DRN-2566987

## The complaint

Ms R has complained about the service and advice she's received from Hargreaves Lansdown Advisory Services Limited (HLAS), in the following terms: she didn't receive an annual review between March 2018 and June 2019; HLAS has applied an incorrect lifetime allowance (LTA), leading to tax being incorrectly deducted; she had more than one Self Invested Personal Pension (SIPP) account; she was incorrectly advised to invest in the Woodford Equity Income Fund (WEIF); and that HLAS sent her two expression of wish forms.

## What happened

Our investigator made the following observations and findings, within which the background to the complaints is also encompassed:

*The issue of the annual review*

The investigator noted that HLAS gave Ms R an initial recommendation relating to her pension affairs in 2016, and it was agreed that HLAS would provide her with annual reviews – a service for which she would pay an annual charge.

Reviews were undertaken in March 2017 and April 2018, but the next wasn't carried out until July 2018. So the investigator considered this and whether HLAS had fulfilled its obligations to Ms R in that regard.

He noted that HLAS had sent an invitation for Ms R to have a review in April 2019, and although the actual letter wasn't available, he thought the records it had provided were indicative of an attempt having been made to review Ms R's pension affairs.

In June 2019, Ms R contacted HLAS to transfer funds from her self-managed SIPP to a Portfolio Managed Service (PMS) SIPP which she also held. She also enquired about her review, so HLAS sent a further invitation and the review was arranged for July 2019.

Although the investigator accepted that Ms R may not have received the initial invitation, he was nevertheless satisfied that an attempt had been made to arrange it – and moreover, he was satisfied that Ms R had received a review in 2019, albeit slightly later than in previous years. As such, he said, Ms R received her yearly review.

*The LTA issue*

The investigator noted that the LTA was first addressed when HLAS gave Ms R initial advice in 2016. Ms R's pension funds were recorded as being below the LTA of £1.25m at the time, but it was known that this would decrease to £1m the following year. There was a discussion about Ms R exceeding that limit, and as part of the review in 2017, the adviser recommended that Ms R apply for Individual Protection 2016.

Ms R had said that she'd emailed her LTA Protection Certificate 2016 to her adviser on 6 April 2018. The investigator said that he could see that she'd told the adviser that she'd applied for it, but it was unclear as to whether the actual certificate had been attached to that

email. He further noted that, in the adviser's report of 17 April 2018, it was recorded that Ms R was in the process of applying for this protection, which was inconsistent with what Ms R had previously said about the status of her Individual Protection earlier in the same month.

A letter from HLAS in April 2019 reminded Ms R that her accumulated pension funds would soon be tested against the LTA as she was nearing age 75. In response, Ms R completed and returned a declaration which confirmed that she understood the LTA to be £1.055m and that, by the time she'd reached 75, there was no possibility that the total value of all her pensions would exceed that limit.

The investigator thought that the adviser should have followed up the absence of an attached certificate in the earlier email of April 2018, but given the subsequent recommendation in the same month that Ms R apply for the LTA protection, and that Ms R had herself confirmed that she wouldn't exceed the LTA the following year, he concluded that Ms R had opportunities to mitigate her situation if indeed there was the possibility that the LTA would be breached. As such, and as no actual evidence of the protection had been provided, the investigator didn't think that HLAS had acted unreasonably in deducting tax from her pension when Ms R turned 75.

However, the investigator said that, if it was the case that the Individual Protection 2016 could be applied retrospectively, then HLAS should do this – and he sent it Ms R's certificate.

*More than one SIPP account for Ms R*

The investigator said that, when Ms R first transferred her pension funds to HLAS, she was advised to open a PMS SIPP and a PMS Drawdown SIPP. The majority of Ms R's funds were retained in the PMS SIPP as she had no need of the drawdown facility at the time – but the drawdown facility provided by the latter was there if she needed it.

When Ms R's requirements changed in 2017, notably a desire to help her daughter buy a house, the adviser recommended that she transfer some money from the PMS to the Drawdown SIPP, which enabled Ms R to draw some cash tax free.

And when a further pension contribution of £10,000 was made after the March 2018 review, this was placed into the PMS SIPP as Ms R wanted to reduce her income tax bill, set aside money for long term investment growth and exclude that investment from her estate. The investigator was therefore satisfied that the two SIPP accounts fulfilled a quite separate purpose and he didn't think that this had been inappropriate.

He noted that a further SIPP account was established online, but this was done by Ms R herself, and she invested £8,000 into this in March 2018 – which was then transferred to the PMS SIPP in May 2018 – and a further £2,800 was invested into it in June 2019. So he wasn't minded to hold HLAS responsible for the opening of the further SIPP account.

*Suitability of the Woodford Equity Income Fund*

The investigator said that Ms R's pension funds hadn't been invested directly into the WEIF – rather, they were invested in a number of "multimanager" funds, some of which had themselves invested small amounts in the WEIF. He noted that Ms R had said that around 4% of her pension funds were invested in the WEIF, but he also said that she wouldn't have been restricted from either drawing on her pension funds or transferring them.

The investigator assessed the advice given to Ms R in 2016, noting that the adviser had taken account of her circumstances, objectives and attitude to investment risk. A consistent

theme, the investigator noted, was that Ms R didn't envisage needing the invested pension funds for her retirement, and instead she anticipated them contributing towards any long term care needs.

The investigator said that Ms R had other pension income of around £38,000 and investment income of approximately £14,000, along with other assets which could be relied upon in retirement. So, he said, there was no immediate need for Ms R to access her SIPP funds.

Given her other available assets, the investigator thought that Ms R also had some capacity for loss, which could be as much as 40% in line with what had occurred in equity markets during the 2008 credit crisis. And so the investigator didn't think the investment strategy, which included a small investment via the multimanager funds, was unsuitable for Ms R, who was investing for the medium to long term. And he didn't think that HLAS would in any case have been able to predict what happened to the WEIF.

*Two "expression of wish" forms*

The investigator noted that Ms R had returned two of these forms, as this is what had been sent to her by HLAS. But he said that, as there were two separate SIPP accounts, this didn't seem unreasonable.

*Other matters*

He also said that, although Ms R had queried the whereabouts of some of her pension contributions since the complaint had started, HLAS had confirmed that these had been allocated correctly. The investigator said that he would forward the information he'd received about this to Ms R, but as this issue hadn't formed a part of the original complaint, if Ms R remained dissatisfied with this, she would be able to raise this as a separate concern.

The investigator also noted that HLAS had itself had discovered that it had made an error with the tax relief which was received in respect of the contribution to the PMS SIPP in 2018 – amounting to £2,000. This had remained uninvested and so hadn't participated in the market growth of the PMS SIPP.

HLAS had offered to move this into the PMS SIPP and assess whether there had been any investment loss. Th investigator agreed that a loss assessment should be undertaken, and set out his view of how this should be done. He said that the actual value of the SIPP should be compared with its notional value, had the transfer of funds been made when it should. If there was a financial loss, this should be paid to the SIPP if possible, or if it had annual allowance or protection implications, it should be paid directly to Ms R with a notional deduction for the income tax which she would otherwise have paid on the amount.

HLAS agreed with the investigator's assessment, and said that it had also forwarded the protection certificate to the relevant team to see if it could be retrospectively applied.

Ms R had further observations to make, which I've summarised as follows:

- No evidence had been provided that the letter of April 2019 inviting her for an annual review had been sent.
- She felt that she had paid for a review in the 2018-19 tax year, which she'd needed but hadn't received - and the amount in respect of this should therefore be repaid to her.
- Matters relating to her physical health meant that she needed face to face meetings – although the detail of her actual condition had also been mis-recorded.
- She had presented the protection certificate to the adviser in July 2018, but the

financial report which followed still said that the protection was still to be confirmed by Ms R in writing. And despite the declaration which she later sent, HLAS still taxed her pension. This should be reclaimed from HMRC and paid to her.
- She only opened the online SIPP account as HLAS hadn't given her any other option of making pension contributions in the 2017/18 tax year. She received no advice about how to get the money into the correct account. And the reasons she didn't combine the PMS and drawdown SIPPs was because she was aware that the former was invested in the WEIF.
- HLAS remained responsible for how her pension funds were invested, and the WEIF allocation had restricted her ability to tidy her pension funds into a single fund and transfer them elsewhere.
- She agreed that a loss calculation should be undertaken to determine whether a loss had been suffered on the funds which had remained uninvested.

The investigator considered these further points and said that he remained satisfied that HLAS had tried to offer Ms R a review in 2019. And he didn't think that the agreement had been that these were completed before the end of the financial year. And so he considered that HLAS had fulfilled its obligation by undertaking the review, albeit a few months later.

Although he agreed that HLAS could have done more to follow up Ms R 's email about the LTA protection certificate, he nevertheless noted again that HLAS had followed this with a request for confirmation of her proximity to the LTA, and that Ms R had indicated that her pension funds wouldn't exceed £1.055m.

The investigator said he couldn't be certain that Ms R had in fact provided HLAS with the protection certificate, although he invited Ms R to provide further evidence that it had been. He had nevertheless requested that HLAS determine whether it could be applied retrospectively and it had confirmed that it was looking into this.

Ms R had further observations to make in response, as follows:

- When she made HLAS aware of her protection certificate, and then that she hadn't exceeded the LTA, she was ignored by HLAS on both occasions.
- She'd handed the adviser her protection certificate, but the report which was completed several months later was filled with errors, including that the LTA protections was still to be confirmed. Ms R remained of the view that she should be repaid the tax which had been incorrectly taken from her pension.
- There was no record of the review invitation letter having been sent in April 2019.
- The review which did happen was too late for the end of the 2018/9 tax year.
- Individual charges had been agreed for the reports dated 7 March 2016, 9 March 2017 and 17 April 2018. But Ms R hadn't agreed a charge for the report which was issued nearly three months after the meeting on 1 July 2019, which was full of errors.

As agreement hasn't been reached on the matter, it's been referred 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, my views are broadly aligned with those of the investigator, and for similar reasons. As such, there's little which I think I can meaningfully add, but I'll address the issues involved, and specifically Ms R's concerns about the findings to date.

*The late annual review in 2019*

I've thought carefully about what Ms R has said about the annual review in 2019, and that it was designed to be undertaken before the end of the tax year. On the basis that it wasn't, and that the subsequent report was issued almost three months later (with errors), Ms R has said that she's unwilling to pay for it.

But as with the investigator, I haven't seen anything which suggests that the reviews needed to take place before the end of each tax year. And Ms R has herself said that she was happy to pay for a review report dated 17 April 2018, which was issued after the end of the 2017/18 tax year.

And so I don't think I need to make a finding on whether the letter inviting Ms R for a review in April 2019 was actually sent. Although the review may have happened slightly later than might otherwise have been the case, it nevertheless occurred in the mid part of 2019.

*The LTA protection issue*

As with the investigator, I think HLAS could have done more to follow up Ms R's email of 6 May 2018, although I note that the email itself doesn't reference an attachment. I also take on board Ms R's comment that she showed the adviser the protection certificate, and that she in any case confirmed in a later declaration that her pension funds wouldn't exceed the LTA.

However, the check later conducted by HLAS revealed that Ms R's pension assets did exceed the LTA. And whilst I also don't doubt Ms R's recollection that she showed the certificate to the adviser, it does seem odd to me that the adviser would simply ignore this. So I think it's possible that there may have been some miscommunication over the issue of whether the protection was in place. And Ms R's later confirmation that her assets wouldn't exceed the LTA, which might render any protection in any case redundant, might lend credence to this notion.

The fact is that, as also noted by the investigator, I can't be certain of what was discussed in the meeting. As it turned out, HLAS checked Ms R's pension assets against the LTA at age 75 and determined that they exceeded this – and so the tax needed to be paid. But I've requested an update as to whether this can be reclaimed from HMRC and whether HLAS can assist Ms R in doing so. HLAS has confirmed that it was its understanding that Ms R had invalidated her protection and it wouldn't therefore be appropriate to apply a certificate which was no longer valid.

However, it has also said that if Ms R has confirmation from HMRC that the certificate and associated protection in still in place, it could retrospectively apply this to her account. It said it wouldn't be able to contact HMRC on Ms R's behalf, however.

I think this is a reasonable stance, and so I would recommend that Ms R seek confirmation from HMRC that the relevant protection is in place, and provide this to HLAS so that it can, if possible, assist her further.

*WEIF*

Before I consider the investment in the WEIF itself, I think it would be useful to set out the agreed asset allocation for Ms R in the initial advice in 2016, based on her circumstances, objectives and attitude to risk. From what I can see, there was no definitive "low/medium/high" risk tolerance attributed to Ms R, but she was described as someone who was a knowledgeable and experienced investor, having previously held fund based

investments and direct shareholdings.

As identified by the investigator, Ms R was also recorded as having the capacity for loss as her secure pension income met all of her current spending and would continue to do so in retirement. Ms R also retained more than enough cash on deposit to meet any emergency needs.

The report from 2016 also said that Ms R was comfortable accepting volatility as she was aware that this was a natural part of investing. She accepted that value was to be achieved through long term investing and enjoyed the risk based side of investing.

A target asset allocation was set as follows:

| | |
|---|---|
| Fixed Interest | 20-30% |
| Managed Equities | 65-75% |

So I think I can be reasonably confident that Ms R was an individual who was prepared to accept some risk for the sake of financial reward in the medium to long term, and as observed by the investigator, she had a specific aim in mind for these pension assets – namely long term care.

The Portfolio Management Service to which Ms R had subscribed was described as follows in the report:

*"The investment team conduct extensive research to identify the best funds and fund managers. The same team are responsible for the HL Multi-Manager funds, so the Portfolio Management Service primarily invests in these multi-manager funds as an efficient way of holding a selection of their best ideas."*

So even though the responsibility for investment in particular assets, including the WEIF, fell within the remit of the multi-manager funds, it was still ultimately the responsibility of the HLAS PMS to ensure that the assets were suitable for Ms R.

But whilst Ms R is right to say that she was reliant on HLAS to make sound investment decisions on her behalf, and without needing to making any findings on the operation of the fund itself or its appropriateness for a particular type of investor, it formed a very small part of her portfolio.

I've nevertheless considered the objectives of the WEIF as stated in its 2016 fund factsheet, which were as follows:

*"To provide a reasonable level of income together with capital growth. This will be achieved by investing primarily in UK listed companies."*

I don't think this would have been inconsistent with the objectives for Ms R's pension funds. HLAS has also confirmed that Ms R's funds in the PMS aren't suspended and that there would be no restrictions on her transferring or consolidating her pension funds.

*More than one SIPP account*

The investigator has explained his reasoning for finding that the two SIPPs held with HLAS served different purposes – as far I can tell, one was effectively a flexi-drawdown account, whereas the bulk of Ms R's investments remained in the non-drawdown account. And having sought clarity from HLAS on this point, it's said that charges were levied on both as a percentage of funds held, which means that Ms R wouldn't have been paying an additional

fixed fee for holding the two SIPP accounts. This doesn't therefore seem unreasonable to me.

But I've also taken into account what Ms R has said about the third SIPP account. Ms R says that she only opened the online SIPP account as HLAS hadn't given her any other option of making pension contributions in the 2017/18 tax year, and that she received no advice about how to get the money into the correct account. But I also haven't seen any evidence of Ms R seeking advice on how best to make an additional pension contribution. And so if HLAS were unaware of her intention, it would be difficult for it to advise on the best way of achieving her objective.

*Two expression of wish forms*

I don't think this has caused any financial loss or significant inconvenience to Ms R. As the investigator noted, this seemed quite reasonable given that there were two HLAS SIPP accounts.

**Putting things right**

HLAS has nevertheless identified that an error was made with regard to the tax relief which remained uninvested – amounting to £2,000. And I think the proposal put forward by the investigator and accepted by HLAS is appropriate.

Hargreaves Lansdown Advisory Services Limited should therefore determine the notional value of Ms R's SIPP, had the funds been invested in the originally proposed manner (so the strategy employed according to Ms R's risk profile, but excluding the WEIF, to which Ms R has said she was keen to avoid further exposure). Ideally, it should ensure that a payment is made to increase the SIPP by any amount of loss, taking account of any fees and available tax relief.

Hargreaves Lansdown Advisory Services Limited has said that it's possible for it to backdate Ms R's portfolio to ensure that it's in line with her original instruction. But if this isn't for whatever reason possible, or has LTA tax implications for Ms R – which it seems likely it might - it should pay the amount directly to Ms R, with a notional deduction for the income tax – presumed to be basic rate - she would otherwise have paid on it outside of the pension fund. Ms R would have been able to take 25% of this as tax free cash, so a notional 20% income tax rate should be deducted from 75% of the compensation.

**My final decision**

My final decision is that I uphold the complaint and Hargreaves Lansdown Advisory Services Limited should ensure that any redress due is paid to either Ms R's SIPP by way of reconstructing its value, or to her directly, as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 21 May 2021.

Philip Miller
**Ombudsman**