

The complaint

Ms B complains that Hargreaves Lansdown Asset Management Limited (Hargreaves) failed to make her aware of a deadline to avoid tax on the benefits from her late father's pension plan. And then made the decision to pay benefits too late for the deadline to be met. She would like compensation for the tax costs incurred.

What happened

Ms B's father (Mr B) died in October 2019. He had a Self-Invested Personal Pension Plan (SIPP) with Hargreaves and death benefits could be paid free of tax before 28 October 2021. If paid later, they would be subject to tax at the beneficiary's marginal income tax rate. Mr B hadn't completed a nomination of beneficiary and the payment of the death benefits was at the discretion of the SIPP Trustees – a sister company of Hargreaves.

Hargreaves liaised with the executor of Mr B's estate and the appointed solicitor and confirmed the tax deadline on 20 December 2019. It requested a copy of the Will and details of any potential beneficiaries such as a spouse and children. The solicitor provided this information on 3 March 2020. Ms B says the executor was her father's estranged wife and matters became contested. Ms B appointed her own solicitor, who wrote to Hargreaves in August 2020 advising that her father and his wife had been estranged pending divorce at the time of his death.

Hargreaves says the Trustees decided the input of Mr B's children was necessary. So, it wrote to the estate's solicitor on 23 October 2020 asking it to contact the children and request they write to Hargreaves to advise how they thought the benefits should be paid. Reminder letters were sent on 21 January 2021, and 19 March 2021, after which the solicitor said it had asked Ms B and her brother to contact Hargreaves. It sent further reminders to the solicitor on 14 June and 5 August 2021 and requested the children's addresses. All these letters noted the tax deadline applying.

Ms B wrote to Hargreaves on 20 August 2021 referring to 14 June 2021 letter sent to the solicitor. She set out some background about the family situation and said:

"My brother and I feel strongly that our father would have wished the fund to be divided equally between us"

Hargreaves emailed the estate solicitor saying it was waiting to hear from Ms B's brother in order to proceed. On 24 September 2021 the solicitor confirmed it had requested her brother get in touch and provided his address. Hargreaves wrote to him on 29 September 2021, asking him to reply by 7 October, but Ms B says he didn't receive this until 5 October 2021. It sent a reminder dated 8 October 2021, also asking him to reply by 7 October 2021. He replied on 15 October 2021, apologising for the delay, and Hargreaves says it received this on 20 October 2021. He said the benefits should be split equally between him and his sister.

The Trustees decided that the benefits should be split 50% to Mr B's widow and 25% each to Ms B and her brother. It wrote to Ms B on 20 October 2021 confirming this and enclosing

forms to be completed by her and her brother and returned as soon as possible, so that payment could be made before 28 October 2021. The letter was sent by signed for delivery.

Ms B says she didn't receive the letter as she was out when delivery was attempted. Unaware that it was from Hargreaves and of its importance she arranged for redelivery and didn't receive it until 29 October 2021. Hargreaves sent a reminder dated 26 October 2021, but Ms B says the envelope was franked 27 October, so it wasn't received until after the deadline had passed. Ms B says missing the deadline resulted in over £46,000 of income tax being payable on her benefits.

Ms B complained to Hargreaves, saying it hadn't made her aware of the tax deadline and its consequences. She said the decision had been made so close to the deadline she had no chance to meet it. Hargreaves said it wasn't responsible for the tax costs that had been incurred. It said significant delays had been caused by third parties. It said it had repeatedly requested that the estate's solicitor ask Ms B and her brother to get in touch and that Ms B had referred to one of these letters which noted the deadline. It said it had no authority to disclose information to her solicitor as it wasn't acting for the estate. But it agreed that some of its service could have been better and offered Ms B £200 as an apology for this.

Ms B didn't accept the offer and referred her complaint to our service. She said the form sent to her had to be returned by post and she had "*no practical opportunity to return it in time*". She said Hargreaves had made no other attempt to contact her about the deadline. She said it was blaming the estates solicitors for not passing on information requests, but as the estate solicitor wasn't acting for her it should have liaised with her.

Our investigator looked into the complaint, but she didn't uphold it.

Our investigator said Hargreaves role was that of administrator, with the decision about how benefits should be distributed lying with the Trustees. She thought the tax deadline had been communicated clearly and outstanding information had been chased repeatedly. She said Hargreaves had advised it couldn't ask Ms B or her solicitor for information directly about other potential beneficiaries, as she hadn't been confirmed as a beneficiary. So, it was reasonable that it liaised with the solicitor representing the estate. She said as the letter Ms B had referred to in writing to Hargreaves referred to the tax deadline it was reasonable to say she would have been aware of it from then.

Our investigator said it wasn't Hargreaves responsibility to avoid tax as this applied to the beneficiaries not to it. She said Hargreaves hadn't made the decision about whether to wait for a response from Ms B's brother or not as this was the Trustees decision. She said she couldn't say why the estate's solicitor took the time it did to respond to queries, or why the Trustees decided to wait as long as they did before making a decision. She said these matters could be raised as separate complaints with those Firms directly.

Ms B didn't agree. She said it was clear that not all of all Hargreaves correspondence was reaching them. She said whilst it said it couldn't contact her or her brother directly that is what it had done when it wrote to her brother in September 2021. She asked why it hadn't contacted her at the same time.

Our investigator said Hargreaves had only requested the same information from Ms B's brother that she had already provided in August 2021. And it could only liaise with the estates solicitor about information being outstanding. She said her opinion hadn't changed.

As Ms B doesn't agree it has come to me to decide.

My provisional decision

I issued my provision decision on 21 April 2023; I explained the reasons why I was planning to uphold the complaint. I said:

I've considered all the available evidence and arguments to decide (provisionally) what's fair and reasonable in the circumstances of this complaint. Having done so, I'm planning to uphold the complaint.

I thought about what has happened here carefully. The main aspect of Ms B's complaint is whether there was adequate time for her to respond to Hargreaves after the Trustees the decision about who would receive the benefits. This complaint isn't about the actions of the Trustees. So, I'm not considering the merits of their decision in any way and will only comment indirectly on their actions in so far as they may have impacted Hargreaves' administration of the arrangement.

However, I note from Hargreaves' Terms and Conditions (T&C's) under section "D1 - scheme structure" that:

"HLAM is the Scheme Administrator and will administer the SIPP in accordance with the Scheme Rules. HLPT is the trustee of the SIPP. It holds all cash and investments in SIPP Accounts on trust, and acts solely on the instructions of the Scheme Administrator."

Hargreaves file notes suggest that it controlled the timing and agenda of the Trustees meeting. And at this stage I have seen no evidence of any service level agreement in terms of administrative timeframes or procedures. But on the basis of the T&Cs noted above I think it is reasonable to conclude that Hargreaves was in control of the process in terms of timeframes.

In rejecting Ms B's complaint Hargreaves focuses on the delays caused by others and its repeated attempts to obtain information from the estate's solicitors and the executor. These delays weren't caused by Ms B and Hargreaves was aware of the dispute. I think in these circumstances it should have attempted to contact Ms B and her brother directly sooner than it did. Had it done so there might have been more time to communicate the decision to Ms B.

Whether or not it was the Trustees or Hargreaves who decided to hold the Trustees meeting close to the two-year deadline, this decision was presumably made in the expectation that the necessary administration requirements arising from the decision could have been dealt with before the deadline passed. So, I think it was incumbent on Hargreaves to adopt appropriate administrative procedures that gave a realistic chance of the deadline being met, given there were only five working days after the Trustees meeting. This is particularly so as Hargreaves was requesting Ms B return documents by post. At this stage I don't think that happened and that there were administrative failings that had significant financial consequences for Ms B.

I think this for the following reasons:

- 1. Hargreaves knew that there were potential issues in Ms B's father's marriage by 3 March 2020, so at an early stage. Because the information form returned to it by the estate's solicitor contained the following question which had been answered, No:*

"Were the deceased and their spouse/civil partner living together at the date of death?"

2. *Both Hargreaves and the Trustees knew the matter was contested by August /September 2020 when it received correspondence from Ms B's own solicitor. This prompted the attempts to seek Ms B and her brother's opinion by asking the estate solicitor to contact them.*
3. *Despite knowledge of the dispute and the difficulty it was having obtaining information from the executor (and potential beneficiary) and the estates solicitor, it didn't seek to reach out directly to Ms B and her brother until nearly a year after it was aware the matter was contested. When it requested Ms B and her brother's addresses from the estate solicitor in June 2021.*
4. *I'm not persuaded that Hargreaves could only communicate with and accept information from the representatives of the estate. The pension benefits weren't in the estate. Many of its letters requesting information stated:*

"The HL SIPP is held under discretionary trust which means the benefits are usually payable outside of the estate."

And, in any case, having failed to obtain information from the estate it eventually contacted Ms B's brother directly. So, it isn't clear to me why Hargreaves felt it couldn't acknowledge Ms B's letter to it and confirm that the Trustees wanted to consider the distribution of benefits before the tax deadline. And to ask her if her brother was aware of the matter and its importance. Ms B's own letter had directly referred to her brother. Hargreaves letter to her confirming the Trustees decision and its requirements directly refers to her brother and encloses documents in respect of his share of the benefits, so it seems confidentiality wasn't a consideration.

5. *In the circumstances I think waiting to as near the deadline as possible before making the decision was reasonable. Provided of course, that all reasonable steps had been taken to obtain the information and there was adequate time to deal with the administrative requirements resulting from that decision.*
6. *I don't agree that Hargreaves had no responsibility in respect of the tax deadline. There would be no need to set the Trustee meeting before the deadline if there was no responsibility here. The evidence suggests there was considerable awareness of the deadline and the need to act before it. I think the Trustees would have a duty of care to the beneficiaries in respect of this. And the Trustees must have reasonably expected that once the decision had been made on 20 October 2021, there would be a realistic prospect of the matter being concluded before the tax deadline.*
7. *There were just five working days before the deadline after Hargreaves wrote to confirm the decision. To which it required documents to be returned by post. Given the short time frame I don't think just sending a letter and form by post, even sent by recorded or next day delivery was adequate in the circumstances. Ms B didn't know correspondence from Hargreaves was likely. Signed for mail requires someone to be present to take delivery, which is by no means certain with a residential address. And unfortunately, Ms B wasn't at home. Hargreaves could have checked whether delivery had been made and may have done so. If it did, it left following up far too late. And as Ms B has said that the reminder letter wasn't actually posted until the day of the deadline, which clearly isn't reasonable.*
8. *The letter sent to Ms B asked her to complete a form and provide evidence of her identity and confirmation of her bank details in case this couldn't be checked electronically. Bank details were required in the form of original postal bank statement or if a "branch printed statement, this must be stamped by the branch".*

Statements from internet banks were not acceptable. Not everyone receives paper bank statements or uses banks with a physical presence in the high street. So, this information might not have been available to allow a reply in time even if the letter had been received at the first attempt. And Hargreaves letter required Ms B to also liaise with her brother to provide the same information before the deadline.

- 9. Unfortunately, it seems Ms B hadn't provided her telephone number or email address when she wrote to Hargreaves. But it did have her solicitor's contact details. And it had received Ms B's brother letter which gave his telephone number and email address, and it appears no attempt was made to contact him either. So, in the circumstances I think calls could have been made and or emails sent to advise important and urgent correspondence was on the way or outstanding. Had this been done the problem may have been averted.*

Even if Hargreaves wasn't in complete control of the process, it was clearly in charge of administration. I think it is fair and reasonable that it should have adopted what administrative requirements were required due to the short timeframes involved here. These weren't onerous or excessive. Calling or emailing her solicitor and/or her brother or indeed the estates solicitor about the benefit decision could have easily averted very serious tax consequences suffered. As it doesn't appear that happened, at this stage I don't think Ms B has been treated fairly and I think the complaint should be upheld.

Putting things right

Had Hargreaves dealt with this death claim more efficiently I think the tax charge could have been avoided. So, I think it is fair that it should compensate Ms B for the tax costs incurred.

Hargreaves should establish the full income tax liability incurred on Ms B's share of the benefits. It may require tax records from her to do so. It should then pay this to her adding interest at 8% per year simple to the sum owing from the date it originally paid the benefits to Ms B until the date it makes settlement.

I think Ms B has been caused distress and inconvenience by what has happened. Hargreaves has already offered £200 compensation for various service failings which Ms B hasn't accepted. I think it's fair that this be increased by £100 to £300 in total.

I asked both parties to send me any further evidence or comments they wished me to consider.

Response to provisional decision

Ms B accepted my provisional decision.

Hargreaves said it disagreed with my provisional decision. It said it hadn't been able to liaise with any party other than the estate's solicitors, who'd been appointed by the Executors of Mr B's estate. It said it had to rely on the solicitors to pass on details and information requests and only had authority to write to the solicitors and there was little more it could have done.

Hargreaves said it had made the estate solicitor aware of the deadline on five occasions and once it had received the beneficiaries details it made them aware of this three times on 11 June, 8 October, and 26 October 2021. And, but for delays caused by the solicitors there would have been more time for the beneficiaries to respond and more time for the Trustees to review the situation. And it wasn't *fair nor reasonable to overlook this*" and that it:

“cannot be held solely liable for the tax charges that the beneficiaries have incurred.”

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've decided to uphold the complaint.

I've thought about Hargreaves response to my provisional decision carefully. What happened here is very unfortunate and I accept the circumstances were difficult. But the benefits in the late Mr B's SIPP weren't part of the estate and the payment of those benefits wasn't at the discretion of the estate or its representatives, that was Hargreaves responsibility. And whilst the actions of others clearly caused delays, I think its errors directly caused the losses for Ms B.

Hargreaves hasn't provided any explanation of why it felt it could only liaise with the estate's solicitor for such a long time when it wasn't receiving the information it required. I think it had a responsibility to try to resolve the issue. Something it clearly concluded itself when it finally did seek to contact the beneficiaries directly. But I don't think it did this soon enough, and once it did it didn't follow up as I think it reasonably should have done. It knew that the executor and estate solicitor were being uncooperative and that the estate was disputed. But it allowed the situation to continue for many, many months before seeking contact details for Ms B.

And, whilst it waited for Ms B and her brother to get in touch via requests to the estate solicitor it already had the means to contact Ms B as her own solicitor had written to it more than a year before the tax deadline. So, it could have reached out to her as soon as its initial enquiries through the estate solicitor were unsuccessful. And it could have responded to Ms B's letter to it of 20 August 2021 to open a clear line of communication with her. Something I think the contested circumstances reasonably required, but it didn't. I think it is very likely that reaching out to her sooner or responding to her letter would have changed the outcome here.

But, because of these failings Ms B didn't know what was happening. And having deferred the decision on the benefits until it did, just five working days before the tax deadline, Hargreaves simply didn't allow adequate time for the procedures required to be completed, even if she had received its letter at the first delivery attempt. And that wasn't fair to Ms B regardless of any issues caused by third parties before then.

Had Hargreaves handled things differently I think the tax costs suffered by Ms B could have been avoided, so it's fair that she is re-imbursed for these.

Putting things right

Hargreaves should establish the full income tax liability incurred on Ms B's share of the benefits. It will require tax records from her to do so, which she has provided to our service. It should then pay this to her adding interest at 8% per year simple to the sum owing from the date it originally paid the benefits to Ms B until the date it makes settlement.

Ms B has been caused distress and inconvenience by what has happened. Hargreaves should increase the compensation it has already offered of £200 to £300 in respect of this.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint against Hargreaves Lansdown Asset Management Limited.

I direct Hargreaves Lansdown Asset Management Limited to calculate the full income tax liability incurred by Ms B as a result of the benefits becoming subject to income tax. It should pay this with 8% per year simple added from the date it originally paid the benefits to Ms B to the date it makes settlement.

I direct Hargreaves Lansdown Asset Management Limited to pay Ms B £300 compensation in respect of the distress and inconvenience she has been caused.

If Hargreaves Lansdown Asset Management Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms B how much it's taken off. It should also give a certificate showing this if Ms B asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 20 June 2023.

Nigel Bracken
Ombudsman