

The complaint

Mr M complains that Hargreaves Lansdown Asset Management Limited (HLAM) did not act on his instructions as he wished and he lost out.

What happened

Mr M said he had three pensions with HLAM. A Self-Invested Personal Pension (SIPP) and SIPP income drawdown and a Group SIPP. They were all under the same client reference.

He said that in 2014 and 2015 he requested tax free amounts from his drawdown pension. In September 2020 he transferred around £48,000 into his SIPP. He then called HLAM on 15 October 2020 to request a payment of £12,000 tax free cash from the SIPP being 25% of the amount he had transferred in and which he thought would be tax free. However the agent said it could only make gross income requests. He assumed he would be taxed at 20% and asked for £16,000 thinking he would get £12,000 net. However he actually received £9,440 after tax which was a rate of 41% which HLAM said was in accordance with the tax code. He understood this was because it was taken from his drawdown account rather than from the new transfer in. Mr M said he was a vulnerable customer and felt that a professional organisation such as HLAM should have helped him to navigate the system correctly. He was clear that he expected the amount to be tax free and to be guided in the way to achieve that.

HLAM said they had completed the request correctly and they were not responsible for his personal tax position. It seemed Mr M had not understood that to access the 25% tax free from the transfer in it needed to be moved into an account that would enable that. In the past he have moved part of his SIPP into drawdown to take 25% tax free cash in 2014 and 2015.

It said in the telephone call with Mr M he specifically requested the payment from his drawdown account. This meant he was taking funds as taxable income and it was required to use the tax code provided by HMRC. With hindsight it believed that Mr M may have intended to request a further movement from either his SIPP or Group SIPP into his drawdown account and then to take up to 25% tax free. But that wasn't what he had asked them to do. They accepted they should have explained things better and explained the difference between requesting income from his drawdown account vs moving money into drawdown and then taking the 25% tax free cash. It said it understood he had then contacted HMRC and felt this must have caused inconvenience. It offered £150 compensation and later increased this to £250.

My provisional decision

I issued a provisional decision and said the following.

In order to make an award for financial loss or distress and inconvenience I needed to decide if HLAM did anything wrong.

For the reasons set out below my provisional view was that it did something wrong. I said that for the following reasons:-

1. HLAM is regulated by the Financial Conduct Authority (FCA). The FCA sets out various principles for business. These include:

(a) Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly and

(b) Principle 7 - a firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading

2. I didn't think HLAM complied with those requirements in its dealings with Mr M. I said that because I had listened to the call with Mr M from October 2020 where he requested a lump sum payment. Mr M opened the call by saying

'I want to make a withdrawal from one of my accounts'.

After the agent completes security he then says, *' a payment from your drawdown account was it sir?'*

The agent didn't go back to the original request to seek clarification about it in terms of which account and why. I thought that the agent made an assumption that payment would be coming from the drawdown account and requested confirmation. Mr M says he wants to drawdown £12,000 as a lump sum. The agent then starts to discuss tax and whether this is net or gross. At this point Mr M reminds HLAM that he gets confused between net and gross and due to a health condition has problems with numbers and short-term memory. While the agent then explains the difference he didn't take this as a cue to step back and ask broader questions to ensure he has fully understood the request Mr M wants to make.

Mr M clarifies that he needs £12,000 net and refers back to the fact he had two separate strains of income one from his drawdown and another from his SIPP. He is already paying tax on the drawdown but didn't know how much. The agent asks which account and Mr M repeats that there are two. But the agent tells Mr M he can only have one SIPP account. Mr M says it is quite simple he is seeking £12,000 net and that is what he has to get in the way that is most beneficial for tax purposes. He repeats that he doesn't want complication.

It is clear that there is confusion and Mr M repeats information about his health and the impact it has on him. But the agent does not take this as a second cue to step back and double check instead continuing to pursue the issue of net and gross. The agent quite reasonably makes clear that HLAM cannot calculate how much is needed gross to achieve the net payment. After Mr M confirms he pays tax at 25% he says he would need to take £16,000 and this is what the agent requests.

I think that the agent might reasonably have confirmed to Mr M which account he wished to take the money from and his options and how it might have been possible to take money tax free. But he doesn't explore or recheck what Mr M wants.

3. In its reply HLAM said

Mr M called our Helpdesk on the 15 October 2020 and requested an income payment from his HL SIPP Drawdown account. We are satisfied that we processed his instruction correctly.....

But I didn't agree, having listened to the call, this was not correct as what he initially asked was money from one of his accounts and the agent didn't seek to clarify which one. Instead saying he can only have one SIPP and making an assumption about how he wanted to take money.

HLAM said ... Mr M held a number of accounts with HLAM when he called on the 15 October 2020. As such, he had the option of requesting an income from his crystallised HL SIPP Drawdown account which is subject to income tax or he could crystallise funds held in his uncrystallised SIPP or Group SIPP, providing him access to 25% tax free cash.

This was not explained to Mr M on the call despite him being clear he had a number of strains of income and wanted to take money in the most tax efficient way.

4. HLAM accepts that it should have explained things more clearly. Had it done so on balance I think it is most likely the request would have proceeded in the manner Mr M wished because he was clear his aim was to take money tax efficiently.

5. In reaching this view I noted in passing that the FCA has issued guidance for firms dealing with vulnerable customers. It was my view that Mr M was vulnerable due to the health condition he disclosed on the call. However this guidance was issued in 2021 and post-dates these events so I have not applied that guidance in reaching my view.

6. I noted also that HLAM is execution only and was not offering Mr M financial advice about his request. I didn't think guiding him through his options for taking tax free cash was financial advice and was instead provision of information.

7. However notwithstanding this I thought Mr M gave enough indications that he had difficulties and it does not seem that HLAM took steps to ensure it clearly understood what he wanted or to guide him through his choices. I think Principle 7 indicates HLAM should have had regard to his information needs and explaining things in a manner that was clear and not misleading.

8. The investigator asked HLAM what reasonable adjustments it made for Mr M's health issues. It showed a note from its records in 2018 where Mr M disclosed his illness. But it notes he said he felt he would make a full recovery and Mr M did not ask it to make any allowance following this. It made a note on the system so that its staff would be aware when he called. It said Mr M did not tell them it impaired his communication or management of his investments and therefore its response was reasonable and proportionate at the time. But I didn't agree, while that might have been appropriate in 2018 the circumstances were different at the time of the call. Mr M made further specific disclosures about his condition, during the telephone call and the impact these had on him particularly in relation to memory and numbers. So I think it was clear that the position had changed from that disclosed in 2018. HLAM made no attempt to react to the disclosures in the light of what it was being told.

9. But even if I was wrong it was clear that the agent made assumptions and did not check which account or pick up on Mr M's request to take money from one of his accounts or as he later calls them strains and in a tax efficient manner. There was no exploration of the approach which Mr M said he wanted.

10. It also came to my attention that Mr M had made an application in September 2020 to withdraw tax free cash associated with the transfer in (of around £48,000). HLAM says that due to an administrative error this was not processed. (In that application Mr M asked for £15,000). His covering letter with this application was clear that he wanted to take tax free cash associated with the transfer in. I said that because he referred to the transfer in of the policy from another provider in his letter and then said

'I have also requested that I drawdown the sum of £15,000 as part of my tax free 25% lump sum payment from this policy'.

Had that been processed then Mr M would not have needed to make the further call that he did and which resulted in him taking funds subject to tax.

In summary I thought that HLAM failed to make reasonable adjustments for the health challenges that Mr M clearly disclosed on the call and on more than one occasion. I thought it failed to comply with principle 6 and 7 because of that. I didn't think the adviser implemented his request but instead made an assumption without asking further questions or fully explaining Mr M's options (something HLAM accepts). Further its failure to process the application made in September 2020 meant that Mr M then had to call in October which resulted in the confusion.

As I concluded that HLAM made a mistake I could make an award for financial loss and distress and inconvenience.

In terms of financial loss my objective was to put Mr M as closely as possible back into the position he would have been in but for the mistake.

I thought the impact was that Mr M has paid more tax than he would have, had it been managed as he wished. However Mr M was still able to withdraw the tax-free lump sum that he originally wished to take, so he has not lost out in that respect. So I thought his loss was either:-

1. paying tax on money sooner than might otherwise have been the case or
2. paying tax at a higher rate due to the funds being withdrawn in a lump sum manner that pushed him into higher rate taxation or
3. possibly paying tax that he might never have had to pay because he didn't withdraw the funds ever.

I was required to make a decision that is fair and reasonable. On balance having considered each of these options it seemed clear that Mr M wished to avoid paying more tax. So I thought it was fair to say he had paid more tax than would have been the case and sooner. For that reason I proposed that HLAM should pay Mr M the difference between the amount of income tax he was required to pay on his withdrawal and the amount that would have been paid had income tax been applied at the lowest basic rate.

I noted that Mr M lives in an area of the United Kingdom where income tax is paid at a different rate to that in England. HLAM will need to work with Mr M to work out the difference between basic rate and the rate of income tax he actually paid.

Further HLAM should pay simple interest on that amount at the rate of 8% per annum from the date of payment of the tax by Mr M to the date of HLAM's payment to Mr M pursuant to this decision.

Such payment should be made directly to Mr M rather than into his SIPP accounts.

I considered an award for distress and inconvenience. Such an award was not intended to punish HLAM but to reflect the impact of these events on Mr M. I think the impact has been considerable. I say that because Mr M is clearly frustrated that his request was not acted on in the manner he hoped and despite being clear that he had difficulties due to a health condition. Further he has been put to trouble in making this complaint and it is only through making it that the failure of the September 2020 application has emerged. For those reasons I proposed an award of £500 was fair and reasonable in all the circumstances. To the extent that HLAM had already paid £250 it need only pay a further £250.

I proposed to uphold this complaint and direct that Hargreaves Lansdown Asset Management Limited should pay Mr M the amounts I proposed for financial loss and distress and inconvenience.

HLAM said that at the very start of the phone call, Mr M clearly refers to his drawdown account which it believed informed the course that the call took, focussing on the drawdown account, although it accepted that Mr M did then mention his other accounts later in the call. Additionally, it was of the opinion, that once made aware of Mr M's issues the call handler did adapt his style, modifying the pace and tone of the call and trying to provide Mr M with reassurance.

Mr M said:-

- HLAM have referred to him making two withdrawals in 2014 and 2015, whereas he said he made one. The second was returned.
- Between 2017 and 2019 he undertook to amalgamate several Employer pension funds which were accrued over his working life, with HLAM, including the fund of £48K.
- By early 2019, the sum of his pension funds, in two HLAM accounts, Group SIPP and SIPP was in the region of £120,000.
- In September 2018 he suffered an illness
- He requested a withdrawal of £15,000 from his HLAM pension fund as part of his tax-free allowance. This was never acknowledged, and no reason for refusal given.
- Shortly after, he made a second request to withdraw £12K tax-free as part of his tax-free allowance. This amount was subsequently raised, after communication with an HLAM agent, (that telephone call) to £16,000.
- HLAM would not advise on tax liabilities during this phone call.
- HLAM stated during that phone call that he could only have one SIPP account, despite having two in his name.
- Both figures, the £12,000 and £16,000 were within his tax-free allowance of two pension funds, well below the 25% tax-free threshold limit of the aggregate total.
- On completion of this transaction, HLAM delivered £9,440.00 to his bank account advising that the remainder was paid to the Inland Revenue as tax due on his pension withdrawal.
- HLAM had later admitted that they did not account for his fund transfer (value £48,000) when dealing with these requests for withdrawal of monies.
- As is typical HLAM have used references to Pension Law and procedures in their communications where a lay person would find difficulty in understanding at best, e.g. one of the first things HLAM inferred was that he was proficient in matters 'pension' throughout refutation of my complaint. He considered himself as defined as a 'reasonable man on the upper floor of the Clapham omnibus'. It was HLAM who are professionally qualified in matters pension, taxation and asset management.
- HLAM had made offers of compensation, in communications during this complaint.

He had refused all offers to date.

- He requested that any calculations, should be carried out by an independent third party to be paid for by HLAM as it is they, who made the mistake. He no longer had dealings with HLAM and no longer trusted them.
- HLAM were a self-professed market leader in Asset Management. They exact fees for this service, and as such they owe a duty of care, competence, and proficiency to investors/clients. In this instance, they appear to have forgotten these tenets.
- To define the amount of compensation, HLAM should proffer proof of any previous payment made to him, otherwise their statement is false. He left the final amount up to me, but asked that I should be aware that he had been inconvenienced and worked an additional two years to make good the deficit in his finances caused by this situation.
- He was an investor, who may be considered a lay person in global matters of finance and pension law. Two withdrawals, plus one failed; five investment transactions: over a period of nine years, did not make him an expert.
- The monies in his award have not yet been quantified. His contention was that this should be the balance of the £16K tax-free withdrawal. These are the monies that were erroneously paid to the Inland Revenue, i.e. £6,560.00 (He was taxed at 41% - Scottish tax system). The interest calculation he remained unsure of the method of computation; either compound over the time of the claim, or simple based on the capital sum, all by your good self.
- In terms of an award for inconvenience and distress, again, only the Ombudsman can fairly set the amount, in addition however, he would like to see a letter of apology, complete with explanation of the reasons why they acted as they did, published with my report on my web page.

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.

I have considered the responses to my provisional decision. I note what HLAM have said but do not agree for the reasons given in my provisional decision. Further I would note that even if I am wrong and the adviser, did as they say, modify his style pace and tone I think more was needed to draw out what Mr M wanted. Further HLAM accepts that it should have explained the options better, but didn't.

With respect to the comments made by Mr M I have noted these but have not responded to them all in detail as they do not all affect the outcome of my decision.

I am not able to direct an independent third party makes the calculation of loss, but I don't think there is a need. HLAM will need to provide Mr M with details of its calculation so that it can be checked, if needed. I do not need to put HLAM to proof of the previous withdrawals as they do not affect my conclusion in this complaint.

HLAM has already accepted that it could have handled the process better than it did. My final decision will be published so there is in my view no need for a further letter of apology. It would not in any event be published on the website for this service but be a private matter between HLAM and Mr M.

I note Mr M's comments about the interest payment but this service makes awards of simple interest and this is the approach I have taken.

I note his comment about his loss but as he is still able to take the tax-free cash I think the award I proposed is fair and reasonable for the reasons set out in my provisional decision.

Putting things right

In order to put things right HLAM should do the following:-

1. HLAM should pay Mr M the difference between the amount of income tax he was required to pay on his withdrawal and the amount that would have been paid had income tax been applied at the lowest basic rate that would have been applicable to him at the time. HLAM will need to work with Mr M to work out the difference between the basic rate of income tax that should have been applied and the rate of income tax he actually paid.
- HLAM should pay simple interest on that amount at the rate of 8% per annum simple from the date of payment of the tax by Mr M or, deduction by HLAM if sooner, to the date of HLAM's payment to Mr M pursuant to this decision.
- HLAM should pay Mr M a total of £500 for distress and inconvenience but to the extent that it has already paid £250 it need only pay a further £250.

Such payments should be made directly to Mr M rather than into his SIPP accounts.

If HLAM believes it should deduct tax from the amount paid in interest it should provide Mr M with a certificate for such deduction suitable for submission to HMRC.

HLAM shall provide Mr M with a copy of its detailed calculation in a form that will enable him to understand and check its calculation of the amount payable under this direction.

My final decision

I uphold this complaint.

I direct that Hargreaves Lansdown Asset Management Limited must within 30 days of this service notifying it that Mr M has accepted my decision, calculate and pay the amount set out above in the section '*putting things right*' for financial loss and distress and inconvenience and take the actions regarding the provision of information set out in that section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 July 2023.

Colette Bewley
Ombudsman