

Ombudsman's Determination

Applicant	Mr T
Scheme	Hargreaves Lansdown Vantage Group SIPP (the SIPP)
Respondents	Hargreaves Lansdown Asset Management Limited (Hargreaves Lansdown)

Ombudsman's Determination and reasons

1. I do not uphold Mr T's complaint and no further action is required by Hargreaves Lansdown.
2. My reasons for reaching this view are explained in more detail below.

Complaint summary

3. Mr T has complained that that Hargreaves Lansdown, the SIPP administrator, started charging for administering his SIPP, when he did not expect to pay any fees.

Background information, including submissions from the parties

4. Mr T joined a workplace SIPP provided by his then employer, Henderson Global Investors (**Henderson**) in 2007. The SIPP was administered for Henderson by Hargreaves Lansdown. When Mr T joined the SIPP, he was notified that Henderson would cover the annual charges levied by Hargreaves Lansdown if he held at least one "Henderson ...ordinary 12.5p share" and was an active employee. This was an informal arrangement with no direct contractual basis.
5. Mr T left Henderson in December 2012. On 12 March 2013, he contacted Hargreaves Lansdown and enquired about the administration charges for his SIPP. Hargreaves Lansdown responded to Mr T and amongst other things said:

"With regards to the Henderson Group SIPP, while you are invested into Henderson shares Henderson will cover any annual charges for your Group SIPP. As you sold your Henderson shares in December we have had to charge this annual charge directly to your Group SIPP."

6. Mr T replied on the same day:

“It is rather disappointing as I do not recall this being made clear. Presumably if I transfer Henderson shares back into my SIPP this charge will no longer apply?”

7. Also on the same day Hargreaves Lansdown said the following:

“As you have suggested...if you do hold Henderson shares within your Group SIPP then your employer, Henderson will cover the charges of the SIPP.”

8. Mr T took this as confirmation that he would not have to pay charges for the SIPP. He made additional contributions to the SIPP and transferred in two other work based pensions in November 2013, and January 2014. During this time, Hargreaves Lansdown did not charge him any administration fees.
9. On 6 October 2014, Hargreaves Lansdown wrote to Mr T and said Henderson had recently notified it that he had left employment. This was the first occasion that it was aware of this in spite of Mr T having left employment in December 2012. Consequently, Henderson would no longer cover the annual charges for his SIPP. Hargreaves Lansdown informed Mr T that he would need to pay the charges from 1 December 2014 onwards.

Adjudicator's Opinion

10. Mr T's complaint was considered by one of our Adjudicators who concluded that no further action was required by Hargreaves Lansdown. The Adjudicator's findings are summarised below:
- Hargreaves Lansdown was correct when it explained that the responsibility for notifying it of any employee events, such as members leaving employment, lies solely with the employer, Henderson. Hargreaves Lansdown can only act upon the information it is provided and has no responsibility, contractually, to check the employment status of Henderson members. Hargreaves Lansdown could not have acted other than it did until Mr T's change in employment status became known.
 - SIPP administration of any sort will always incur a cost. That certain employers cover these costs for their employees is commendable but not obligatory. It is not reasonable to expect Hargreaves Lansdown to continue administering the SIPP for Mr T free of charge.
 - The evidence indicates that Hargreaves Lansdown took remedial action to notify Mr T that charges were due from him directly, shortly after being informed that he was no longer employed with Henderson.
 - Despite the generous nature of Henderson's arrangement with Mr T, it is impractical to expect Henderson to continue paying future management charges for individuals who had left employment. Once he ceased employment, Henderson was no longer willing or indeed obliged, to pay these charges.

- It does not appear that Mr T made his employment status known to Hargreaves Lansdown when he made fee enquiries in March 2013. Had he done so, Hargreaves Lansdown could have updated its records and it is likely that he would have been informed of the correct position in relation to the fees. Further Hargreaves Lansdown's terms and conditions clearly states that by joining the SIPP all members commit to "inform us (Hargreaves Lansdown) if your circumstances change...". It is clear from the evidence provided by both parties that Mr T did not do this.
 - Mr T says that the two arrangements transferred into the SIPP had no management charges at the time of transfer. This may have been so at the time, but Mr T has not provided evidence of this. This evidence could take many forms but the most obvious would be a letter from the previous scheme administrator.
 - Annual management charges (**AMC**) and the process by which these were recovered were drastically altered in 2013 when the Financial Conduct Authority (FCA), as the UK's regulator for financial services, introduced new set of industry wide rules. This was known as the retail distribution review RDR.
 - These changes meant AMC no longer included commission to pay providers such as Hargreaves Lansdown. All charges would from then on have to be levied separately and would not be met by scheme rebates.
 - This RDR would likely have affected all Mr T's arrangements if they were on any basis other than defined benefit. Mr T has not provided any further information regarding these other arrangements he transferred.
 - Mr T has benefited from Henderson's error in that Hargreaves Lansdown have not charged him for two years.
 - It is likely that Mr T he would still have acted in a similar fashion in relation to his subsequent transfers.
11. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr T provided his further comments many of which were not new. Essentially I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr T for completeness.

Ombudsman's decision

12. Mr T did not accept the views set out in the Opinion on the basis that:
- Hargreaves Lansdown **was** a party to the arrangement between Henderson (his former employer), and its employees as evidenced by the marketing material for the SIPP (amongst other things).

- Hargreaves Lansdown's email of 12 March 2013, provided incorrect information to him which he placed reliance on and which it should take responsibility for.
 - Other factors including the fact that Henderson covers the administration costs of his staff pension fund and his inducement to join the SIPP, were not adequately taken into account during the Adjudicator's investigation.
13. Prior to joining the SIPP, Mr T completed Hargreaves Lansdown 'Joining and Share Transfer' form for an HL Vantage *Group* SIPP. (my emphasis). A copy of this form is available and while it is difficult to read it is tolerably clear that it required Mr T to declare:
- "My principal source of employed income is via the employer stated overleaf"
- "Should I leave the employer stated overleaf, I am happy for an individual account to be set up within the HL Vantage SIPP."
14. Hargreaves Lansdown does not have copies of the Group SIPP documentation issued to Mr T in May 2007. It has provided copies of the documentation for the individual Advantage SIPP that were applicable from November 2007.
15. Section 8 of the Advantage SIPP Terms and Conditions deals with administration charges and says the fees applicable to the SIPP are described in the Fee Schedule. It also says that charges are deducted from the SIPP account and that "completion of the application" to become a member confirms authority to make those deductions.
16. The Fee Schedule says the annual charge is "0% for monies invested in the SIPP bank account and funds that pay [Hargreaves Lansdown] renewal commission. For all other investments, we charge an annual fee of 0.5% + VAT up to a maximum of £200 + VAT per annum (charged monthly in arrears)". The Key Features also confirms that charges "will apply" to the SIPP as set out in the Fee Schedule. These documents set out the standard terms of business at the time which it is reasonable to assume formed the departure point of the agreement for the terms of the Group SIPP. But there is no basis to conclude that these terms were applicable without variation to the Group SIPP.
17. Mr T says that Henderson promoted the SIPP on the basis that fees would not be payable as long as he held Henderson shares within it. He says he was not informed that this arrangement would change if he left the company. While I do not dispute Mr T's recollection of events, my jurisdiction does not extend to the product sales process or matters concerning an employee's contract of employment. It is concerned with whether the scheme is being managed according to its agreed terms and conditions. The best evidence of what those terms and conditions were is provided by the May 2007 application form.

18. According to Hargreaves Lansdown, Henderson agreed to pay the administration fees for its employees (who held Henderson shares), while they were employed with it. Hargreaves Lansdown issued quarterly invoices to Henderson in respect of the relevant employees. The charge to Henderson for each employee was fixed at £200 per annum and the invoices specified how much was due for all the employees. From an administrative perspective, Henderson paid the fees in bulk and Hargreaves Lansdown did not document receipt of the payment from Henderson on the individual employee's Fees Account.
19. I accept that Hargreaves Lansdown did not deduct fees from Mr T's SIPP because it was receiving the fees due directly from Henderson instead.
20. In my view the agreement between Hargreaves Lansdown and Henderson did form part of the agreement between Mr T and Hargreaves Lansdown, otherwise there would have been no need for the Group SIPP application form to exist at all. Equally plainly, in my view, all three parties intended that once Mr T had left his employment with Henderson the terms of the payment arrangements would change, otherwise there would have been no need for the declarations contained in the application form.
21. Mr T considers that he is being required now to accept a product substitution to which he did not agree. I do not agree. Clearly he did agree to the setting up of a personal account within the Advantage SIPP when his employment with Henderson ended. I have considered the email exchange of 12 March 2013 in the context of the application of 2007 and the fact that Hargreaves Lansdown were unaware that his employment with Henderson had ended. The representation made to Mr T was unequivocal in that Henderson would pay so long as they were 'your employer' but nothing was said about what would happen if Henderson was no longer 'your employer'. I do not think it was reasonable for Mr T to rely on this statement as assurance that the fees would continue to be paid even though he was no longer employed by Henderson.
22. I have considered Mr T's point that Henderson continued to meet the costs of their occupational scheme even after employees had left them and his point that Henderson represented the Group SIPP to him as an alternative to the Henderson AVC. However, the complaint is against Hargreaves Lansdown. They were responsible for explaining the terms of their own product but they were not advising Mr T on comparisons between it and other products. They cannot be held responsible for conclusions which he drew from his own understanding of the situation rather than what they told him, nor for representations which may have been made by his employer.
23. The complaint against Hargreaves Lansdown therefore cannot be upheld because I am not satisfied there has been maladministration.

PO-9887

24. Therefore, I do not uphold Mr T's complaint.

Karen Johnston

Deputy Pensions Ombudsman
2 June 2016