

complaint

Mr L complains that Hargreaves Lansdown Advisory Services Limited (“Hargreaves Lansdown”) will not allow him to sell unlisted shares in his Self Invested Personal Pension (‘SIPP’). It says that it can only allow a sale if ‘fair value’ for the transaction has been established as required by Her Majesty’s Revenue and Customs (‘HMRC’). But as the shares are unlisted establishing fair value is problematic. Mr L disagrees and says it should be possible to sell the shares on a matched bargain basis.

background

Mr L has a SIPP with Hargreaves Lansdown. In 2013, shares in a particular company were delisted having previously been listed on AIM when Mr L first invested in the shares.

Mr L now wishes to sell these shares. But Hargreaves Lansdown is concerned that as there is no ‘open’ market it cannot be certain that the price at which the shares might be bought out of Mr L’s SIPP will meet HMRC requirements for the price to be at ‘fair value’ and that the transaction is being conducted at arm’s length.

It is concerned that if it falls foul of HMRC rules, an unauthorised payment charge might be imposed by HMRC.

Mr L initially said that the shares could be sold on a ‘matched bargain’ basis through another trading company (‘trader’). But it now transpires that can only be done if a Hargreaves Lansdown employee takes personal responsibility for the transaction meeting HMRC requirements.

Hargreaves Lansdown is unwilling to facilitate this. Instead, it has suggested Mr L commissions an independent valuation of the shares concerned or, alternatively, transfers his SIPP to another provider who will allow the sale to proceed.

Mr L has declined both options as either would involve him incurring costs which he says are disproportionate to the value of the shares in question.

Mr L complained to this service that Hargreaves Lansdown was being obstructive. He says it is its internal rules that are preventing the sale. He says Hargreaves Lansdown have changed its rules without telling him and has thus denied him the opportunity to realise the value of his shares.

Our adjudicator concluded that Hargreaves Lansdown was not at fault. She said HMRC requires it to certify that transactions such as that which Mr L wishes to proceed with reflect fair value and that the transaction properly reflected the value of the asset being disposed of.

Mr L did not agree. He reiterated that he was being treated unfairly by Hargreaves Lansdown which was being unnecessarily obstructive.

As agreement was not reached the matter has been referred to me.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Mr L has made substantial submissions in support of his complaint. I am grateful for these. His submissions clearly set out the difficult situation he faces and I understand his frustration that he is unable to crystallise the value of a particular investment held in his SIPP.

But I hope Mr L will understand that it is not my intention to address every point he has raised. My decision only addresses those points I consider relevant to the position of Hargreaves Lansdown and whether its reasons for refusing to complete Mr L's sale instructions are valid.

In response to our adjudicator, Mr L raised a number of issues. In particular, his submissions of 5th and 7th December 2018 set out why Mr L feels Hargreaves Lansdown should facilitate his share sale. Mr L also made a number of more general points about pensions and Hargreave Lansdown's obligation to him as its client.

Whilst I have considered all these points, in my view none directly address the fundamental issue underlying Mr L's complaint.

The crux of this matter is about Hargreaves Lansdown's insistence that 'fair value' is established for the share sale to proceed.

I am sorry to disappoint Mr L. But I agree with both our adjudicator and Hargreaves Lansdown that HMRC require Hargreaves Lansdown to be satisfied that the shares are being sold at 'fair value'. Hargreaves Lansdown has no discretion in the matter. It is not, as Mr L has said, a case of Hargreaves Lansdown being obstructive or failing to exercise discretion or amending its own rules in order to prevent the sale.

As has been explained to Mr L, HMRC imposes this requirement on SIPP providers in order to prevent assets (whether shares, property or other assets) being transferred outwith the tax beneficial wrapper of a SIPP without the relevant tax being paid on the transferred assets 'fair value'.

In the same way that income taken from a SIPP is taxed (after any relevant allowances are accounted for) so it is the case with other assets transferred outside the SIPP. Without establishing 'fair value' HMRC is concerned that tax that should be paid is otherwise avoided. Hence the obligation it places on SIPP providers to ensure this does not happen by imposing the 'fair value' requirement.

In his submission of 6th June 2018, Mr L said:

'I would also like to highlight to you that they advertise and encourage, through advertisements, clients to trade in xxxx (my deletion) products. These said xxxx products are heavily invested in shares that are "delisted". Is this a double standard?'

I think Mr L misunderstands this particular issue. Mr L is *directly* invested, through his SIPP in an unlisted share. The xxxx products to which he refers have *underlying* investments in unlisted or delisted shares. It is therefore the wrapper or jacket that can be traded and not the underlying assets held within the jacket or wrapper. So I do not agree that '*double standards*' are being applied by Hargreaves Lansdown.

I appreciate that Mr L says the sale of his shares could be achieved by an employee of Hargreaves Lansdown taking personal responsibility for the transaction given that his trader no longer offers a matched bargain facility to institutions such as Hargreaves Lansdown.

In his submission of 5th December 2018, Mr L said of this proposed course of action:

'From my understanding it appears straight forward. HL to provide (trader) with a named person and authorisation that HL trust them to perform the transaction on my behalf. That named person to do the sale on my behalf via (trader). (Trader) to transfer the funds from the sale to HL. HL to put the funds into my SIPP account. All appears very straight forward and reasonable to me, would you not agree??'

I do not agree this would be a reasonable course of action for Hargreaves Lansdown to endorse. The only circumstance in which I could envisage such an arrangement is if Hargreaves Lansdown *directed* an employee to take personal responsibility.

In my view, given the risks involved for the employee (how would the employee know 'fair value' had been paid for the shares?) this would anyway be an abuse of a responsible employer's obligations to its employees. It cannot be reasonable for a responsible employer to direct one of its employees to take on the obligations rightly the responsibility of the employer.

Apart from this and all other such considerations apart, this course of action would still not address the fundamental issue that such transactions must be at 'fair value'.

I therefore understand why Hargreaves Lansdown has reasonably declined to go down this route.

I have noted that Mr L says he also held the same company's shares with another provider and that he sold those shares without difficulty. Consequently, Mr L says Hargreaves Lansdown should do the same.

I do not agree. I do not know whether the shares with another provider were held in a pension wrapper such as a SIPP. If not, then different, less onerous restrictions would have applied in selling the shares.

But notwithstanding that, the circumstances under which the other provider sold the shares are a matter for it. It is not fair or reasonable that Hargreaves Lansdown should be bound by the actions of another provider.

Nor do I accept Mr L's assertion that Hargreaves Lansdown has changed its dealing rules since the shares were delisted in 2013. Rather, it is Mr L's preferred trader that has changed its rules. In 2013, it offered a dealing facility to Hargreaves Lansdown for the shares in question.

I understand though that it no longer offers this facility. I cannot see why Hargreaves Lansdown should therefore be held to account for another business, over which it has no control, changing its rules.

I appreciate this all leaves Mr L in an unsatisfactory position. He remains invested in illiquid shares which if he is to sell he must first establish that he is doing so at fair value. Given

there is no 'open market', it is more likely than not that this would require him to commission an independent valuation, meeting the criteria for such as set out on HMRC's website.

But this would be disproportionately expensive when compared to the apparently modest value Mr L says the shares are worth.

So I accept that there is something of an impasse between Mr L and Hargreaves Lansdown. But given that I will not direct Hargreaves Lansdown to avoid or ignore its regulatory obligation to satisfy itself that fair value has been achieved if the sale is to proceed, Mr L's options are somewhat constrained.

I have noted that on the website of the company's shares in question, there is a facility for shareholders to see the prices at which the most recent transactions in the company's shares have completed. I do not know those prices or the date and details of any such transactions.

I am aware that some contact has been made between the company, Mr L and his preferred trader. If not already discussed and discounted during these exchanges, it might be worth Mr L asking for such details and then providing either Hargreaves Lansdown and/or HMRC with such to see if 'fair value' can be established to the satisfaction of Hargreaves Lansdown and/or HMRC that way.

But I cannot anticipate how likely that is to succeed in resolving this difficult situation.

For the reasons set out above, I do not find Hargreaves Lansdown at fault for refusing to sanction the transaction Mr L wishes to complete. It follows that I do not uphold Mr L's complaint.

my final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 18 May 2019.

Terry Connor
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