

The complaint

Mr C complains that Hargreaves Lansdown Asset Management Limited (“HLAM”) didn’t act on his instructions to sell an investment trust held in his account. The investment trust was later wound up and he wants compensation for the loss he says he’s made, plus compensation for the distress he’s been caused.

What happened

Mr C phoned HLAM in November 2019 to ask what he needed to do to lodge and sell a certificated holding in his name, which I’ll refer to as “J”. It was agreed that HLAM would send him the forms he needed to lodge the certificate.

Mr C sent HLAM a secure message on 29 February 2020 to tell it he wanted to transfer half of J shares to his wife’s account and then to sell both holdings. He says he realised, after J had been wound up, that his instructions hadn’t been carried out.

HLAM said it had explained to Mr C that it could only accept his sale instructions by phone, post, or online once J shares had been lodged in his account and the transfer to his wife had taken place. It said it had sent him quarterly valuations which showed J shares were still held in his account. HLAM said that Mr C told it he wanted to transfer and sell the shares when he sent in the paperwork to lodge them. It apologised that it didn’t reply at that point to make it clear it couldn’t accept his instructions until J shares had been successfully lodged. It credited his account with £50 by way of an apology.

Our investigator didn’t recommend that the complaint should be upheld. He concluded that HLAM had acted in line with the agreed terms and conditions and that it had provided Mr C with enough information to explain what he needed to do.

Mr C didn’t agree. He said, in summary, that:

- He didn’t receive the secure messages HLAM claims to have sent him. So he couldn’t comply with its requirements.
- In his secure message to HLAM dated 29 February 2020, he instructed it to sell J shares. HLAM told him he could sell J shares “online” and secure messaging is considered to be “online”.
- HLAM knew he wanted to sell J shares; it should have contacted him if it couldn’t act on his instructions.

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 arrived at the same conclusion as the investigator for the following reasons:

Mr C first contacted HLAM by phone on 28 November 2019 to ask how he could sell J shares for which he held a share certificate in his name. I've listened to that call, and I'm satisfied that HLAM made it clear that Mr C could give instructions to sell J shares once they had been successfully lodged in his account. Mr C acknowledged this as he asked how long it would take for the shares to be lodged. HLAM told him, "*We'll let you know once it's in the account and then you can place your trade*". I think this made it reasonably clear that HLAM wouldn't accept Mr C's sale, or transfer, instructions until J shares had been lodged in his account.

I find this was also set out in the secure message sent to Mr C on the same day. This said:

"Please be aware that if you intend to sell or transfer your holding to another account, you cannot do so until the shares have successfully been transferred into the name of Hargreaves Lansdown Nominees Limited. This is usually approximately 3 business days from receipt of a signed Crest Transfer form, although can sometimes take longer. Once the shares have been lodged into the account you can then go online to sell the shares at a low cost of £11.95 if you wish. Alternatively the shares could be sold over the telephone at a charge of 1% (minimum £20, maximum £50)."

I'm satisfied this made it clear that Mr C would need to give instructions to sell or transfer J shares after they had been successfully lodged in his account.

Mr C says he didn't receive this secure message. But HLAM has provided a copy of Mr C's reply to the message, thanking HLAM and saying he would progress things. So I'm satisfied that he did receive it.

I find that HLAM's requirements about sale instructions are also set out in the agreed account terms and conditions. These say:

"You may only sell investments held in your Account". (A14)

So, until the shares were lodged in his account, Mr C couldn't give a valid sale instruction.

The terms also say:

"Investment instructions may be given by telephone, post and (in respect of certain investments) via the dealing section of the HL Website or HL Mobile Application." (A11)

So this doesn't say that instructions sent via a secure message would or could be accepted.

Mr C says that he was told he could give instructions "online", and that "online" would generally include a secure messaging system. I think it was made reasonably clear – during the phone call, in the secure message, and in the terms and conditions – that "online" in this instance meant via HLAM's online dealing application, rather than by sending a message.

On 29 February 2020, Mr C sent a secure message to HLAM asking it to transfer 50% of J shares to his wife's account then to sell both holdings and send the proceeds to their joint bank account. I've already set out above why I think HLAM had made it clear what Mr C needed to do and why HLAM wouldn't accept this instruction by secure message. HLAM replied to Mr C's message on 3 March 2020 explaining why it couldn't act on the transfer instruction – it needed specific information about how many shares to transfer, confirmation that the transfer was a gift, and the name and account number to transfer the shares to. And that the sale orders had to be given by him, and by the recipient of the shares, either by phone or online in their accounts.

Mr C says he didn't receive this message. He sent us a screenshot showing the messages he has received. But HLAM's told us that its messages are archived after two years, although they can be restored if Mr C wants to see them. HLAM's provided copies of all its messages, and I'm satisfied the 3 March 2020 message was delivered to Mr C.

Mr C says he didn't realise J shares hadn't been sold until he received a lump sum after the company had been wound up in or around March 2021. And he complained to HLAM in January 2022. Whilst I appreciate it's not always easy to keep abreast of account transactions, it was Mr C's responsibility to check his account. He didn't receive a contract note for a sale transaction and he didn't receive the expected sale proceeds. Had he checked his account, he may have been able to resolve matters before the share price fell and J was wound up. J shares remained in his account, and this was reflected in the quarterly reports he received. Whilst Mr C doesn't think this is relevant, I think it does show he reasonably should've realised at a much earlier date that his instructions hadn't been actioned.

I do appreciate Mr C wouldn't have been familiar with HLAM's procedures or how to transfer and sell his certificated holding. But, when he contacted HLAM for guidance, I'm satisfied that HLAM gave him a clear enough explanation of what he needed to do.

When Mr C returned the account opening form on 3 January 2020 by post, he said:

"When that is done I wish [J] shares to be lodged in my name, then split in half with my wife owning 50%. Then I wish the shares to be sold."

HLAM replied to request the documentation it needed to fulfil its anti-money laundering obligations. During the investigation of Mr C's complaint, it accepted it could have made it clear in its response that it couldn't accept his transfer and sale instructions until the account had been opened and J shares lodged. And it credited his account with £50 by way of an apology. Whilst it may have been helpful, in HLAM's words, to *"give a more direct response"*, I've already explained why I'm satisfied that HLAM had set out its requirements reasonably clearly in the November phone call and follow up message. So Mr C should've reasonably known HLAM couldn't act on this instruction. I think the £50 gesture of goodwill is fair and reasonable in the circumstances and I don't require HLAM to do anything more.

HLAM told us it can pay the £50 to Mr C if he would prefer it not to remain in his loyalty bonus account. Mr C should contact HLAM direct if he wants to arrange this.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 August 2023.

Elizabeth Dawes
Ombudsman