised Mrs S and Mr S's frustration about the time it took HL to respond, but HL were reliant on receiving updates from another business and would've been very limited about what it could say.
- He said £200 was about right and he didn't recommend any more than this.

Mr S was not in agreement with the investigator's view. He provided the following points in response:

- He was unable to agree with the investigator's interpretation of the call made by him on 24 August 2023.
- He felt the call on 14 September 2023 made to HL, evidenced the reasons why he made the call to HL on 24 August 2023. He said it showed that they were considering a pre-merger sale, should any doubt whatsoever exist in relation to the shares.
- He asked that I consider the call on 24 August 2023 and let him have my view on this and what I believe the reasons for the call were.
- He said at no time have they mentioned guarantees but they both had expectations in relation to receiving complete, accurate and relevant information from HL in a timely manner.
- He then mentioned the use of the word guarantee in relation to the secure message sent by HL on 22 August 2023. He said in all aspects of the message they had expectations. He said all aspects of HL's message should be judged on this, an equal basis, rather than applying different tests to parts of it, specifically the expected share transfer date.
- He said they believe they were fully entitled to expect the whole matter would be dealt with in line with the original message and initial phone call.
- He said at no time during the long delay did HL update them to amend their expectations.

Because the parties are not in agreement, Mrs S and Mr S's complaint has been passed to me, an ombudsman, to look into.

### **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.

The crux of Mrs S and Mr S's complaint as I see it is that they don't think they were given clear, fair, and not misleading information when they received the secure message from HL on 22 August 2023 or when Mr S called HL on 24 August 2023. They said this mattered as they don't think they could have made an informed decision about whether to sell their shares in Spectral MD or not.

The proposal was for the company they were shareholders in to merge with another, and they had until 7 September 2023 to sell their shares if they wanted to, after which the corporate action, if voted through, would go ahead. In any case, the shares in Spectral MD were delisting, so Mrs S and Mr S had a decision to make about whether to keep hold of the shares or sell them.

I have reviewed the secure message sent on 22 August 2023 and listened to the call made by Mr S on 24 August 2023 to consider the points Mrs S and Mr S have made about this.

### **The secure message sent by HL on 22 August 2023**

HL sent to all its affected clients the following secure message on 22 August 2023. I have omitted parts of the message that I don't think are relevant to the outcome of Mrs S and Mr S's complaint:

*"The boards of Spectral MD holdings Ltd and Rosecliff acquisitions Corporation have agreed on the terms of a Merger.*

*The new combined company will be called Spectral AI and you will therefore have shares in this combined company in place of your current holding. The new shares are expected to be traded on the NASDAQ stock exchange in the US.....*

*The merger remains condition on shareholder and court approval. If approved, it is expected the merger will close in the third quarter of 2023 with the resulting Spectral AI shares being credited to your account upon receipt, around 8 September 2023....*

*The board of Spectral MD holdings Ltd has also announced proposals to cancel the company's ordinary shares from trading on Aim. It's expected that the company's shares will be delisted with effect from 8 September 2023....*

*If you wish to sell your holding before the proposed listing cancellation you must do so before the end of the day on 7 September 2023."*

The investigator concluded when he read the message that part of this message was specific about when to sell shares if that's what Mrs S and Mr S wanted to do. But part of the message was not specific, this being around when the new shares would be credited to Mrs S and Mr S's account and that no guarantee was provided.

Mrs S and Mr S said they had not mentioned the use of the word guarantee and that in all aspects of the secure message they had expectations. They said rather than applying

different tests to parts of it, all should be judged equally. They said after reading the message they had expectations that HL would do what it stated.

I acknowledge what Mrs S and Mr S have said regarding the secure message and what they say their intentions were when they received and read it. That said, I can see the investigator was just making the point that HL had given a fixed date for certain events within its message and didn't do so for when the transfer of shares would take place. I can also see that this was the case.

HL stated in the secure message that Spectral MD's shares would delist from 8 September 2023 and that the last day to sell these shares was before end of day 7 September 2023. There wasn't any degree of uncertainty about these statements: HL stated that this is what was happening. Whereas on the subject of the new Spectral AI shares, they would be credited "*around 8 September 2023...*". HL did not give a fixed date as to when this would happen and instead left it open that the crediting of new shares would happen *around* that date.

I can't say after carefully reading the secure message that HL gave any expectations that Mrs S and Mr S ought to have been given the impression they would receive their shares by any given date. The statement it provided left things fairly open.

HL has told our service that it was unaware of any issues with regards to the format of the new shares, when it sent the secure message on 22 August 2023 and then received a phone call from Mr S on 24 August 2023. I have not seen any information from either party that would persuade me that anything other than what HL has said here was the case.

HL has told our service that if the new shares had been sent to it through the electronic system CREST as it had expected, then it would have taken it between 3 to 5 days to load to its clients' accounts. So, with this in mind, and what I have said above, it wouldn't seem unreasonable to me for HL to state in its secure message that it would load the new shares "*around 8 September 2023*" consider the time frame it was initially working to.

So, based on what I have concluded, I don't think at this stage that HL had misinformed Mrs S and Mr S, or not told them anything they ought to have been aware of. Instead, I think it provided information that it was aware of and what it was working to at that time.

### **The phone call between Mr S and HL on 24 August 2023**

I have listened carefully to the call recording that took place on 24 August 2023. I have been able to hear what Mr S asked of HL when he called them, when the parties discussed the merger.

Mr S asked the first representative whether the new shares were going to be on his account, once the old shares had been delisted, and whether he would be able to monitor the share price movement. Mr S was then transferred to a second representative, who worked on complex investments. This person then referred Mr S's query to the corporate actions team. Whilst they were waiting to hear back, Mr S reiterated his enquiry. I can hear him clearly say he had two specific queries these being 1. Did it [the Spectral MD shares] disappear off his stocks and shares account list and 2. If it did, once the shares were quoted on the NASDAQ, how would he then access them.

The second representative from HL then received a message back from its corporate actions team, and relayed this message to Mr S. The message from this team was that if the merger went ahead, the new shares in Spectral AI would replace the current holding and would show in the account. Mr S was happy with the response and the call was terminated.

The investigator said he was not persuaded HL did anything wrong in these calls. He concluded that HL answered Mr S's questions and that a timeline or when the shares could be traded was not discussed. Mr S said in response that he didn't agree with the investigator's interpretation of the call. He said a call he made post the merger on 14 September 2023, to HL, evidenced the reasons why he made the call on 24 August 2023. Mr S said he would like my views on all this, and what I believe the reasons for the call were.

Firstly, I don't think I can agree with Mr S that the phone call he made on 14 September 2023, demonstrated what his intentions were on 24 August 2023. This is because this call was made after the merger took place. I don't think I can place too much weight on what was said in the 14 September 2023 phone call, about Mr S's intentions on 24 August 2023, with him having the benefit of hindsight, at this point.

That said, I have listened carefully to the phone call on 24 August 2023, and to the conversation he had with the two representatives. Mr S was clear with HL about what it was that he wanted to know. He was looking for HL to let him know what was going to happen if and when the merger went ahead and what would happen to his shares. I think, on balance, HL answered his questions and explained what would happen. I don't think it did anything wrong here or gave any misinformation. It said if the merger went ahead that the new shares would replace the old and would show in his account.

HL didn't mention or discuss a timeframe or when the shares would show in Mr S's account, and he didn't ask. I don't think at that stage HL had any reason to discuss a timeframe with Mr S in any case. I say this because, at that time, it was unaware that there were any issues with the new shares, or that it needed to use a custodian to convert them onto CREST. So, I don't think HL was being unfair to Mr S by not mentioning to him any timeframe, as on balance, I think at this stage, it was expecting matters to be resolved within the 3-to-5-day window it has stated was its aim, if the shares had been sent to it through CREST. I don't think on balance, it would have felt the need to provide any additional information about this.

I don't think, on balance, HL held off, or didn't provide information to Mr S at that time, to better inform him about the merger. Rather, I think it answered Mr S's questions, and was of the understanding that if the merger went ahead, that it would do so with relative ease and within a shorter time frame than it eventually turned out to be.

In conclusion, I don't think HL did anything wrong when it replied to Mr S's questions at this stage.

### **Events that took place post-merger**

Mrs S and Mr S didn't sell their shares by the deadline given of 7 September 2023, and so they and their shares were included in the corporate action that took place. They were due new shares in Spectral AI that would be tradable on NASDAQ.

There was a long delay, before Mrs S and Mr S received their shares. HL has explained why it thinks there was a delay and why it took longer than it expected. This was, as I have already described, because it received the new shares not in a format that it was expecting and so it was unable to load them and apply to Mrs S and Mr S's accounts. Instead, it had to send the shares to a company that provided custodian services, HSBC, for it to convert the shares and apply them to CREST.

HL said it sent the shares to its custodian and delays occurred but that it was not responsible for these. It said it chased up the other company and did all it could to ensure that the shares were converted as quickly as possible.

I have gone through what has been said by the parties here and think on balance, HL has made efforts to chase matters. It has looked to pursue the conversion of the shares in question on behalf of Mrs S and Mr S, and once this happened, it loaded the shares onto their accounts in a reasonable amount of time. I don't think I have seen enough to conclude, that it has been responsible for the delay in these shares appearing in their accounts or that it has treated Mrs S and Mr S unfairly on this occasion.

That said, HL has made mistakes and I can see that it has taken responsibility for these. It did give some misinformation in a later phone call on 14 September 2023 with Mr S after the merger took place. HL said, they would have shares loaded on their accounts by the end of that week, which wasn't the case. It also took longer than it should to respond fully to Mrs S and Mr S's complaint. HL has acknowledged this and paid them £200.

I do think overall, that £200 is a fair and reasonable amount for HL to pay for the distress and inconvenience it has caused in Mrs S and Mr S's complaint and I won't be asking it to do anything further.

In conclusion, I don't think HL provided misinformation when it sent a secure message to Mrs S and Mr S on 22 August 2023. In addition, I can't fairly conclude HL ought to have done anything more than it did when it answered Mr S's enquiries pre-merger, during the phone call on 24 August 2023. I also haven't seen enough that would suggest to me that HL made any mistakes when it looked to deal with an unexpected issue and then resolve matters with its custodian. I do think it made mistakes though as I have found above, but HL have paid fair and reasonable compensation for this.

I appreciate that my decision will be disappointing for Mrs S and Mr S, and I acknowledge the strength of their feelings in the submissions provided. But based on everything I have read and the findings I have given, I don't uphold their complaint.

### **My final decision**

My final decision is that I do not uphold Mrs S and Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 17 April 2025.

Mark Richardson  
**Ombudsman**