

The complaint

Mr D complains about the service he received from Hargreaves Lansdown Asset Management Limited (HL) when he tried to transfer some shares to an account he held with them. He's unhappy with delays they caused during the transfer process which resulted in the shares being sold.

What happened

Mr D tried to transfer some shares he owned to HL from another firm (B1) in February 2020. He'd acquired the shares through an employee sharesave scheme and as he'd been made redundant, he was informed by B1 that he had 30 days from 14 February 2020 to sell or transfer his shares. If they didn't receive instruction for him within that time, the shares would be sold to cash.

He contacted HL on 17 February regarding transferring the shares to an account he held with them. They advised him that they would action the transfer, but he would need to complete some documents. The documents were sent to him on 25 February, and he returned them on 2 March.

Mr D contacted B1 and gained agreement for the deadline to be extended to 29 April. On 22 April HL realised that they hadn't sent the documentation to B1 and emailed them to start the transfer process. B1 responded on 23 April and said the transfer couldn't proceed due to the type of stock being held.

B1 have subsequently confirmed that they were provided with the wrong paperwork and because of this, Mr D's shares were sold to cash on 29 April. HL informed Mr D about this on 3 May, and the sale of the shares was completed on 6 May.

Mr D subsequently complained to HL, but they didn't fully uphold the complaint. They responded on 26 June 2020 and said they didn't think they were solely responsible. They apologised for the delays caused by their actions when forwarding the transfer request to B1. However, they said that they didn't inform B1 to sell the shares and as they hadn't been informed of any deadlines, they couldn't agree that they should be solely held accountable for any financial loss. They offered him £150 in compensation for the inconvenience and poor service he'd experienced.

Mr D didn't agree and asked us to look into the matter. The complaint was considered by one of our investigators who thought it should be upheld. He pointed to the delays caused by HL - seven days to send Mr D forms and six weeks to send the forms to B1. He thought that delays meant that there was little time to correct any errors or find an alternative business to make the transfer if HL were unable to. In order to put things right, he thought that HL should pay the difference between what Mr D received from the sale of the shares and the cost of repurchasing them. And also pay Mr D any missed dividend payments from the time he was out of the market.

HL accepted most of the investigator's findings but thought that Mr D hadn't mitigated his losses. They thought he should have repurchased as many shares as possible when the

funds from the sale became available. They accepted this would have left him with around 130 less shares than he'd previously held and proposed alternative redress based on the cost of repurchasing the 130 shares in addition to missing dividends for 130 shares and a further payment of £330 for the inconvenience Mr D had suffered.

The investigator wasn't persuaded to change his opinion. He said, in summary, Mr D waited for this service to reach a conclusion before doing anything with the money. He'd kept it to one side so not to complicate the outcome. He had less money at this point than he thought he would get so chose to wait and see what he was fully entitled to before making a decision.

HL didn't agree and said, in summary:

- They weren't disputing that they'd caused a delay which had disadvantaged Mr D. But they didn't agree that the responsibility for the market risk for the entire investment rested with them. Mr D chose to hold his investment as cash and therefore had a responsibility to understand the implications of that decision.
- Mr D never informed them that it was his intention to keep the cash and not reinvest, had he done so, they would have explicitly told him to consider taking steps to mitigate.
- Even if they accepted that it was reasonable to hold the cash out of the market (which they didn't), the reason for the vast majority of the loss here is the length of time taken for the case to complete the FOS process. It wasn't reasonable that they were disadvantaged by something out of their control.
- Mr D had the opportunity to mitigate his loss and was made aware immediately that his shares were sold. His message of 18 May said the error cost him "a few thousand pounds". This displayed that there was a crystallised loss at that point and given they'd made no further errors after that point, it wasn't fair and reasonable that the loss should increase.
- Mr D also said in an email of 29 June that he'd be able to "recoup his losses" by transferring out – which again suggested that he was aware of a crystallised loss at that point.
- There were other reasons why someone could add the money to their bank account besides holding it to reinvest, such as wanting to take the cash out of the market to stop exposure to risk. Therefore, holding the money in an account did not in itself prove anything.
- They believed this point went much wider than this individual complaint and they had concerns about the fairness and feasibility of such an approach should it be applied more widely.
- It wasn't feasible for a business to operate a process whereby a complainant could wait for the result of an investigation before mitigating their loss. This would leave a business with an undefined loss for an indefinite period and no means to mitigate as it was unreasonable to simply buy shares whenever a client complained but there was no barrier to the client reinvesting to mitigate.
- Even if they accepted that it was reasonable for Mr D to wait for a complaint response before taking any action to mitigate, then he should have done so after HL's complaint response and not that of the FOS.

- They noted what the investigator said about HL having had the chance to mitigate this previously, but they were satisfied that what they offered at the time of the complaint resolution was fair.
- They believed that B1's involvement was significant and hadn't been considered. B1 had provided an assurance to Mr D that the shares would not be sold, but subsequently sold them. It was their view at the time, shared by Mr D, that they weren't wholly responsible for the losses incurred. B1 had made no effort to redress Mr D and had shifted all the blame to HL.

The investigator wasn't persuaded to change his opinion so the complaint was passed to me to decide. I issued a provisional decision where I said:

'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, and while I agree that this case is finely balanced, I agree with the redress methodology suggested by the investigator. I will now explain why.

HL have agreed that they caused a delay which disadvantaged Mr D, so I've mainly focused this decision on what would be fair redress. I appreciate the concerns HL have made about the potential wider implications of the redress suggested, but I must stress that my decision is solely about the very specific circumstances of this complaint.

Mr D has told us about his situation at the time of the complaint. He'd been made redundant and had wanted to keep the shares and not sell them, as in his opinion the markets were low. He'd proactively taken steps to ensure that there was enough time for the transfer to proceed by contacting B1 and asking them to extend the original deadline for the transfer of the shares.

I appreciate he didn't tell HL about the deadline, but he's said this is because they told him on 20 March 2020 that the transfer had been processed. Given that this was nearly six weeks before the deadline, I don't think it's unreasonable that he didn't think he needed to make them aware of it. However, for completeness, I've considered what would have potentially happened, had he made them aware of the deadline. The evidence shows that HL made an error and didn't send the request to B1. I don't think that even if Mr D had made them aware of the deadline, it would have prevented the error and resulted in the request being sent to B1.

I think a key point is the fact that HL recognised they'd made an error but did not attempt to put Mr D back to the position he would have been in had the error not occurred. I accept they thought that B1 had some responsibility, but I don't think this means that they shouldn't have done anything to try and put things right for Mr D. Mr D contacted B1 regarding the complaint and when they advised him that they didn't think they'd done anything wrong, he let HL know.

Following on from this, HL didn't take any steps to address any of the loss Mr D had suffered, despite thinking at the time that they were jointly responsible. Arguably, had they taken some action at the time then the issue of mitigation would have arisen. I don't think it's fair that they only offered Mr D compensation for the inconvenience and didn't do anything about the financial loss which they acknowledged he suffered.

For the avoidance of doubt, I don't think that B1 can be held responsible for selling the shares, I'm satisfied that the delays caused by HL were solely responsible for the shares being sold. I can see that B1 tried to help Mr D by extending the deadline for the shares to

be transferred. I think that the issues stemmed from HL's failure to send the request in a timely manner, had they done so, then the shares wouldn't have been sold.

Given Mr D's circumstances at the time, I don't think it's unreasonable that he didn't repurchase the shares. From what I've seen, the share price started to rise from the time they were sold and by the time HL responded to Mr D's email regarding B1 not taking any action - the share price had increased from c.\$37 to c.\$48. This meant that Mr D wouldn't have been able to use the sale proceeds to purchase the same number of shares he originally held, and his circumstances - his uncertain financial position due to unemployment - meant that he wasn't able to commit additional funds to the purchase.

Mr D has provided evidence to show that he moved the funds he received from B1 into a savings account. Having considered his comments, I'm satisfied that this was to ring-fence the funds while he awaited a resolution in case he had to return the funds in exchange for the original number of shares he held.

While this isn't how I'd usually expect someone to mitigate their losses in a scenario where shares have been incorrectly sold, in the particular circumstances of this case, I don't think that course of action wasn't unreasonable. And because I also think that HL should have done more to resolve the situation when they recognised that their actions had caused Mr D financial loss, I think they now need to put things right as I've set out below.

Putting things right

Mr D should use the funds he received from the sale of the shares in 2020 to repurchase as many of the shares as possible. He earned interest on the funds while holding them in his savings account, so I'd expect him to use this towards the purchase too. He should then notify HL of the purchase and share his interest calculation and contract note.

This will illustrate the shortfall between the number of shares he is able to buy and the number of shares he previously held. HL should then purchase the number of shares required to make up the difference and transfer them to Mr D. HL should also compensate Mr D for any dividends he missed while he's been out of the market and any dealing costs he incurs when reinstating his holding.

Responses to my provisional decision

Mr D and HL both accepted my findings and had nothing further to add.

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 neither party has objected to my decision or provided any further submissions, I see no reason to depart from my provisional findings. I remain of the view that this complaint should be upheld for the reasons in my provisional decision which I've set out above.

Putting things right

Mr D should use the funds he received from the sale of the shares in 2020 to repurchase as many of the shares as possible. He should do so within 28 days of this decision. He earned interest on the funds while holding them in his savings account, so I'd expect him to use this towards the purchase too. He should then notify HL of the purchase and share his interest calculation and contract note.

This will illustrate the shortfall between the number of shares he is able to buy and the number of shares he previously held. HL should then purchase the number of shares required to make up the difference and transfer them to Mr D. HL should also compensate Mr D for any dividends he missed while he's been out of the market and any dealing costs he incurs when reinstating his holding.

My final decision

I uphold this complaint. Hargreaves Lansdown Asset Management Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 2 August 2023.

Marc Purnell
Ombudsman