

## **The complaint**

Mr K complains that Hargreaves Lansdown Asset Management Limited (“HLAM”) required him to provide information in relation to his account that it didn’t need and wrongly suspended his account when he didn’t provide the information. He also complains that it spied on him and that if it did require the information it should have informed him at the time he opened his account.

## **What happened**

Mr K opened a fund and share account with HLAM in January 2014. He operated the account without any issues until March 2021 at which time HLAM wrote to him informing him that it needed him to provide his Tax Identification Number (“TIN”). It said this was because its records showed he had an address in the US and as he was a resident of the US it needed this information to complete the Automatic Exchange of Information (“AEIO”) return it had to provide to HMRC.

He responded and stated he hadn’t lived in the US since he was five years old. There was then subsequent email correspondence between HLAM and Mr K about the need for a TIN within which it clarified that he needed to provide this information because he was a US citizen. The matter wasn’t resolved and HLAM treated emails sent by Mr K in October 2021 about the issue as a complaint.

It provided a final response to the complaint by email dated 22 October 2021. It said that on conducting a data review it identified it didn’t hold a TIN for him and that as he was a US citizen having been born in the US and holding a US passport it needed this for reporting purposes for the AEIO return it had to provide. It said it couldn’t remove the suspension of his fund and share account until the information was provided.

There was then ongoing email correspondence between Mr K and HLAM but matters were not resolved and he referred his complaint to our service in January 2023. One of our investigators said that we couldn’t consider the complaint in relation to those issues raised with HLAM and which it responded to in its final response of 22 October 2021 because this hadn’t been referred to us in time. He explained that the rules required the complaint be referred to us within six months of the final response and it hadn’t been and there were no exceptional reasons why the complaint wasn’t referred to us in time.

The investigator did think we could consider the complaint made by Mr K that HLAM had spied on him, as this was raised by him later and was separate to the issues dealt with in the FRL. However, the investigator didn’t uphold the complaint. He said that there was no evidence that HLAM had spied on Mr K and that it had recorded he was a US citizen based on the information he had provided to it.

The investigator said he appreciated the upset caused by the mistake in the initial letter sent to him regarding him being a US resident but as that letter had been the subject of the complaint dealt with by the FRL it wasn’t something he could comment on.

Mr K didn’t agree with the investigator and the matter was referred to me for review. I issued

a provisional decision explaining why I didn't think the complaint should be upheld, the findings from which are set out below.

*I think it is important to make clear what my role is given the arguments that Mr K has made as to us having to investigate everything in relation to his complaint. We are an alternative dispute resolution service and my role is to consider the complaint put forward and the evidence provided by the parties in respect of the complaint and make fair and reasonable findings based on the evidence. I will set out my reasons for the findings I make on what I consider are the central issues in this complaint but I won't be addressing every separate point raised as I am not required to.*

*It is also not for me to gather my own evidence to prove or disprove a party's case, although we will request further evidence from a party if we don't think we can come to a fair and reasonable decision based on the information initially provided. It is also for me to decide what weight to give any evidence that is provided.*

*Having considered the information provided in this complaint I am satisfied I don't need any further information from either party to come to a fair and reasonable decision. I note Mr K has raised various questions that he says need to be answered before a final decision can be made but I don't agree I need answers to the questions he has raised to make a fair and reasonable decision in relation to the complaint he has made.*

*Having considered the information provided by both parties I think Mr K's complaint involves three separate issues as I explain below.*

*Mr K's initial complaint related to HLAM's insistence that he provide a TIN, which he argued he didn't need to provide. This was the subject of HLAM's letter in response of 22 October 2021 and it made clear that was what had been considered – stating "I'm writing further to your secure messages from mid-October in which you expressed your concerns with our request for your US Tax Identification Number (TIN)".*

*Mr K later complained that HLAM had spied on him. This complaint issue arose from HLAM stating in its initial email to Mr K of 30 March 2021 that he had an address in the US between 2018 and 2020 (or later) and was resident in the US. I acknowledge this email was the starting point for the complaint about the need for a TIN but the complaint about spying relates to HLAM obtaining information about Mr K without his consent. This wasn't part of his complaint that HLAM was wrong to request he provide a TIN and isn't something dealt with in its response of 22 October 2021 - its response being limited to addressing the issue of why it had done nothing wrong in requesting a TIN.*

*Mr K also subsequently complained that HLAM had failed to inform him that he needed a TIN when he opened his account. I think it is clear that this is separate to the complaint HLAM responded to in its email of 22 October 2021. The starting point for that complaint is that Mr K wasn't required to provide a TIN in the first place. The starting point for his complaint that HLAM failed to inform him about the need for a TIN when he opened his account in 2014 is the opposite – namely that he was required to provide a TIN and should have been told this. As with the complaint about spying the email of 22 October 2021 doesn't address this issue.*

*Mr K has raised various other points but I am not satisfied that there have been any other distinct complaint issues raised by him with HLAM prior to referral to our service. I will address these three complaint issues in turn.*

The complaint about the need for a TIN

*The rules under which we operate are set out under the Dispute Resolution Rules (DISP) in the Handbook of the regulator, the Financial Conduct Authority. These include rules about what complaint we can and cannot consider, in other words what our jurisdiction is.*

*Before we consider the merits of a complaint we need to be satisfied that we have jurisdiction to do so. There are various jurisdiction rules but in this case it is those relating to the time limits for making the complaint which I think are relevant to this complaint. These rules are set out within DISP 2.8, which I am not going to set out in full. In simple terms one of the time limits, set out in DISP 2.8.2(1)R, means we cannot consider a complaint referred to us more than six months from the date a final response was sent to the complainant.*

*HLAM responded to Mr K's complaint in relation to its insistence he provide a TIN on 22 October 2021, as I have already referred to, within which it said he had to refer his complaint to our service within six months. Mr K referred his complaint to our service in January 2023 – so well outside the six-month period specified in DISP 2.8.2(1)R, which started on 22 October 2021.*

*I note that Mr K argues that the email of 22 October 2021 didn't amount to a final response to his complaint because of the ongoing communication between him and HLAM and the further queries he raised. So it is clear, whilst there are circumstances in which further communications could mean the six-month period didn't start from the date of the final response – such as where a firm indicates its final response is withdrawn – I am not satisfied that there is any basis for finding that the start of the six-month period was later than 22 October 2021 because of subsequent correspondence.*

*HLAM made clear in all its subsequent correspondence that Mr K needed to refer his complaint to our service within six-months of the date of the letter of 22 October 2021. Mr K can have been under no illusion of the importance of complying with that time limit but he chose to ignore it on the basis that as he was still raising issues and corresponding with HLAM the six-months didn't apply to him.*

*There is nothing in the rules which supports this and it is the rules that I have to abide by. I note his reference to the need to make all efforts to settle disputes before taking legal action. This is relevant to taking civil proceedings but as I have said, we are an alternative dispute resolution service and the principle he is referring to has no bearing on the time limits set out in DISP.*

*I note that Mr K has also sought to argue that the email of 22 October 2021 didn't amount to a final response under the rules set out in DISP for various reasons. He has suggested that a message sent through a secure messaging service can't amount to a final response but there is nothing in the rules that supports this. This was the means by which Mr K had been corresponding with HLAM from the outset after he first received the email of 30 March 2021 informing him of the need for a TIN. There is no question that he received it as he responded on 13 April 2021 stating he hadn't lived in the US since he was five years old and then continued to correspond with HLAM through the secure messaging service throughout.*

*Mr K has also argued that the email of 22 October 2021 didn't amount to a FRL because it didn't inform him that he might be able to take civil action and didn't attach our leaflet. However, the purpose of the rules relating to the final response is to make complainants aware; of the outcome of the complaint; that they can contact us if they don't agree with the outcome and how they can do so; that there is a time limit for contacting us and what that is and whether the business will consent if the complaint is referred late.*

*I am satisfied that the email of 22 October 2022 fulfilled the purpose of the rules relating to the provision of a final response so far as our service is concerned. It didn't need to make*

reference to the possibility of Mr K taking civil action for him to be aware of his rights so far as our service is concerned. The provision of a link to our web address for our leaflet also meant Mr K had access to this and could consider the information in it.

*In the circumstances I am satisfied that the complaint about HLAM's request for a TIN and the suspension of his fund and share account has been made too late as it was referred to us more than six months from the date HLAM emailed Mr K with its final response to his complaint.*

*The rules do allow us to consider a complaint made outside the six-month time limit but only where the respondent business consents - and HLAM hasn't consented - or where there are exceptional reasons why it wasn't referred within time.*

*I have considered whether there were any exceptional reasons for this complaint not being referred in time but am not satisfied there were. The reasons have to be exceptional, in that they must have prevented a complaint being referred in time. The example of exceptional circumstances given under DISP 2.8.4G is where the complainant is or was incapacitated. I note that Mr K has referred to significant health issues he was suffering with at the time and continues to suffer with. I have no doubt that his health had a significant impact on him but I am not satisfied this prevented him referring his complaint to our service. I say this because in the six months following the email of 22 October 2021 Mr K had ongoing email communication with HLAM, making various points and responding to its emails in turn.*

*His ability to carry on emailing and arguing with HLAM over the six-months following the final response of 22 October 2021 makes it clear there were no exceptional reasons his complaint wasn't referred in time. I note that Mr K has said that putting a detailed case to our service was protracted and stressful. However, he didn't need to provide a detailed case to us when he first referred his complaint. I think it is also clear from his emails that it wasn't a lack of ability to refer his complaint but his refusal to accept he had to refer his complaint within six-months of the final response of 22 October 2021 that was the reason he didn't refer the complaint in time.*

*I am satisfied that his complaint about HLAM requiring him to provide a TIN was made too late and because of this we cannot consider the merits of that complaint.*

The complaint about HLAM spying

*From what Mr K has said his complaint about spying isn't that HLAM physically spied on him but relates to it accessing information about him without his consent. He has argued that whether HLAM has the ability to search for, or hold, records on foreign residency is fundamental to the issue of whether or not it spied on him and that if I don't agree I need to explain this before making my decision. I repeat what I said at the outset. It is for me to decide whether I need further information before making a decision and I am satisfied in this case that I can make a fair and reasonable decision on the information already provided.*

*I don't agree that I need to ask HLAM if it has the ability to search for or hold records on foreign residency. Even if HLAM had the capability to search databases for information about the residency of clients without consent, that doesn't provide any evidence that it did so in the case of Mr K. So even if HLAM said it could obtain such information this wouldn't provide any evidence that it did so or that the information in the final response of 22 October 2021 about him having an address in the US was obtained by it searching for such information.*

*HLAM has said that it didn't consider any databases before writing to Mr K and referring to him having an address in the US between 2018 and 2020. It has explained that the only*

*information it considered was his application in December 2013 for a SIPP in which he referred to being a US citizen and that the reference to him having a US address was made in error. I accept what it has said about what information it considered and that it referred to Mr K being a resident in the US in error and I therefore don't need any further information in relation to this.*

*Moreover, the possibility that HLAM got things wrong about Mr K having a US address between 2018 and 2020 from searching for this information is very unlikely given his own evidence. He has made clear that he hasn't got a residence in the US and hasn't resided there since he was five years old – more than five decades ago. So, on Mr K's own case, the information about him residing in the US between 2018 and 2020 is not information HLAM could have obtained about him from any database or by any other means.*

*In other words, if he hasn't lived there for over 50 years – as he has said is the case – then it is very unlikely HLAM could have obtained information that showed he had an address in the US between 2018 and 2020. In the circumstances his own evidence supports the explanation that HLAM has provided about it just getting this wrong when it wrote to him. Its letter to him was part of a mass communication to clients and it isn't surprising in my view that in the course of such communication mistakes are made.*

*Mr K has argued that if I find that HLAM didn't spy on him that I need to consider the consequences of it having mistakenly stated he resided in the US. However, I consider this comes within his complaint that HLAM were wrong to ask him to provide a TIN, which I have already found we don't have jurisdiction to consider.*

*The complaint about spying is quite distinct as it is about whether or not HLAM obtained information about Mr K which it shouldn't have. I have found that the only information considered by HLAM when it wrote to him in March 2021 was its own records in the form of the SIPP application completed by Mr K in December 2013 and that it didn't obtain information about him without his consent. Having done so there is nothing further for me to consider in relation to this complaint issue.*

The information provided to Mr K on account opening

*HLAM explained that the need for a TIN arose from the requirements of HMRC in relation to the Automatic Exchange of Information agreement in place for the US. I note that the first regulations introduced in relation to this (The International Tax Compliance (United States of America) Regulations 2013) came into force in September 2013 although these were superseded by subsequent regulations.*

*HLAM has confirmed that Mr K's fund and share account was opened on 16 January 2014, so after the initial regulations came into force. It has also said that the requirement for it to report a TIN was as from 31 December 2013 but from information I have considered this reporting requirement only applied if it had that information in the first place. For example HMRC guidance issued on 28 August 2014 included the following:*

*"Taxpayer Identification Numbers (TINs)*

*Where it has been established that an account holder is a US Person a Financial Institution is required to obtain a US TIN in several instances. When referred to, a US TIN means a US Federal Taxpayer Identification Number. For Pre-existing Individual Accounts that are Reportable Accounts then a US TIN need only be provided if it exists in the records of the Reporting Financial Institution. In the absence of a record of the US TIN, a date of birth should be provided, but again only where it is held by the Reporting Financial Institution. In line with the Agreement, HMRC has introduced legislation to require Reporting Financial*

Institutions to obtain the US TIN for relevant Pre-existing Individual Accounts from the 1 January 2017.”

*The guidance defines a pre-existing individual account as “a Financial Account maintained by a Financial Institution as of 30 June 2014.” In the circumstances I am not satisfied that HLAM needed to report Mr K’s TIN when he opened his account in January 2014 when this wasn’t information it obtained on account opening. In the circumstances I don’t think there was any requirement for HLAM to inform Mr K at the time he opened his account that he needed to provide a TIN.*

*In any event I am not satisfied that HLAM necessarily needed to inform clients of the possible need for a TIN when an account is opened. For example, it might have wanted to take advantage of certain exemptions to reporting for applicable accounts such that it didn’t need a TIN in all cases. It seems to me reasonable for it to notify clients of the need for a TIN after an account has been opened after determining whether this was information it needed to report.*

*In making that finding I am mindful that whilst the issue over Mr K providing a TIN became very protracted, his case is unlikely to be typical such that HLAM would have had reason to think that requesting a TIN after an account had been opened would be an issue. I think it would reasonably have expected this was information that clients would in most cases already have such that it could readily obtain this information if necessary after an account had been opened.*

*Even if I am wrong and HLAM were required to report a TIN in 2014 when he opened his account I am not persuaded that Mr K would have chosen not to proceed with opening his account at the time if he had been made aware of this. The reason this has become such an issue now is because HLAM mistakenly referred to him having an address in the US between 2018 and 2020 and he had been using his account since 2014 without any issue and without having to provide this information.*

*This is very different to the position he would have been if he had been told in 2014 that he needed to provide a TIN before he even started using his account. There is no reason to think he would have sought to question this at the time if informed that as a US citizen this was information he needed to provide to operate a fund and share account or that he would have decided not to go ahead with opening his account because of this.*

I gave both parties the opportunity of responding to my provisional decision and providing any further information they wanted me to consider before making my final decision. HLAM didn’t have anything further to add. Mr K responded and made various points and I summarise what I consider to be his main points below.

- He didn’t accept the email from HLAM of 22 October 2021 as a final response and the fact that it continued to engage in correspondence and debate proves it didn’t treat it as a final response.
- The ombudsman should contact his doctor about his health as he was unable to think clearly at the time and the thought of dealing with our service was stressful. The ombudsman has ignored the fact that all his emails were short following the email of 22 October 2021 due to stress.
- Undertaking a complaint before the dispute has crystalized is in direct conflict with the pre-action protocol.
- The ombudsman cannot make a determination as to whether HLAM spied on him

unless he knows if it has the ability to check foreign residency. Refusing to ask HLAM about this gives the appearance of collusion.

- He has provided expert witness evidence that HLAM couldn't have spied on him and if it doesn't have the ability to check foreign residency it proves that it lied to him.
- HLAM only informed him of the need for a TIN eight years after he opened his account and four years after the rules changed.
- There is no evidence either way as to whether he would have decided to go ahead with opening his account if he had been informed of the need for a TIN on account opening. It is perverse for the ombudsman to have concluded he would have opened his account in any event.
- The ombudsman has made no mention of the Principles and he has made specific allegations it has broken numerous specific rules of communication which the ombudsman should address in his findings.

Mr K also requested that his complaint be put on hold pending the Subject Access Request (SAR) he made to HLAM through which he said he hoped to get evidence to support his complaint.

### **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 everything that Mr K has said but he has, in the main, repeated arguments already made and considered by me in the course of drafting my provisional decision. He has provided no new information that would lead me to change the findings in my provisional decision which, for the avoidance of doubt, form part of my findings in this final decision. However, I will provide some further brief findings on the three complaint issues identified in my provisional decision.

Before doing so, I note that Mr K has said that I haven't commented on his arguments about HLAM breaching the rules. However, what I am required to do, and what I have done in this complaint, is determine the complaint by reference to what, in my opinion, is fair, and reasonable in all the circumstances of the case. In making that determination I have taken into account: relevant law and regulations; regulators' rules, guidance, and standards; codes of practice; and (where appropriate) what I consider to have been good industry practise at the relevant time.

Whilst it may be helpful in some cases to set out the rules I have considered in coming to a fair and reasonable decision, I am not required to do so and don't feel it is necessary here, save that I have referred briefly to the rules relevant to our jurisdiction in this complaint.

I have also noted Mr K's request to put the complaint on hold pending the response from HLAM to his SAR. I acknowledge the importance that Mr K places on finding answers to his questions, particularly in relation to whether HLAM had the ability to find out about foreign residency through databases or otherwise. However, whilst I acknowledge his desire for answers to his questions it isn't my role to get these for him, or allow him further time to do so, when I am satisfied that I don't need any further information to make a fair and reasonable decision in this complaint.

### ***The complaint about the need for a TIN***

I note Mr K's continued argument as to whether HLAM did or didn't provide a final response to his complaint about the need for a TIN, but he has provided no new evidence or argument that would lead me to change my finding that his complaint about that issue has been made too late. The ongoing communication following the final response doesn't mean the six-month time limit didn't start to run from the date of that final response, as I made clear in my provisional decision.

Mr K continues to argue that in any event there are exceptional circumstances as to why he didn't refer his complaint in time. He has suggested that I contact his doctor in relation to his health in this regard. I acknowledge that he has serious health issues, which no doubt impacted his life at the time he raised his complaint and continued to do so afterwards. However, where a complaint has been referred to us outside the relevant time limits we can only consider it where the reason it wasn't referred in time was exceptional. It isn't enough that Mr K has serious health issues, they must have been such that he couldn't refer his complaint in time because of them.

The fact he was able to carry on corresponding with HLAM in the six months following the final response is evidence of itself that he wasn't prevented from referring his complaint in time due to exceptional circumstances. I note what he has said about the shortness of his emails following the final response. However, referring a complaint to our service is straightforward and didn't require him to put forward his detailed arguments at the outset. In short, if he could consider and respond to emails from HLAM in the six months following its final response - as he did - then he could have referred his complaint to us in that period also.

Mr K has also referred to the pre-action protocol in support of his argument his complaint hasn't been made too late, but that has no bearing on the rules that I need to apply when deciding if a complaint is within our jurisdiction. For the reasons I have set out above and in my provisional decision, the complaint about HLAM requesting a TIN has been made too late under the relevant DISP rules and we cannot consider it.

### *The complaint about HLAM spying*

This complaint issue is only about whether HLAM obtained information about Mr K through 'spying' on him. It isn't about whether the contents of the initial or subsequent emails from HLAM wherein it requested a TIN were accurate – HLAM has accepted that the reference to Mr K having a US address was made in error - or if they weren't why this is the case. These are issues that relate to his complaint about HLAM's request for a TIN, which I have found we don't have jurisdiction to consider.

I have been provided with no evidence that would support a finding that HLAM's reference to Mr K having a US address was based on it having spied on him. I note Mr K's argument that I can't determine that without knowing if it had the capability to do so. However, as I set out in my provisional decision, even if HLAM did have the capability to obtain information about foreign residency, it doesn't mean that it did so in the case of Mr K.

Moreover, as I pointed out in my provisional decision, Mr K's own evidence is that he hasn't resided in the US for over 50 years making it very unlikely that the reference in HLAM's email to him holding an address in the US in 2018, 2019 and 2020 was the result of it having 'spied' on him - given on his own case he wasn't a resident in those years and hadn't been for some considerable time. So, this supports the finding that HLAM didn't obtain information about Mr K through spying on him.

Mr K has also pointed me to the expert evidence that he provided which he notes I didn't comment on in my provisional decision. I am not required to comment on every piece of



evidence provided by a party. I did consider this evidence when I made my provisional decision but didn't, and still don't, consider it adds anything.

The expert evidence he refers to consists simply of an email from someone within the financial services industry who states that in his experience all address search engines he has come across have been UK address based only. It doesn't provide any evidence that suggests HLAM obtained information about Mr K through spying on him.

#### *The information provided to Mr K on account opening*

I have very little to add to what I have already said about this. I have seen no persuasive evidence that there was a requirement on HLAM to obtain a TIN on account opening so that this could be reported at the time Mr K opened his account. From what I have seen the requirement to report a TIN, when this wasn't information already held, came later. In any event I am not persuaded this was something that HLAM necessarily needed to obtain on account opening rather than afterwards.

I note Mr K's dispute with my finding that it is more likely, than not, he would have gone ahead with opening his account even if a TIN had been required on account opening. Given my findings above, this is very much a secondary issue as, even if I agreed with him, my finding that HLAM wasn't required to ask for this when he opened his account still means I am not upholding this part of his complaint.

However, I am still of the view that he wouldn't have been put off opening his fund and share account if he had been informed as part of the account opening process that because he was a US citizen he needed to provide a TIN. This is very different to the request made in 2021, by which time he had been operating his account for several years without any issue and I don't think how he responded to the request at that time indicates what he would have done on account opening.

#### **My final decision**

I don't uphold this complaint for the reasons I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 15 February 2024.

Philip Gibbons  
**Ombudsman**