

The complaint

Mr W complains that Hargreaves Lansdown Asset Management Limited (“HLAM”) didn’t contact him about two corporate actions. He says he missed the opportunity to subscribe for new shares and HLAM didn’t sell his entitlement on his behalf.

What happened

Mr W has an execution only share dealing account with HLAM. He has a holding of overseas shares, which I’ll refer to as “K”. Mr W says K had two rights issues and that HLAM failed to contact him about either of them. He wasn’t given the opportunity to subscribe or sell his rights and HLAM didn’t give him any information until he complained.

HLAM said that in 2021 there were only three days between announcement and closure of the subscription period, which didn’t give it enough time to take and process Mr W’s instructions. And that in 2022 there was no FCA approved prospectus, so Mr W wasn’t able to take up the rights. HLAM said it would have attempted to sell Mr W’s rights, but that the cut-off date for trading set by its market maker was the same day CREST set up the event, so there wasn’t enough time for it to trade. It said it wasn’t responsible for any financial loss Mr W made by not being able to participate in the rights issues.

Our investigator didn’t recommend that the complaint should be upheld. She didn’t think the events were under HLAM’s control so she couldn’t conclude that it was responsible for any loss.

Mr W didn’t agree. He said, in summary, that HLAM should have been ready to act ahead of CREST setting up the event, and it should have contacted more than one market maker. When it failed to sell his rights, it should have let him know.

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.

In 2021, the corporate event would appear to have been a placement, rather than a rights issue. But I’m satisfied that the timescales HLAM referred to in its final response letter were accurate. K allowed existing shareholders a priority period to subscribe for new shares. But the subscription price was announced on 12 April 2021 and the priority subscription period was from 13 to 15 April. I don’t think it was unreasonable that HLAM decided this was too short a time period to enable it to seek, and act on, its clients’ instructions. This is also set out in HLAM’s agreed terms and conditions which say:

“If we receive notice of a Corporate Action relating to a security you hold that will result in a material change to your holding, we will use reasonable endeavours to notify you to obtain your instructions. There may be instances where we are not notified by the company, its registrar, CREST, or our third party data provider of a Corporate Action (or are not provided with sufficient information in time by them) and as a result are unable to pass on the details to you. In such circumstances, we will not be liable to you for any loss suffered.” (A18)

In 2022, K announced a rights issue. HLAM wasn't able to take up the rights on Mr W's behalf because he is a retail client and an FCA approved prospectus wasn't issued in the UK. In the circumstances, I don't find HLAM was obliged to contact Mr W about the rights issue, because he wouldn't have been able to take up the rights. But HLAM was obliged to act in Mr W's best interests, so it looked to sell his rights entitlement. I find this was set out in the agreed terms and conditions which say:

"We may attempt to sell any rights you receive in a corporate action without your prior instruction where (i) you do not have the option to take up those rights (usually where they relate to overseas securities)" (A18)

I'm satisfied from the information that HLAM has provided that it didn't have enough time to sell Mr W's rights. I say this because it was reliant on CREST allocating the rights to it and setting up the event to exercise the rights. And it was reliant on a market maker to trade. The market maker's deadline for trading was the same day the event was set up by CREST, so I find there reasonably wasn't enough time for HLAM to place an order.

Mr W says HLAM should have tried to sell his rights through other market makers, and not just relied on one. HLAM's order execution policy, which forms part of its terms and conditions, lists a number of market makers and it's possible that another market maker may have had a later dealing cut off time. I've considered this carefully. Whilst I can't say for certain what the outcome might have been if HLAM had approached other market makers, I think it's more likely than not that they would have been subject to a similar dealing cut off time. I say this because all the market makers would have been in the same position of wanting to exercise any rights they purchased before K's deadline of 6 June (particularly taking into account the bank holidays on 2 and 3 June). So, even if HLAM had approached other market makers, I'm not persuaded the outcome would have been any different.

I don't find HLAM was obliged to let Mr W know what had happened, although it might have been helpful to explain why it had been unable to sell the rights for him. But, even if Mr W had been made aware of what happened at an earlier date, I don't find the overall outcome would have been any different.

I understand Mr W's strength of feeling on this matter. But I'm satisfied HLAM acted reasonably and in line with its agreed terms. And it couldn't have done anything more, taking into account the short timescales given for both corporate actions.

My final decision

For the reasons I've explained, 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 W to accept or reject my decision before 7 August 2023.

Elizabeth Dawes
Ombudsman