DRN-4270726

The complaint

Mr T complains about the way Hargreaves Lansdown (HL) produced information about his Individual Saving Account (ISA), Self Invested Personal Pension (SIPP) and Fund and Share Account in its reports. He said the information wasn't clear and he couldn't see what charges applied as they were all paid from his Fund and Share Account.

As a result, he said he was unable to make investment decisions based upon these reports.

What happened

Mr T contacted HL to raise concerns about the information presented in his Quarterly Investment Reports (QIRs) and Annual Tax Reports. He asked for his concerns to be logged as a formal complaint in June 2021. In July 2021, HL provided a formal response on his complaint and signposted him to this service should he wish to pursue matters further. Mr T went back to HL later in July 2021, making some further points and HL issued another response on 2 August 2021.

In October 2021, dissatisfied with the responses received from HL, Mr T referred his complaint
to this service. Mr T identified a number of points to his complaint. In summary, these were that:

- HL did not initially treat the concerns he raised as a complaint.
- HL did not understand his concerns or the information contained in the Quarterly
- Investment Reports (QIR).
- HL provided false and misleading replies.
- HL had conflated issues about the timing of the Spring Investment Report and the
- Annual Tax Certificate. He said these were unrelated activities and there was no correlation between the timing of these documents and the information contained in them.
- HL's QIRs did not accurately provide information about his three accounts, his ISA, SIPP and the Fund & Share Account. That's because the charges shown and the calculations produced, relate to the source of funds to pay the charges and not the actual charges incurred by each of the three different accounts. He said the cash held in the Fund & Share Account was used to pay charges incurred in the ISA and SIPP accounts, which meant the calculations shown in the 'Illustration of Charges' section were incorrect and provided a misleading impression of the true charges per account.
- explanations provided about the four QIRs were also misleading and inaccurate because the four reports did not contain information relating to a single tax year because the Spring Report 2020 contained data from 30 April which is not the start of the previous tax year. The Spring 2021 QIR contained transactions and charges from 1 February 2021 to 28 April 2021 which straddled two tax years. The HL Tax Report Certificate was a separate document that was issued separately to the Spring Investment Report. The Tax Certificate email was sent by HL on 20 April 2021. The Spring Investment Report email was sent by HL on 21 May 2021. Mr T wants HL to align the information contained in the QIRs with the tax year, so that it's

clear and corresponds with the tax certificate produced.

HL said it used to produce bi-annual reports in October and April each year and the April statement would provide all tax information for the previous tax year. However, in January 2018, in response to The Markets in Financial Instruments Directive II (MiFID II) (to keep things simple I have referred to this as 'the Directive') it changed its information practices.

HL said this Directive meant that businesses such as it had to produce more frequent reports and charges information. It said it switched to quarterly reporting and included a new charges section in its reports to comply with the Directive and the Conduct of Business Sourcebook (COBS). It said its QIRs were issued in April, July, October and January each year.

One of our investigators looked into Mr T's complaint and issued a view recommending that the complaint was not upheld. Mr T's complaint was then passed on to another investigator to deal with and that investigator reconsidered Mr T's complaint, including asking HL for some more information about its information practices. Having looked at the additional information provided by HL, and considering Mr T's representations, the second investigator also concluded that Mr T's complaint should not be upheld.

Mr T didn't accept our investigators' views and was concerned about how the investigators had handled his complaint. His complaint was referred to me for independent consideration of the issues and to issue a decision on.

In summary, Mr T did not accept our investigators' views because:

- HL do not provide clients with a breakdown of the actual account charges incurred separately for each of their funds, in his case his ISA, SIPP and Fund and Share accounts. It was not possible to understand from the Spring 2021 QIR what the actual management charge, total investment charges or total charges expressed as a percentage of total value were.
- HL showed the charges applying to the account which the cash was taken from to pay the charge, but it should also have included tables of the actual charges incurred, because this is what the rules require.
- as account charges can be paid by a variety of different options, using different sources of money, there was no way of understanding the actual account charges unless a table was included in the QIRs to show the charges. HL have not provided this information in the QIR or on request.
- HL have not met the requirement to provide a table of actual account charges incurred per wrapper in their QIR.
- the information in the QIR is misleading and meaningless. Five QIRs need to be considered instead of four when looking across the tax year.
- the charges summary is from 1 May 2020 to 30 April 2021 and does not correspond with the tax year or calendar year.

I issued a provisional decision on Mr T's complaint in May 2023. Mr T did not accept my decision and provided detailed comments on my provisional decision itself, as well as an overview of his reasons for not accepting the decision.

In overview, Mr T said:

- He did not agree with my interpretation of COBS;

- I did not understand his case, have not addressed the specifics of his complaint or understood the information contained in the QIR or HL's spreadsheet;
- He disagrees with my findings and assumptions; and
- I did not recognise that there are both historical and ongoing problems with the QIRs.

HL said it had nothing further to add.

Mr T's complaint comes back to me for a decision.

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.

As I explained in my provisional decision, the ombudsman service is not a regulator. Its role is to deal with individual complaints and decide whether a firm has done anything wrong pertaining to a particular complainant. If it finds it has, it will then go on to consider whether a complainant has suffered any financial loss or inconvenience as a result of a firm's conduct. It cannot require a firm to change its practices, that is the role of the regulator. It can highlight in an individual case how a practice may have impacted on a particular consumer's loss or inconvenience. Our remit is to consider what's fair and reasonable in all the circumstances. In doing so we are required to have regard to (amongst other things) relevant rules and regulations. I am considering Mr T's case in that context.

In his response to my provisional decision Mr T refers to what he sees as HL's continuing failings in respect of the information it provides in its QIR's. He tells me he has complained to HL again about its 2023 QIR. Here, I am dealing *only* with the complaint that Mr T raised with this service in October 2021. There are rules about bringing complaints to this service and I need to comply with these.

Mr T is also concerned that I did not ask him about his financial loss in relation to the matters he complains about. It is only if there is a finding that the business has done something wrong that has caused financial loss or warrants a compensation award for distress and inconvenience, that this service will enquire further into this.

After reviewing Mr T's detailed representations, I remain of the view that Mr T's complaint should not be upheld. I have considered *everything* that Mr T has sent in since I issued my provisional decision and his strength of feeling about this is evident. I have not repeated every representation that Mr T has made. I mean him no disrespect in not doing so. I have included those that I consider relevant to this final decision.

Conduct of Business Sourcebook (COBS) and purpose of the rules
COBS

The COBS, sets down the rules which firms have to follow where they are carrying out investment services, as HL was in Mr T's case. The Directive requirements about the disclosure of charging information were included in the COBS rules.

HL has referred this Service to Chapter 16 of COBS. This chapter applies to firms carrying out MiFID business, however the section about periodic reporting – COBS 16A.4 – says it's for '*Investments firms which provide the service of portfolio management to retail clients'*. As I understand it, Mr T made his own investment decisions and therefore HL was not providing Mr T with 'portfolio management' services. I think therefore, the relevant Chapter in this case

is Chapter 6 of COBS, which applies to regulated firms' MiFID business – which I'm satisfied this was (and there appears to be no dispute about).

Mr T in response to my provisional decision was concerned that I did not understand the relevant regulations that applied here. But he said that by quoting the wrong regulations, HL had demonstrated poor understanding of the applicable regulations. It would seem therefore that Mr T appears to accept that I am applying the relevant chapter of COBS here. He hasn't said otherwise.

In terms of HL referring to another part of COBS, I agree with Mr T this had the potential to cause confusion. I also understand that this has now further compounded Mr T's disappointment in the service he has received from HL. In terms of the *actual information* requirements themselves, I can't see that the communications sent by HL about the *actual requirements* were so different and misleading because the wrong chapter was referred to, as to warrant an award for distress and inconvenience.

Mr T tells me he disagrees with my interpretation of COBS, so I have looked at it again, but my position has not changed. I included what I saw as the relevant sections of COBS in my provisional decision. I do so again now.

COBS 6.1ZA.11R says firms have to provide clients with information about all costs and charges relating to investment services, and the cost of financial instruments. This is the language used in COBS.

COBS 6.1ZA.14UK then goes on to give more detailed requirements about how it should do that. It says that all the investment services charges should be aggregated and given as an overall figure, and the same for costs associated with the managing of the financial instruments. In Mr T's case that is the fund management charges referred to as "investment charges" in his QIRs. It says the aggregated figures should be given as cash and a percentage.

COBS does not say anything more about aggregation, or how different accounts for the same client should be treated. It does not say, for example, that annual charges information needs to be given on an *account by account* basis. It does say that the client should be given an *itemised breakdown* if they ask for one.

Mr T disagrees with this interpretation and considers that the information should be *aggregated* and be provided *account by account*, Our views are not aligned on this.

When considering whether HL has met its responsibilities under COBS, I am looking at ***both*** the information set out in the *QIR and the itemised breakdown* that HL provided Mr T with, when he asked for one. Mr T describes the extra information provided by HL on top of the QIR as '*ad hoc reports'.* For the purposes of COBS, my view is that these documents are *'itemised breakdowns'* and these need to be considered alongside the QIRs.

Purpose of the rules

In COBS 6.1ZA.12R and COBS 6.1ZA.13R it explains the purpose of the disclosure rules:

'This is to allow the client to understand the overall cost, and the cumulative effect on the return, of the investment'.

'A firm must provide the information required by COBS 6.1ZA.11R and COBS 6.1ZA.12R in a comprehensible form in such a manner that the client is reasonably able to understand the

nature and risks of the investment service and of the specific type of financial instrument or insurance-based investment product that is being offered and, consequently, to take investment decisions on an informed basis.'

FCA Review

In considering the purpose of the rules,, and more importantly – in considering what I consider to be fair and reasonable in these circumstances (because that it what the rules that apply to this service also require us to do), I have also taken into account that in 2019, the regulator, the Financial Conduct Authority (FCA), carried out a review into firms' compliance with these costs disclosure rules. The FCA noted that businesses were interpreting and applying the rules in different ways in practice. It reminded firms that all communications to customers about MiFID business must be *'fair, clear and not misleading'*

I'll now look at each of the areas of complaint Mr T raises in this context.

Timing of the reports

It seems not to be in dispute that information had to be provided '*once every three months'.* Beyond that, COBS provides no specific timings.

I have considered Mr T's point about having to look at five QIRs instead of four when comparing it to the tax year. Mr T considers HL's business decision ' *illogical'* and that to align the reports would provide increased value to clients.

Mr T tells me that it was HL who first referred to the information in the QIRs being useful for tax purposes and this is a mis-statement. It's possible that communications between HL and Mr T about this could have been put differently. Mr T tells me from his perspective, the way it was put has further compounded his dis-satisfaction in the consideration Mr T believes HL shows its customers and the accuracy of its communications.

I appreciate it may have been an easier read overall if the QIRs directly correlated with the tax year, but I can't fairly or reasonably say that HL has done *something wrong* by not selecting issue dates which correspond directly with the tax year. Had the legal framework set out in the Directive required that, it would have said so. And as set out above – the purpose of the disclosure isn't tax related, but to allow an investor to understand what they've been charged and how it affects their investment.

Having looked at what was required, and on the basis that HL issued reports once every three months, I can't reasonably find that it acted unfairly or unreasonably because it did not select issue dates that would have suited Mr T's needs better. HL explained why it had selected the dates for issuing these reports (a link to the previous timings of bi-annual reports). This was a commercial decision taken by HL and not one that this service can usually interfere with. I see no reason to do so here.

I also do not consider that I can fairly say that Mr T has been caused inconvenience or upset warranting an award of compensation as a result of the narrative contained in HL's correspondence with Mr T about the usefulness of the QIRs for tax purposes.

Itemised charges

HL has told this service that customers were able to view specific charges applied

to each account by viewing the transaction history online. This is relevant in terms of the transparency of the information available, which is, after all, what the Directive and COBS are aimed at. I can't see that Mr T has disputed that he had access to that.

I can also see in response to Mr T request in July 2021 to be provided with further information about the charges, that on 2 August 2021 HL provided Mr T with an *itemised breakdown* for each of his three accounts. This showed the actual account charges per account. I can see that Mr T then asked for it to be provided in Excel spreadsheet format, and HL supplied it in that format on 12 August 2021.

The information Mr T was provided with showed the management charge and the investment charges levied against each account. I can't see that Mr T was provided with the total charge per account, explained as a percentage of the total value per account.

Looking at the spreadsheet HL provided, I think it would have been a relatively simple task to add these up to obtain the cash figure and percentage figure per account that Mr T was seeking. Mr T disagrees with this and states that this is not a simple task for a client to perform, furthermore a client should not have to ask for the additional information in the first place, it should be included in the QIR.

Earlier in this decision, I set out my decision regarding what HL had to provide under COBS. It was open to Mr T to ask for more information, which he did, and which HL provided, albeit, it did not provide *everything* that Mr T asked for.

Whilst I note that Mr T does not agree with me, I still consider that the questions for me to decide are whether HL was:

- required to perform that calculation and to provide that information per account; or
- whether it met its obligation and provided Mr T with *clear* information, so he could calculate it per account himself, if he wanted to.

Were the communications fair, clear and not misleading

In essence, Mr T complains that the way HL presented the information about his charges was not clear and was misleading because it underrepresented how much he had paid on his SIPP and ISA charges and overstated what he had paid on his Fund and Share Account charges.

In summary, Mr T's position is that HL was required to perform the calculation and provide the information *per account* as it had the people, tools, technology and expertise to do so, and this was required by the Directive.

HL's position is that the information it presented set out how the charges were taken, so, it is a true reflection of what got paid from where. And it was open to Mr T to ask for an itemised breakdown if he wanted to reconstruct which account was the source of the different amounts paid.

Further, the QIR did highlight that the way Mr T paid his charges may skew the figures.

As I see it, by not including the platform charges for each account, because they were paid from a different account, did not make the information provided unclear and/or misleading. Mr T was still able to understand the overall cost and cumulative effect on the return on his investments by looking at the QIR and itemised information.

It could have been equally arguable that had HL presented the charges information account by account this could be viewed as being unclear and misleading, because although some of his charges were for services provided in relation to, for example his SIPP, they weren't paid for from his SIPP. So, it would be incorrect to say that his SIPP incurred those charges. I consider that the way rules and requirements operate, is to require HL to provide *aggregated costs and charges information across all of Mr T's investments*, rather than on an account by account basis. In my view, Mr T was provided with the itemised information by HL, in a timely way, to breakdown the figures to the level he then required.

I have also taken into account that the QIR specifically highlights that the charges information could be perceived to be skewed because of the way Mr T paid for the charges. The QIR also stated under *"Important Investment Notes"* that a customer should check up to date market information before using the report to make any decisions on the investments, as the report provides historical data. I think, therefore, that HL provided, or was upon request able to provide, Mr T with enough clear, fair and not misleading information to enable him to make informed investment decisions and that it met its obligations under COBS (and the Directive). Mr T points out that HL was not, as I pointed out in my provisional decision, providing investment *advice*. I don't think it is in dispute however, that HL was providing *information.* Mr T said in his response to my provisional decision that he was not using the QIR to make any decisions on investments. However, when he complained to this service, he said that due to HL providing inadequate information, it was having an impact on his ability to make investment decisions.

As I said in my provisional decision, I can understand Mr T's frustration. Mr T says I appear to be saying that the problems he is experiencing are entirely his fault. To be clear, I am not saying that. I am not assessing his conduct here, but HLs. I am looking at whether HL has done something wrong.

I can't fairly say HL has treated him unfairly or breached its regulatory obligations in the way it's told him about his investment accounts. HL was obliged to give a factual and accurate report of what he'd paid, and for what services. Mr T paid his charges in the way he did, so this factual representation wasn't as useful as it could have been in terms of allowing Mr T to instantly assess what each of his accounts had contributed to his overall level of fees. I recognise that HL probably *could* have presented information in a way that Mr T found more useful, but from my analysis of COBS, I can't say that it *should* have produced it in the format Mr T would have liked it to.

I'm satisfied that by warning Mr T in the report that this wrinkle of his charging arrangements might impact some of the headline figures and by providing the detail to allow Mr T to see what charges came from which account when he asked, HL fulfilled the requirements of the Directive and COBS. Overall, I think HL has considered Mr T's information needs, albeit not providing him with exactly what he has asked for, and as a whole has communicated with him clearly and treated him fairly.

I am sorry to hear that Mr T doesn't like some of the language I used in my provisional decision such as *'skew'* and *'wrinkle'*, which I have used again in this final decision. I hope Mr T will accept that I do this because in context I consider these words convey what I am saying, rather than to cause him any upset.

Whilst Mr T still clearly considers that the way HL is producing this information is inconveniencing him, I can't fairly conclude that he is entitled to be compensated for that, as HL, in my view, met its reporting obligations in 2021. Whether HL is continuing to meet its regulatory responsibilities in relation to the 2023 QIR is not something I can determine now, as this complaint is not before me.

Failure to treat Mr T's concerns as a complaint

I don't think HL acted unfairly or unreasonably in the way it first handled Mr T's initial concerns about its information practices. As soon as it was clear that Mr T wanted his concerns to be treated as a formal complaint, HL actioned this, providing him with a response in a timely way and signposting him to this service, should he remain dissatisfied with the outcome.

Mr T says there was no single person in HL owning his complaint and multiple persons were involved which led to problems and incorrect responses. I do not consider that the way HL handled his complaint fell below an acceptable standard.

Explanations offered by HL when responding to this complaint

In response to Mr T's complaint, HL offered some explanations about the information contained in the QIRs. Mr T points out that some of the statements made were not entirely correct. I think he is right about this.

Although the explanation was given within the context of dealing with a complaint, as I see it, the requirement to explain things clearly was a continuation of the provision of the underlying financial service and the expected customer service associated with it. So, I think we have jurisdiction to consider HL's handling of this complaint more widely.

From what I have seen, I don't agree with Mr T that HL has demonstrated that it does not understand his complaint. I think it has. HL itself highlighted the reporting requirements brought about by the Directive (albeit referring to the wrong Chapter of COBS). I think HL's responses about the QIRs could have been clearer. But, overall, I don't think the impact of this warrants a compensation award for inconvenience and upset given all the circumstances of this case and looking at how HL has generally communicated here and the information it has provided. So, I make no award.

I do not consider that HL needs to do anything more overall, and I do not uphold Mr T's complaint.

My final decision

For the reasons given, I do not uphold Mr T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 8 October 2023.

Kim Parsons
Ombudsman