

## Ombudsman's Determination

Applicant	Mr T
Scheme	Hargreaves Lansdown SIPP ( <b>the SIPP</b> )
Respondent	Hargreaves Lansdown ( <b>HL</b> )

## Outcome

1. I do not uphold Mr T's complaint and no further action is required by HL.

## Complaint summary

2. Mr T complained about the inability to reinvest the tax relief portion of his pension contributions into the 'XBT Provider Bitcoin Tracker One' Exchange Traded Note (**XBT**), which is a form of Cryptoasset. He said:-
  - He was informed by HL it would be possible to reinvest the tax relief from his pension contributions into the XBT.
  - After making his contributions into the XBT, he was informed HL no longer permitted further investments into Cryptoassets, which included the XBT.
  - HL's actions have caused him a financial loss, time costs in dealing with the matter and distress.

## Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. HL's Terms and Conditions for the SIPP, under Section A11, under the heading 'general information about dealing' said:

"Our acceptance of online investment instructions in respect of specific investments is at our sole discretion and subject to change at any time without notice."

5. Under the 'Complex Investments' heading, also in Section A11, it said:

"If we do not consider continued dealing in such investments to be appropriate for you, we will warn you of this. You may continue to hold such investments, and you may sell them at any time, but we will not make further purchases on your behalf and we will not be liable for you continuing to hold the investments."
6. On 6 October 2020, the Financial Conduct Authority (**FCA**) issued an announcement banning purchases of Cryptoassets by retail consumers with effect from 6 January 2021.
7. On 13 October 2020, Mr T telephoned HL's helpdesk. During the telephone call:-
  - Mr T enquired about investing in a particular Cryptoasset, the XBT.
  - He said he understood the law was changing in respect of being able to invest into these types of assets.
  - HL's call handler explained if the investments were listed as being available within a SIPP, it would be possible to purchase that investment. However, if he was required to sell it due to a change in regulations, he would be informed of this. But, if he did not do so within the required timeframe, HL would sell the investment.
  - Mr T asked about being able to invest the tax relief from any contributions and the timescales in respect of this.
  - HL's call handler confirmed any contributions would need to be made by 6 November 2020 for the tax-relief to be received before January 2021 to allow time for reinvestment before the FCA ban began.
  - No guarantees were provided as to the ongoing availability of the particular investment Mr T wished to purchase.
8. On 15 October 2020, Mr T made a further telephone call to HL's helpdesk. His main queries concerned taking any profit from his intended investment, currency, domicile status and the fees.
9. On 19 October 2020, Mr T opened the SIPP and, by doing so, he agreed to and accepted HL's Terms and Conditions.
10. On 22 October 2020, Mr T made an investment of £1,284.14 into the XBT.
11. On 29 October 2020, Mr T made a further investment of £1,308.96 into the XBT.
12. On 30 October 2020, HL issued an email to Mr T. It said, due to the new FCA rules coming into force on 6 January 2021, new purchases of crypto-currency derivatives would be prohibited from 30 October 2020.
13. On 5 November 2020, Mr T telephoned HL to discuss whether the tax relief from his contributions into the XBT would be invested.

14. On 9 November 2020, HL emailed Mr T. It said, after having reviewed the telephone conversation on 13 October 2020, the information provided to Mr T was correct at that time. However, HL subsequently suspended the further purchases of Cryptoassets which prevented the reinvestment of Mr T's tax relief into the XBT. It noted Mr T was informed on the telephone call that the tax relief would not be automatically reinvested into the XBT and a manual deal would need to be placed.
15. On the same day, Mr T submitted his complaint to HL, arguing he had been misinformed.
16. On 16 November 2020, HL issued its response to Mr T rejecting his complaint, as it said no misinformation was provided. HL said it had taken the decision to suspend purchases of crypto-derivatives after consideration of the risks raised by the FCA. HL also said it was not feasible to give advance warning of this ban, as this could have led to further purchases of crypto-derivatives. It concluded:

“...stopping all purchases prior to the 6 January deadline is preferable and any further purchases could lead to the poor client outcomes the FCA seek to prevent.”
17. On 23 December 2020, Mr T invested £511.73 into BT MicroStrategy Inc 2 from the tax relief received.
18. On 4 January 2021, Mr T invested £143.24 into BT Defiance Silver Corp from the tax relief received.

## **Adjudicator's Opinion**

19. Mr T's complaint was considered by one of our Adjudicators who concluded that no further action was required by HL. The Adjudicator's findings are summarised below:-
  - During a telephone call on 13 October 2020, Mr T said he was aware that there was a ban due to be implemented on purchasing Cryptoassets in January 2021. HL informed Mr T he was still able to purchase his proposed investment. However, if he was required to sell it due to a change in regulations, he would be informed. If he did not sell the investment in the required timeframe, HL would sell it.
  - Mr T also enquired about the process of reinvesting the tax relief element for his SIPP contributions and whether this would be done automatically. He was informed this was not possible for Exchange Traded Funds and that an instruction would need to be placed to invest any tax relief. When discussing the timeframes for receipt and reinvestment of the tax relief element, HL said if the rule changes came in earlier, this might not be possible.
  - HL did not provide any incorrect or misleading information during the telephone calls. Mr T was informed any investments had to be listed by HL as being available to invest in a SIPP and that the XBT was available to invest in at that time. No definitive statement was provided to Mr T that this would remain the

case. The statements made to Mr T came with caveats regarding the investments Mr T would be able to purchase.

- During a subsequent telephone call on 15 October 2020, HL explained any income generated by the XBT would be credited to the cash account and could be reinvested by placing a manual deal into a different investment.
- Section A11 of HL's Terms and Conditions, which Mr T accepted on 19 October 2020 when opening his SIPP, said HL would accept investment selections at its discretion and that it could alter its stance on particular investments.
- The Terms and Conditions also said HL would warn its customers if it thought dealing in certain investments would not be appropriate and it would not allow further purchases to be made. HL considered the FCA's rules and impending ban of the sale of Cryptoassets. It exercised its discretion, which was allowed under its Terms and Conditions, to remove these types of investments from its platforms. As Mr T was provided with advance notice of this decision on 30 October 2020, HL had acted within its Terms and Conditions.
- Mr T was made aware when he made his initial contribution that sales of these types of investments were due to be banned. He should reasonably have been aware that the situation could change. He was not provided with any guarantees that he would be able to make further purchases of his chosen investments and that the investments made available under the SIPP were subject to change.

20. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

21. Mr T provided further comments, which are, in summary:-

- It was because of the importance of conducting due diligence that he contacted HL regarding his intended investments.
- During his telephone conversations with HL, it offered no warning of the imminent suspension of the ability to invest the tax relief element into his selected investment.
- HL provided assurances to the contrary; that he would be able to re-invest the tax relief element but withheld information from him regarding the impending suspension.

22. HL did not submit any further comments for consideration.

23. I note the additional points raised by Mr T but I agree with the Adjudicator's Opinion.

## **Ombudsman's decision**

24. Mr T contended that HL offered no warning of the imminent suspension of the ability to invest the tax relief element into his selected investment. He said HL provided assurances to the contrary; that he would be able to re-invest the tax relief element but withheld information from him regarding the impending suspension.
25. Mr T was informed that he was able to invest into Cryptotassets, but if the regulations changed this may not be possible. If he was required to sell an investment, he would be notified.
26. Mr T was also informed of the process for investing the tax-relief portion of his SIPP contribution. It was explained that this could not be done automatically and that he needed to place a manual instruction. It was made clear to Mr T that the investments HL made available on its platforms were subject to change and review. I find that Mr T was not provided with any assurances or guarantees that his intended investment would remain available on HL's platforms in the future.
27. Mr T claimed that HL withheld information from him regarding the impending ban on investments into Cryptoassets. He said that HL would have been aware during his telephone calls of its decision to prohibit new purchases of Cryptotassets from 30 October 2020. However, Mr T has not provided any evidence to support this assertion. I find that HL accurately explained the known situation at that time; that the FCA ban was due to be implemented in January 2021. I do not consider that Mr T was mis-led in this regard.
28. HL said that it took action earlier than the FCA's implementation date in order to prevent poor client outcomes. It said the decision was taken following consideration of the risks to clients and its regulatory requirements. In accordance with Section A11 of its Terms and Conditions HL was entitled to make such a decision without a prior announcement.
29. Mr T was already aware when he telephoned HL on 13 October 2020, that the FCA was implementing a ban on the sale of Cryptotassets, which would come in force in January 2021. I find that HL provided Mr T with information which was accurate at the time it was given and did not provide any assurances, during the telephone calls it had with Mr T, that he would be able to make any further investments into the XBT after 30 October 2020.

CAS-62490-J5T2

30. I do not uphold Mr T's complaint.

**Anthony Arter**

Pensions Ombudsman  
08 September 2022