DRN-5416961

The complaint

Miss D complains about the way Hargreaves Lansdown Asset Management Limited ("HL") processed a payment it received on her behalf.

What happened

Miss D held a SIPP with HL, which included an investment in the Woodford Equity Income Fund ("WEIF"). In 2019 the WEIF faced high profile liquidity issues and was suspended.

In 2023, the Authorised Corporate Directors of the WEIF, Link Fund Solutions Limited ("Link") announced it was proposing a Scheme of Arrangement ("SOA") which, in short, would involve payments being made to WEIF investors. This followed an FCA investigation into the way Link had overseen the operation of the WEIF.

The first SOA payment was made in March 2024, and HL credited Miss D's payment to her SIPP, where her WEIF investment had been held.

Miss D complained. In summary, she said HL should have paid her the money outside her SIPP. She said she'd transferred her pension to another provider, and all that was left in her HL SIPP was the illiquid WEIF holding. She said she should be able to do what she wanted with the SOA payment but couldn't as it was trapped in her HL SIPP. She also said that by paying the SOA payment into her pension, HL had caused her to risk tax consequences with HMRC – because she fully used her pension contribution allowances each year, and this payment (if deemed a pension contribution) could cause her to exceed those limits.

HL didn't uphold Miss D's complaint. It said it considered the SOA payment as a distribution of capital by the WEIF itself, rather than as a compensation payment. It said this meant it was appropriate for the payment to be made directly into Miss D's SIPP and that this shouldn't be treated as a pension contribution which would otherwise impact on Miss D's annual allowances.

Miss D brought her complaint to our service where it was considered by one of our investigators. He said HL had based its interpretation of the SOA payment on Link's own description. He thought it was reasonable for HL to have considered the payment as a capital distribution, and processed it accordingly. He also noted that Miss D wasn't being charged for holding her HL SIPP while it only contained the WEIF, and that she was free to transfer the SOA payment to her new pension provider if she wanted to.

There was some further correspondence between Miss D and our investigator. Miss D said we, like HL, had fundamentally misunderstood the SOA payment. She pointed out that the FCA itself described the SOA as providing "redress" to investors and that the scheme website itself talks about when "compensation" will be paid. She provided evidence of another pension provider who had made the SOA payments to clients' cash accounts outside of SIPPs, and confirmed that if that payment was then put back into a pension it would be treated as a pension contribution. Miss D reiterated that because she uses her full annual pension contribution allowances she may be subject to penalties from HMRC, which she thinks HL should be responsible for.

The investigator wasn't persuaded to change his mind. He said he still felt HL had reasonably treated the SOA payment as a capital distribution, and had written to Miss D before making the payment to let her know it would do so. He said he'd not seen evidence to confirm that HMRC would treat the payment as a pension contribution towards Miss D's annual allowance. He asked for Miss D to provide any evidence she'd received from HMRC about this, and said Miss D could complain in future if the tax position changed.

Miss D remained dissatisfied and asked for an ombudsman to decide the matter.

I issued a provisional decision in which I said:

> Firstly I'd like to note that I've summarised the evidence and arguments provided – but I can confirm I've read and considered everything Miss D has sent in detail. The purpose of my decision isn't to address each and every point raised, but to give my conclusions about what I consider to be fair and reasonable in the circumstances of this complaint, and my reasons for reaching those conclusions.
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> I'd also like to be clear that it isn't my role to say whether the SOA payment was a capital distribution or a compensation payment – or whether or not it should be treated as a pension contribution to Miss D's SIPP. That's a matter for HMRC, and for Miss D's individual tax affairs. What I need to do is assess whether HL acted fairly and reasonably in the way it processed Miss D's SOA payment. In other words whether it was reasonable for HL to take the actions it did. I've done this also mindful of HL's obligations under the FCA's Principles for Business, in particular its requirement under Prin 6 to have regard for its customers' interests and treat them fairly.
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> HL has leaned heavily on the way Link itself described the SOA payment. And while I acknowledge that as Miss D points out many parties (including Link) have variously referred to the payment as "compensation" and "redress" – I've also taken into account the scheme website which says that payments will be received *"in the same way as they have previously received capital distribution payments"* and that SOA payments *"will be treated as capital distributions from the fund"*.
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> This reflects the fact that while the SOA was proposed and funded by Link and its related entities, the mechanism by which it was to be paid was by funds being paid into the WEIF itself, and from there distributed to investors.
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> So on one hand I think it's eminently reasonable for HL to have treated the SOA payments in the way that Link – the people ultimately making the payment – said they were to be treated. And which reflected the mechanics of the means of payment.
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> But Link are an ACD, not a pension scheme administrator. I would expect HL to consider all the information available in deciding if this payment was a pension contribution to Miss D's SIPP or not. And I think there is some evidence that characterising this as a fund distribution is potentially simplistic. In summary:
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> • The payment was to be made in return for investors releasing Link from any claims relating to the management of the WEIF.
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> • The SOA was described as a "settlement".
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> • The bulk of the money used to make the SOA payments appears to have come from Link and its related entities, rather than from the investment assets of the WEIF itself (although a portion of it was made up of the residual WEIF holdings).

In support of the interpretation of the payment as a capital distribution, in the FCA's explanation of how it arrived at its view of the loss suffered by investors (which it considered Link ought to compensate, albeit the SOA was ultimately made with no admission of liability) it said it arrived at the figure by reference to the price achieved for the sale of assets held within the WEIF between November 2018 and the suspension of the fund. This could be construed as effectively a re-pricing of the value of the units in the fund and the SOA payment therefore a distribution of the corrected capital value of Miss D's units.

So I find that there are compelling reasons to draw either interpretation here. And without a more definitive steer (for example commentary from HMRC) I don't consider there's enough persuasive evidence to say it was unfair or unreasonable for HL to treat the SOA payment as a capital distribution.

I think this is supported by the related aspect of Miss D's complaint which concerns the fact HL paid the SOA payment directly into her SIPP. I say this because, whether it considered the payment a capital distribution or a compensation payment, I don't think it was unreasonable for HL to credit it directly to Miss D's pension.

Firstly, doing so would only be likely to cause Miss D harm if the payment was to be treated as a relievable pension contribution (and even then, it's not certain Miss D would actually be worse off in any way). Again, to be clear I am not saying how I think the payment should or would have been treated for the purposes of Miss D's pension. But I've had regard for HMRC's pensions tax manual – in particular PTM044100. This guidance for pension scheme administrators talks about *"compensation that qualifies as a pension contribution"*.

Of note, the guidance says that compensation paid into a pension *"could"* be a relievable pension contribution – indicative that there are circumstances where it wouldn't be. It goes on to give an example of when it wouldn't.

The guidance also contemplates a scenario where *"the person paying the compensation is required or otherwise decides to make the payment directly into the individual's pension saving and, in either case, the individual had no choice in the decision"*.

So I find that another factor for HL to weigh up was that even if the SOA payment was compensation, it may not be treated as a contribution. And also, that there can be occasions when a compensation payment is made directly into a pension, without the pension beneficiary getting a say in the matter.

This latter point I think is a reasonable one more broadly in these circumstances. Whatever form the SOA payment was to be treated as having, it was made as a result of losses to Miss D's investment in the WEIF, which was held in her SIPP. The payment was made by way of a payment *from* the WEIF itself, inside Miss D's SIPP. Even if it were a payment of compensation, it was to compensate for losses suffered by Miss D's SIPP, not by Miss D more generally. The position she'd have been in had things gone differently with the WEIF would have been to have more money in her pension, not more money in her ISA or non-pension cash accounts. So I don't think it's fundamentally unreasonable for any compensation to be paid back into that pension – which again the HMRC guidance provides for.

At this point I'll briefly note that, like our investigator, I'm satisfied Miss D can move that money to a different pension provider and isn't being charged for her HL SIPP, and so I don't think she's being disadvantaged in terms of being unable to reinvest that

money in her pension the way she'd like to.

Making a payment that *is* a relievable pension contribution directly into Miss D's pension could, as she's rightly pointed out, have implications for her overall tax position and annual pension contribution allowances. But at this point Miss D hasn't given any evidence of a likely tax bill or penalty, and I'm not currently persuaded that she's likely to have lost out as a result of any failing on HL's part. I also note that HL wrote to Miss D some weeks before making the SOA payment to say it would be made in the same way as previous capital distributions – i.e. into Miss D's SIPP.

Finally, I've considered that were HL to have made the SOA payment outside Miss D's SIPP, and the payment was, in fact, a capital distribution from a fund in her pension (which, to reiterate, is not a finding I'm making in this decision) then there is a risk HL could have been seen to remove money from Miss D's pension where, as she's not yet able to draw down that pension, she and HL aren't allowed to do so. This is commonly known as "pension liberation". This could result in financial consequences for both HL and Miss D. I also say this mindful that HL, I understand, has significant numbers of clients who held the WEIF within SIPPs.

To summarise, acknowledging the conflicting and incomplete nature of a lot of the information about how the SOA payment would be treated when made to someone holding the WEIF in a pension, as I see it the situation for HL when it received the SOA payment for Miss D was:

- The payment might be a capital distribution, or it might be compensation.

- If it was a capital distribution, it would go into Miss D's SIPP and wouldn't be a pension contribution.

- If it was compensation, it could still go into Miss D's SIPP and may or may not be a pension contribution.

- If it was a capital distribution and HL paid it outside Miss D's SIPP, it could constitute pension liberation.

- HL had many clients with WEIF holdings in SIPPs.

Taking all this into account, I'm not currently persuaded it was unfair or unreasonable for HL to pay the SOA payment into Miss D's SIPP. The implications of how HMRC treat that payment for the purposes of Miss D's individual tax position are not known, but at this stage I've not seen any evidence to suggest Miss D has been caused a loss, or material distress or inconvenience, by unfair treatment on the part of HL.

HL didn't have anything to add to my provisional decision. Miss D responded to say she didn't agree with my findings. She said I'd failed to determine the difference between a redress payment and a capital repayment. She said the terms of the SOA were based on redress and that I was materially wrong in my assessment. She said I'd failed to properly interrogate HL's evidence and arguments.

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.

As neither party has provided material new evidence or arguments in response to my

provisional decision, I see no reason to depart from the findings and conclusions I reached there. I therefore make those same findings and conclusions here and make them final.

Miss D has said she thinks I've erred in my analysis, but not explained why. I remain of the view I reached in my provisional decision for the same reasons. To reiterate, I have made no finding on whether the SOA payment was in fact a capital distribution or a redress payment – what I needed to consider was whether it was fair and reasonable in the circumstances for HL to process the payment the way it did. And based on the evidence and information available to HL I remain satisfied that it has treated Miss D fairly.

As I noted in my provisional decision, even if HL was wrong to designate the SOA payment as a capital distribution, and it is as a matter of fact a payment of compensation, for the reasons in my provisional decision I think it would still have been open to HL to make the payment directly to Miss D's pension, and I don't think it was unfair or unreasonable in these particular circumstances for it to have done so. It follows that I don't think it would be fair to require HL to pay Miss D anything for the consequences of making the payment into her SIPP. And I would again note that neither party has provided persuasive evidence that paying it in this way has or is likely on balance to cause Miss D harm in any event.

My final decision

For the reasons I have given here and in my provisional decision, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 25 April 2025.

Luke Gordon
Ombudsman