

The complaint

Mr O complained that Hargreaves Lansdown Asset Management Limited (HLAM) did not communicate clearly with him regarding the delisting of American Depositary Shares (ADS) traded on the New York Stock Exchange (NYSE) that he held in his self-invested personal pension (SIPP). As a result, he was unable to reclaim tax he has paid in an overseas country.

What happened

I have reviewed all the evidence provided by both parties. I have not reproduced all of this in this decision but concentrated on what I believe to be the most relevant parts.

Mr O held a SIPP with HLAM. Mr O had set his preferred communication channel for HLAM to 'secure message'. This entailed a secure message being sent to his inbox in his online account, together with an email message to tell him that a new message had been sent to him.

One of the investments within his SIPP were ADS, traded on the NYSE. An announcement was made on 9 November 2022 that the parent company intended to delist its ADS from the NYSE, and holders of these shares, including Mr O, needed to take some action.

Consequently, HLAM sent Mr O a secure message through his online account on 20 December 2022 and simultaneously sent him an email to tell him that a new message had arrived for him. The secure message explained that the ADS would be delisted with effect from the close of business on 23 January 2023 and setting out the options he had for taking action.

The secure message included the information:

If you wish to sell your holding before the proposed listing cancellation you must do so before the end of the day on 20 January 2023. The trade will be placed in accordance with our terms and conditions and subject to the standard Stockbrokers commission rates.

It provided a telephone number for sales enquiries.

It went on to say that:

Should you have any queries relating to the delisting please contact us (link) Please note, we can provide factual assistance but cannot provide advice about which option you should choose.

Mr O did not contact HLAM and his ADS were delisted from the NYSE on 23 January 2023.

On 31 January 2023, HLAM sent Mr O another secure message and email alert to tell him that the ADS had been delisted as he had previously been advised. Mr O did not respond to this message.

Mr O discovered that his ADS holdings had been delisted on 24 April 2023, when he checked his portfolio through the HLAM online portal. He called HLAM on 25 April 2023 to say that he had not received either of the email alerts and had been unaware of the delisting until the deadline had passed. He carried out some further investigation himself into the delisting, discovering that he could apply to have his ADS converted to ordinary shares in the parent company which were traded on its home country'

Mr O subsequently complained to HLAM on 4 May 2023 about not being informed appropriately about the delisting. He said that he believed the responsibility to return the equivalent funds to his SIPP lay with HLAM.

HLAM sent Mr O its response to his complaint on 27 June 2023. It did not uphold his complaint, saying that it had sent him a combination of secure message and email alert in line with his communications preferences. It also said that it was unable to help him with the conversion of ADS to ordinary shares in the parent company as it did not operate in the stock market the parent company was listed in. It went on to say:

I am satisfied we have provided adequate and appropriate correspondence to your preferred mailing preference to make you aware of the sale cut off within HL.

Unfortunately we are not able to provide you with any alternative option and must wait for receipt of any sale proceeds to then credit to your SIPP account

Mr O communicated a number of times with HLAM regarding his attempts to convert the ADS to ordinary shares using a different broker. This attempt was ultimately unsuccessful and so Mr O's communications with HLAM switched to the remittance of funds to his SIPP once the ADS had been redeemed. On 3 October 2023, the proceeds from the delisting were deposited in Mr O's SIPP account, but a c48% tax deduction from the parent company's home country had been applied. Mr O told HLAM that he considered it responsible for his loss.

On 2 August 2023 Mr O informed HLAM by email that he intended to reclaim the withholding tax that had been levied when the ADS were sold.

On 3 October 2023 HLAM confirmed receipt of the net sale proceeds to Mr O but did not provide him with confirmation of the amount of tax deduction.

Mr O emailed HLAM again on 9 November 2023 for assistance regarding the completion of the withholding tax reclamation forms. Both HLAM and CREST (a UK-based Central Securities Depository) needed to complete a form in order for Mr O to make a successful application.

HLAM replied to Mr O the following day to confirm that CREST had advised that it was not able to assist with this process. HLAM apologised for not being able to facilitate the reclaim.

Mr O wrote to HLAM on 5 December 2023 to raise further complaint points, primarily about the loss he had suffered because of the tax deduction, for which he felt HLAM was responsible. He also noted that the deadline for him to complain to this service was approaching.

Mr O wrote again on 11 December 2023 outlining both the original complaint points and his new complaint points relating to his financial loss.

HLAM responded to his complaint on 25 January 2024. It reiterated its findings about his complaint in respect to the communications through the secure portal prior to the delisting. It again did not uphold these points.

It also responded to his new complaint points, finding that some of its communications with him could have been clearer and awarding him £250 in respect of the distress and inconvenience this may have caused him.

Mr O replied to HLAM on 13 March 2024 to reject its decision and decline the £250 compensation and saying that he still believed that HLAM was responsible for his losses.

HLAM responded to Mr O on 15 March 2023 to restate that it did not believe that it was to blame for Mr O's inability to reclaim the withholding tax, as it had provided him with a completed form in its role as his broker. It said that as CREST wasn't prepared to complete the form he needed to complete his application and this was out of HLAM's control

CREST had confirmed after consulting with its legal team that it would not be able to provide the document Mr O had requested and so his attempt to reclaim the tax he had paid was unsuccessful..

Unhappy with this response, Mr O brought his complaint to this service.

Our investigator reviewed the evidence and explained to Mr O that he agreed with HLAM that he had made two separate complaints – the first relating to the poor communication prior to the delisting and the second about the subsequent events and the financial loss he had suffered. Consequently, he considered that the original complaint had been brought too late to be considered.

Mr O was unhappy with this view, and so the case has been passed to me to make a final decision on whether this first complaint had been brought to this service on time. I agreed with our investigator that I could not look into Mr O's first complaint as he had brought it to this service too late.

The investigator did, however, consider the circumstances of Mr O's second complaint about the events following the delisting and the financial loss he had suffered as a result. Having reviewed the evidence, they formed the view that HLAM had treated Mr O unfairly but that the compensation offer of £250 in respect of the distress and inconvenience he had been caused was appropriate in the circumstances of this complaint.

Mr O was unhappy with this decision, and so the complaint has been passed to me to make a final decision.

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 have reached the same conclusion as our Investigator and do not uphold Mr O's complaint. I also agree with investigator that the compensation HLAM has offered to Mr O is appropriate in the circumstances of this complaint.

I can appreciate that this will be disappointing to Mr O, so I will explain now how I have reached my conclusions.

Firstly, I think it's important to reflect upon the role of this Service. Our role is to impartially review the circumstances of a complaint and make a decision on whether a business has

made errors or treated a customer unfairly. Where it has, we expect a business to fairly compensate a customer for any financial loss and distress and inconvenience they have suffered as a result.

It is also important to point out that the role of this service is as an informal alternative to court action. In this spirit, we have to arrive at a decision that we think, on balance, is fair and reasonable to both parties.

I have already agreed in a separate complaint with HLAM's assertion that Mr O brought his complaint about HLAM's provision of information to him about the corporate action too late for it to be considered by this service – so I will not address these aspects of his complaint.

It's apparent in the circumstances of this complaint that there is no dispute about the fact that Mr O has suffered a financial loss as a result of the withholding tax payment that was taken from the proceeds of the sale of his ADS investment. The decision I have had to make is whether the actions or inactions of HLAM were the cause of Mr O's inability to reclaim this tax payment.

To do so, I will look at each of these circumstances in turn.

Firstly, when Mr O spoke to HLAM on 20 June 2023, he stated that he was concerned that HLAM was taking no action to allow his ADS investment to be converted into ordinary shares in the parent company and that he would miss this opportunity. HLAM explained to Mr O in the response to his complaint that it was unable to help him with this as it did not have the facility to hold shares in the overseas stock exchange where the parent company's shares were listed. It also advised Mr O that it was unable to help him find a suitable third party broker to try and help him with this. While I sympathise with Mr O on this point, I can't see that HLAM did anything wrong as it lacked the necessary authorisation to allow it to act on his instruction.

It also informed Mr O that:

We are therefore required to wait until the ADS cancellation cut off time has passed and provide you with a redemption payment where appropriate

Turning now to look at the issue of whether HLAM is responsible for Mr O being unable to reclaim the withholding tax which has caused him a financial loss, I've considered the process that needed to be followed to allow this to happen. I consider that the key issue that prevented the recovery of the tax paid was the requirement of forms to be submitted both by HLAM and CREST, the UK central securities depository. I can see that HLAM completed the form that it was required to, but that CREST, acting on its own legal advice, was unable to complete its submission. I can see that HLAM communicated on a number of occasions with CREST to try and secure a completed form, but it was ultimately unable to do so. Given this, I find that it was the lack of a completed form from CREST – a third party – which was primarily the cause of Mr O's inability to reclaim the tax payment. Consequently, I can't see that HLAM has done anything wrong here either.

Finally, I've considered that HLAM has identified some issues with the information and service that it provided to Mr O, acknowledging, and upholding some elements of Mr O's complaint. These are that HLAM could have provided more information about the corporate action, including a link to the frequently asked questions that was issued by the ADS parent company. It also agreed that it did not clearly show the tax deducted from the payment that was eventually made to Mr O and that it should have provided updates about its efforts to engage CREST in completing the necessary forms.

It has offered Mr O the sum of £250 in compensation for the distress and inconvenience he suffered as a result of these errors. While Mr O obviously feels that this compensation is insufficient, I cannot agree with him. I find that HLAM's offer is fair and reasonable in the circumstances of this complaint and in line with the guidelines that this service publishes to ensure consistency of awards.

My final decision

For the reasons given above, I do not uphold Mr O's complaint.

Hargreaves Lansdown Asset Management Limited should pay Mr O £250 in respect of the distress and inconvenience he has suffered, if it has not already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 27 January 2025.

Bill Catchpole
Ombudsman