

The complaint

Miss B complains that Hargreaves Lansdown Asset Management Ltd (the business) failed to open a separate savings account as instructed by her.

She's unhappy that it failed to pay her monthly contribution into a savings plan, and instead paid this into her Stocks and Shares ISA, referred to as the "ISA".

What happened

In April 2017, Miss B invested £10,000 into the ISA. She also signed up to the regular savings service which authorised the business to collect £160 a month to invest in the ISA.

Miss B says she thought she was setting up a separate savings account and was misled into thinking the ISA was doing very well, when it wasn't. She says that the business didn't make clear that the monthly contributions were going into the ISA, and it's not something she wanted or would've agreed to.

Miss B also says that she was on occasions harassed by the business to contribute more money into the ISA even though she couldn't afford to do so.

One of our investigators considered the complaint but didn't think it should be upheld. In summary, she said:

- In April 2017, Miss B spoke to a staff member – as she needed help completing a top-up form to invest £10,000 into the ISA – but was told that she had the wrong form. The call operative offered to take payment over the phone and Miss B confirmed that she'd read the terms and conditions and understood the value of the fund can go up or down.
- The form Miss B filled out clearly states it's a "Vantage ISA Application Form" – an application to invest in the Vantage Stocks and Shares ISA. Miss B signed the form to say she'd read the terms and conditions, and the Key Features Document (KFD).
- One of the terms Miss B agreed to states "*HLAM shall administer all your HL Vantage ISAs for different Tax Years as one Account per type of HL Vantage ISA you hold.*" This indicates that the regular savings will be held in the same account as her lump sum investment.
- Although Miss B says she was misled, the business wrote to her twice a year initially, and quarterly from Spring 2018 showing the number of units she held, per unit value and total value, as well as whether there has been a loss or gain since the last statement.
- The statement also provided a list of all the transactions that took place since the last statement, including regular (savings) deposits into the account and any new shares bought. So, Miss B can't now say the statements didn't show where the money went.
- The request for additional money was to do with the outstanding fees on her account. The business advises its customers to have at least £10 in the vantage account, so that it can collect the monthly fees. If there isn't enough cash the business has the rights to sell units to pay for the fees, and that's why it wrote to Miss B to give her the

opportunity to top up her account. Although Miss B found the letters distressing, that wasn't the business' intention, it was trying to help.

- Having listened to the July 2018 call, she understands that it was agreed that the fees would be deducted from the regular savings contribution, and the balance invested. This ensured that Miss B didn't have to pay more than she could afford.
- On balance she's unable to say the business has behaved unreasonably, so is unable to ask the business to return all her funds.
- Although Miss B asked the business to freeze her account until the complaint was dealt with, it's not something the business can do.

Miss B disagreed with the investigator's view and asked for an ombudsman's decision. She made a substantial number of points but in short, she said:

- The investigator hasn't understood the nature of her complaint. The premise of her complaint isn't that she opened the ISA account into which she invested £10,000 but that she thought she had opened a separate savings account.
- Her complaint points haven't been considered properly, probably so that it doesn't have to be upheld.
- She has now read that the application was for a Vantage ISA and that she should've known from the terms and conditions that the business administers the ISAs from the same account. Unfortunately, she didn't read this nor was it explained to her at the time, so she didn't know. She still doesn't agree that her money should be in the same account.
- She feels the business could've frozen her account whilst the complaint was dealt with but chose not to.
- She should never have been goaded into this distance selling. Her rights have been taken away. She never approached the business for any forms but ended up signing up for something she didn't want.
- She invested with the business based on trust and wonders if we feel she deserves this treatment?
- She's not an adventurous investor and wouldn't have placed her money in a failing fund.
- To put things right she would like her money returned in full.

The investigator having considered the additional points wasn't persuaded to change her mind.

As no agreement has been reached the matter has been passed to me for review.

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.

Having done so, I agree with the investigator's conclusions for much the same reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Miss B says, I'm unable to safely say the business has behaved unreasonably.

But before I explain why this is the case, I think it's important for me to recognise Miss B's strength of feeling about this matter. I'm sorry if she feels she's been mistreated by the business, I'm not persuaded that she has.

Miss B has provided detailed submissions to support this complaint, which I've read and considered carefully. However, I hope she won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by Miss B and the business, and reach what I think is an independent, fair and reasonable decision based on the facts of the case. It's not for me to determine if a "*fraud*" has been committed.

In deciding what's fair and reasonable, I must take into account the relevant law, regulation and best industry practice, but I'm not bound by this. It's for me to decide, based on the information I've been given, what's more likely than not to have happened.

I note the business says that it reopened Miss B's ISA on 23 March 2017, and she contacted the business on 3 April 2017 to subscribe £10,000 by debit card for the 2016/17 tax year. Miss B instructed the business to invest in the Woodford Income Focus fund. I don't think there's any dispute about this, and as I understand this isn't what Miss B is complaining about.

Miss B subsequently provided regular savings instructions to subscribe to her ISA for the 2017/18 tax year, purchasing additional units of the Woodford Income fund. I note the business says that in line with her instructions, £160 was invested every month, until she cancelled her regular savings instructions in August 2018.

I appreciate Miss B now says she was sent a letter (possibly a spam letter), she didn't understand it but signed it and signed her life away, not knowing that her money was going into the same ISA. But I can't blame the business for this because it simply did what Miss B instructed it to do.

I'm conscious that Miss B had the option to simply ignore the letter or seek advice before going ahead with any instructions but chose not to. In other words, she had a choice, and without seeking clarification it seems she signed and returned the forms thinking she was opening a savings account. I'm not persuaded that the business told her or led her to believe this would be the case.

I appreciate that Miss B thought ISAs (for different tax years) would be held separately, and therefore this was in effect instructions to save £160 a month in a separate account, but I can't blame the business for this misunderstanding. The terms and conditions made clear that the ISAs for different tax years would be held together, therefore the monthly contributions for 2017/18 would be held with the 2016/17 ISA, and invested in the Woodford Income Fund, as instructed by her.

I'm also mindful that this is a self-select ISA, so the business only invested in accordance with Miss B's instructions and this is not something that it would've advised on. I note Miss B says she chose the particular fund because it was something she invested in in the past and thought it was doing well.

I appreciate Miss B says that she thought her ISA was doing very well (when it wasn't) and that the business "misled" her into thinking that it was. But on the face of the evidence, and on balance, I'm unable to agree.

The regular statements made clear the unit value and the shares purchased, including later contributions made. The business didn't provide her with other information, so I don't think the it misled her as to what was going on.

I appreciate Miss B says she would never have opened another account if she knew her ISA was making a loss, but whether (or not) she knew it, she still instructed to business to take £160 a month for this purpose.

So far as the business was concerned, Miss B had an ISA into which she was making monthly contributions, held with an ISA from the previous year. Despite what Miss B says, it wasn't the case that she was "converting" her ISA into a regular savings ISA – so it wasn't something that she had to consent to. Rather it was a lump sum ISA into which she was making monthly contributions which were invested in the fund of her choice.

I appreciate Miss B's example – that the business offered her bananas, and then got her to sign for apples, but I don't agree that this was the case. I think it's more the case that she applied for bananas, thinking she was applying for apples, and is now unhappy because she got what she applied for. In other words, I can't blame the business if Miss B thought by applying to contribute £160 monthly, she was getting a separate savings account, when this was never the case. I'm mindful that this isn't even a feature with the Vantage ISA, so she is unlikely to have been told that it was. So, despite what Miss B says, I'm not persuaded that it told her, or led her to believe, that the money was going into a "separate" account.

I also don't think the business ever told her that her ISA was simultaneously growing by the same amount that she was contributing every month, and this would've been evident from the statements which showed every transaction, including every deposit made and unit purchased.

I just think this arose out of Miss B's (mis)-understanding that she was saving her money in a separate savings account, and that her ISA was increasing at the same time, by the same amount. But I've seen nothing to suggest that the business is responsible for this misunderstanding.

I'm mindful that when the business corresponded with Miss B, it even quoted the same account number. So, if there was any doubt it was open for Miss B to cross reference this with her other documentation relating to the ISA – it wasn't necessary for her to have this detail memorised to be able to do this.

I appreciate Miss B is concerned about the business asking for more money, but I understand that was in relation to the outstanding fees that had accumulated. I understand that if she wasn't willing to pay this (separately) the business had the option sell shares to pay for the fees. I appreciate Miss B had affordability issues, so the business agreed to take any fees differently – rather than ask for her to pay additional sums – which I think is fair and reasonable in the circumstances.

I appreciate Miss B wants the business to suspend or freeze her ISA account whilst her complaint is dealt with. But despite what she wants, given how ISAs operate, this isn't something the business can do. So, I can't blame the business for not being able freeze or quarantine her ISA.

If I was to uphold the complaint – which I don't – I could've asked the business to return her money if this was the right thing to do. But I don't feel it's a reasonable outcome in the circumstances.

I note the business says that Miss B has the option to close her ISA by selling the investments (for which charges may apply) or go to another provider. She may wish to get financial advice before deciding what to do.

I'm mindful of the other issues raised by Miss B, but despite what she says, I've seen nothing to suggest that her money has been stolen, or that the business has been duplicitous or deceitful towards her.

I understand that a new complaint about the fund and marketing is being considered separately. I understand Miss B feels she was targeted – through distance selling – to invest when the business knew the fund was failing. She's not an online person so didn't know the fund was failing.

The business will have to be given time to respond to the complaint before Miss B decides whether or not she wishes to refer the complaint to our service. It's not something I can comment upon in this case.

I appreciate Miss B will be unhappy I've reached the same conclusion as the investigator. I realise my decision isn't what she wants to hear. Whilst I appreciate her frustration, I'm unable to uphold this complaint and give her what she wants.

My final decision

For the reasons set out above, I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 25 December 2020.

Dara Islam
Ombudsman