

Ombudsman's Determination

Applicant	Dr I
Scheme	Hargreaves Lansdown SIPP (the SIPP)
Respondents	Hargreaves Lansdown Asset Management Ltd (HLAM) Interactive Investor (II)

Outcome

1. Dr I's complaint is partially upheld and, to put matters right, HLAM and II should each refund £58.31 of HLAM's SIPP Management fees. HLAM and II should also each pay Dr I £250 (less any sums in respect of distress and inconvenience already paid) in recognition of the significant distress and inconvenience they have caused him.

Complaint Summary

2. Dr I complained that both HLAM and II were responsible for a delay in the SIPP being transferred. He says these delays resulted in him incurring excessive transactional costs with HLAM and that he lost trading opportunities in foreign stock as he was expecting the transfer to be completed no later than October 2020.

Background information, including submissions from the parties

3. Dr I held a SIPP with HLAM. On 19 May 2020, Barnett Waddingham (**BW**), who were II's SIPP provider acting on its behalf, sent a password protected email to HLAM. This email requested an in-specie transfer of the SIPP from HLAM to BW and also contained an attachment comprising of completed transfer paperwork received from Dr I.
4. As an incentive to open a SIPP with it, II was running an offer of no SIPP management fees from May 2020 for 12 months.
5. On 26 May 2020, HLAM sent an email to BW stating that it was unable to open the attachment to the email of 19 May 2020 and requested for it to be re-sent. No response was received from BW.

6. On 10 July 2020, II requested a valuation of the SIPP from HLAM. HLAM responded on 28 July 2020 to repeat it was unable to open the file attached to the email of 19 May 2020.
7. On 18 August 2020, II requested a further valuation from HLAM.
8. On 20 September 2020, HLAM sent an email to II stating that it had not received any transfer paperwork to instigate the transfer. HLAM also stated that it still required Dr I to complete its transfer discharge form and would not be able to proceed with the transfer until this was received.
9. On 21 September 2020, HLAM received a further transfer request from BW, which it was able to access on this occasion.
10. On 26 October 2020, Dr I signed and returned the discharge forms to HLAM which confirmed receipt on 28 October 2020.
11. On 2 December 2020, II requested an update and valuation from HLAM.
12. On 7 December 2020, HLAM began processing the forms received on 28 October 2020.
13. Dr I raised a complaint with both HLAM and II at this time concerning the delays that had occurred. II confirmed that its offer of no fees for 12 months could not be extended. Dr I advised II that HLAM had informed him that it may take a further three months to complete the transfer and that he would cancel the transfer if II did not extend the no fees offer. II reminded Dr I that he retained the ability to sell the assets at any point during the transfer process.
14. On 7 December 2020, II advised HLAM that it could not accept two of Mr I's Stocks (Unicredit Spa NPV and iShares MSCI World UCITS ETF Dist GBP). II advised Dr I that he could sell the assets and transfer the cash or leave them with HLAM if he did not wish to lose them. Dr I advised that the stocks were being sold and requested that II proceed with the transfer.
15. Also on 7 December 2020, HLAM emailed II and advised that as Dr I was due to receive tax relief on his funds on 21 December 2020 and 21 January 2021, the cash payment would not be made until these payments were received, unless it received an instruction from Dr I to transfer before then in which case the tax relief could then be sent across as additional payments. HLAM also stated "You may therefore wish to query this with the client" and "Please diarise your case and allow up to two weeks before chasing for an update". HLAM also sent Dr I a secure message concerning the tax relief issue.
16. On 11 December 2020, Dr I instructed HLAM by secure message to proceed with the transfer and to forward the tax relief at a later date. HLAM was then awaiting acceptance of the transfer from II.

17. On 19 January 2021, II issued its complaint response to Dr I and offered £40 by way of an apology for not being more proactive in the earlier stages of the transfer.
18. Also on 19 January 2021, HLAM issued its complaint response to Dr I and while it was not specific, it accepted that delays had been caused by its actions. As the transfer was being arranged in-specie, it was unable to conclude a financial loss had been suffered but it did pay Dr I £150 in light of the inconvenience caused.
19. On 23 January 2021, HLAM offered Dr I a further £50 in recognition of the frustration caused to him, thereby bringing the total to £200.
20. On 13 February 2021, II confirmed to Dr I that its acceptance of the transfer had been sent to HLAM.
21. On 22 February 2021, Dr I contacted II and explained he was unhappy that he had been charged a service plan fee for his SIPP while the transfer had been ongoing. Due to the delays, he was paying fees to both HLAM and II. As a resolution to this complaint, II applied a credit of £89.94 to his account to cover the outstanding and upcoming fees.
22. On 24 February 2021, II confirmed to Dr I that all assets had been received and had been added to his account.

Dr I's position

23. The compensation offered by HLAM and II (£200 and £40) does not cover the fees he had to pay to HLAM from May 2020 until the transfer completed.
24. Both parties are at fault. HLAM did receive the request for transfer but waited to be chased. II in its communication admitted that it should have been more proactive.
25. This entire situation caused him a lot of stress, frustration and money. From September 2020, he delayed reinvesting as he was under the impression that the transfer would happen soon. He lost a lot of investment opportunities.
26. He transferred £120,000 to HLAM in February 2020 and this amount had increased in value to £220,000 by June 2020. However, he ceased trading between August and November 2020 and at the time of transfer in February 2021, the value stood at only £224,000. He feels that he could have made another 50% to 60% profit buying and selling as he was doing from March to June 2020. He was unable to take advantage of the second stock market rally in September 2020, as he was waiting for the transfer to complete.
27. He asked HLAM and II if he could have bought and/or sold the stock and was told that this would have created an issue with the transfer. He executed some trades in October to December 2020 when it was clear that HLAM was not close to completing the transfer.

28. HLAM's fees have been extortionate. To trade his £120,000 initial investment cost him almost £4,700 in fees in less than three months.
29. It should have agreed to extend its offer of no fees for 12 months due to the delays caused.

HLAM's position

30. Dr I is a client of HLAM using its service on an execution only basis. When acting in this capacity HLAM does not provide any investment advice; it merely executes the instructions provided to it.
31. When a client requests an in-specie transfer to another provider they retain the ability to trade on their investments if they wish to make the most of market fluctuations. Submitting a transfer instruction does not supersede the fact that the client holds an execution only account and the onus remains with them to ensure that their portfolio is held as they intended.
32. Dr I's investments would have appeared in his online account and he had full access to sell at any point during the transfer. Dr I did trade on a number of occasions while the transfer was ongoing and it reminded him on 7 December 2020 that he retained the ability to sell, if he wished.
33. It appreciates Dr I is unhappy with the time taken to complete the transfer but the very nature of an in-specie transfer means that the funds remain invested while the transfer takes place. If Dr I did not want to remain invested, he could have requested a cash transfer or sold the investments himself.
34. It is required to receive the client application form before it can proceed with a transfer, and it received Dr I's completed application on 28 October 2020. It has acknowledged to Dr I that the processing of this document was outside of the timescales it endeavours to provide and apologised for any inconvenience caused.
35. It has made a payment of £150 and offered an additional £50 to Dr I for the delays caused by HLAM. Dr I has claimed he paid additional charges as a result of the delays and its offer was considerate of this.
36. It does not agree that it should be held liable for any further perceived loss of opportunity as Dr I had a responsibility to mitigate his losses and as such had the opportunity to sell the investments himself at any point. Dr I also requested an in-specie transfer, indicating that he was happy to remain invested during the process.
37. An email was sent to It on 26 May 2020 advising that it was unable to open the attachment and the paperwork was not received from It until 21 September 2020 by email. It confirmed to It that it did not have the original paperwork in order to proceed and each time It chased HLAM for a valuation HLAM advised It that it did not have the authority to do so. Despite this, It continually requested valuations. There were no email communications sent to It to say that it was obligated to wait to send acceptance, so it is unsure why It would have been under this impression.

38. The delay between 7 December 2020 and 24 February 2021 was caused by the fact it did not receive acceptance from II until 13 February 2021, so it could not proceed until this date.
39. Typically, it will include a two week 'warning' to providers to not chase HLAM for progress to allow it sufficient time to process documents. It implemented this acknowledgment to providers, so they were aware that it was in receipt of the necessary information and were processing this.
40. Dr I continued to pay HLAM SIPP Management fees of £16.66 per month between May 2020 and February 2021. It does not waive a client's annual management charges while a transfer is ongoing.

II's Position

41. It was not until October 2020 that it was advised that HLAM had received its transfer submission sent in May 2020, but that it could not be opened. No explanation was provided as to why it was not notified earlier.
42. It did not advise Dr I to sell the Unicredit Spa NPV and iShares MSCI World UCITS ETF Dist GBP stocks, which he says were sold at a loss. If Dr I had wished to keep them, he could have left them with HLAM. Dr I chose to sell and therefore he must accept responsibility for when he sold them and what price he accepted.
43. The reason that these two stocks are now available to Dr I on its platform is down to its business practice of continuous review of what is eligible to be held on its platform. At the time of the transfer, these assets were listed as incompatible and ultimately which stocks it accepts on its platform are at its own discretion.
44. Dr I did not repurchase these assets suggesting that they were not part of his long-term investment strategy. Seemingly he made other investment choices.
45. It is evident that the delays lie with HLAM who accepted such liability and compensated for its role. II compensated Dr I for not updating him as often as he would have liked, but during this period it regularly chased HLAM who failed to communicate with II despite having received its completed transfer request.
46. HLAM advised II not to issue its acceptance of the transfer until February 2021.
47. Due to Dr I's frustration at being misinformed and delayed, it did waive the service plan fees he had accrued with II during HLAM's delays. However, it considers that £129.94 is a fair amount of redress (£40 + £89.94).

Adjudicator's Opinion

48. Dr I's complaint was considered by one of our Adjudicator's who concluded that both HLAM and II caused delays to the transfer equating to a total of approximately 28 weeks. The Adjudicator's findings are summarised in paragraphs 49 to 56 below.
49. On 26 May 2020, HLAM advised BW that it was unable to open the attachment to the email of 19 May 2020 and requested for it to be re-sent. No response was received from BW at that time and the accessible transfer paperwork was not received by HLAM until 21 September 2020. Therefore, II was ultimately responsible for this delay of just under 18 weeks.
50. HLAM should have processed the final document received on 28 October 2020 within ten working days. As this was not processed until 7 December 2020, HLAM was responsible for this delay of just under four weeks.
51. II was at fault for not sending the acceptance to HLAM earlier once Dr I confirmed he wished to proceed with the transfer on 11 December 2020. II sent the acceptance to HLAM on 13 February 2021, which equated to a delay of just under seven weeks caused by II. It was reasonable to expect the acceptance to have been sent to HLAM within ten working days.
52. Dr I had the option to keep the investments that could not be transferred in-specie with HLAM but ultimately decided to sell and transfer the cash to II. The Adjudicator was therefore unable to conclude that a financial loss was incurred due to the delay, as the funds either remained invested or were sold and transferred.
53. If the transfer had completed 28 weeks earlier, Dr I would not have paid HLAM SIPP Management fees of £16.66 per month for this period. This equated to the sum of £116.62 in overpaid HLAM SIPP Management fees. As this was within II's offer period of no SIPP fees from May 2020 for 12 months there was no compensation required for any overpaid fees to II.
54. It was not possible to say with any certainty what exact course of action Dr I would have taken had the delays to the transfer not occurred. However, Dr I did have the opportunity to execute trades with HLAM if he so wished at any point throughout the transfer period and this was confirmed to him by HLAM. It was ultimately Dr I's decision not to do so during the period in question. Therefore, HLAM and II cannot be held responsible for any losses as a result of Dr I's decision.
55. In respect of the trading fees levied by HLAM, Dr I agreed to be bound the terms set out in HLAM's tariff of charges terms when he established the SIPP and HLAM made no error in this regard.
56. The delays caused by HLAM and II amounted to maladministration and would have caused Dr I significant distress and inconvenience. The Adjudicator considered a sum of £500 split equally between HLAM and II was an appropriate payment to Dr I in recognition of this.

57. Both HLAM and II accepted the Adjudicator's Opinion.
58. Dr I did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
59. Dr I provided some further comments in response to the Opinion. In summary he said:
- It was only after October 2020 that he was advised to trade on the basis that anything traded during the transfer would have remained with the old provider.
 - HLAM apply a spread charge whereas II only charge an exchange fee. Therefore, the same transaction level costs him no more than £300 with II as opposed to £8,000 with HLAM.
 - He started trading in the SIPP with £110,000 and one year later it was worth £280,000. In the five months lost from May to October 2020 the value of the SIPP would have grown over £430,000 based on the previous trading activity.
 - He accepts that he is not owed £150,000 but does not agree with the assessment. He was advised at the beginning of the transfer that the transactions traded while funds were being transferred would have remained with the old provider and was never told that the process had not started.
 - It was he who continuously chased HLAM and II and it would have taken longer had he not done so.
 - The delay caused by II from May to October 2020 and its delay in communicating his acceptance from November 2020 to February 2021 is worth £5,000 alone. He also suffered aggravation and losses as a result of having to sell the Unicredit and Deutsche Bank shares.
 - He considers that compensation of at least £10,000 from HLAM and at least £20,000 from II is more appropriate.
60. I have considered the additional points raised by Dr I, however they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

61. There is no dispute that both HLAM and II have made errors and have both contributed to the delay in transferring the SIPP, which I find amounts to maladministration.
62. Dr I does not dispute the length of delays caused by HLAM and II, as concluded by the Adjudicator, but is seeking compensation of at least £10,000 from HLAM and at

least £20,000 from II. This is due to the delays which he says caused him to incur excessive transactional costs with HLAM and lost trading opportunities in foreign stock. Dr I has sought to justify his losses from May to October 2020, by referencing an increase of £170,000 in his portfolio during the first year of trading.

63. I find that the increase in value of Dr I's investment in the first year of trading has no direct relevance to the investment growth Dr I may have enjoyed if he had traded between May and October 2020 and amounts to speculation. Past performance should not be taken as a guide to future performance, particularly in relation to stocks and shares.
64. I find that Dr I did have the opportunity to trade between May and October 2020, including taking advantage of the second stock market rally, in September 2020. It was Dr I's decision not to trade during this period. In any event, it cannot be said with any certainty what investment decisions Dr I would have made had he chosen to trade during this period. For this reason, I find that it is not possible to conclude with any certainty that a financial loss has been suffered.
65. I do not find that either HLAM or II were at fault for Dr I having to sell his Unicredit and Deutsche Bank shares. These investments were not available on II's platform at that time so an in-specie transfer was not an option. But, if Dr I did not wish to sell these holdings, he had the option to keep them with HLAM. Ultimately, he decided to sell them and transfer the cash to II. That was his decision alone.
66. In relation to financial loss as a result of the delays incurred, both HLAM and II caused delays to the transfer of the SIPP equating to a total of approximately 28 weeks. Had the transfer completed 28 weeks earlier, Dr I would not have paid HLAM SIPP Management fees of £16.66 per month for this period. This equates to the sum of £116.62 in overpaid HLAM SIPP Management fees. I find that these overpaid fees should be refunded by HLAM and II. However, I do not find that HLAM or II can be held responsible for any investment losses as a result of Dr I's decision not to trade between May and October 2020.
67. My awards for non-financial injustice are intended as an acknowledgement to the applicant for the inconvenience and/or distress that they have suffered as a result of maladministration. In other words, to remedy the injustice genuinely suffered – not to penalise or punish the respondent for bad behaviour. There is published guidance on the level of awards that may be made. I consider Dr I has suffered significant non-financial injustice and an award of £500 is appropriate.
68. I partially uphold Dr I's complaint.

Directions

69. To put matters right, within 28 days of the date of this Determination:

HLAM shall:-

CAS-62729-H2N5

(i) Pay £58.31 directly to Dr I in recognition of half of the overpaid HLAM SIPP Management fees;

(ii) Pay £250 (less £200 if already paid) directly to Dr I in recognition of the significant distress and inconvenience caused to him.

It shall:-

(i) Pay £58.31 directly to Dr I in recognition of half of the overpaid HLAM SIPP Management fees;

(ii) Pay £250 (less £40 if already paid) directly to Dr I in recognition of the significant distress and inconvenience caused to him.

Anthony Arter CBE

Deputy Pensions Ombudsman
30 August 2023