

complaint

Mr T complains about the delays caused by Hargreaves Lansdown Asset Management Limited (Hargreaves Lansdown) in processing his SIPP contribution. As his contribution was added to his SIPP after his 75th birthday he was no longer eligible to claim tax relief.

background

I issued my provisional decision on this complaint on 27 October 2015. The background and circumstances to the complaint, and the reasons for my provisional finding, which was to uphold the complaint, were set out in that decision (see attached).

I invited both parties to provide any further evidence or arguments that they wanted me to consider before I made my final decision.

Hargreaves Lansdown didn't agree with my decision. It said, in summary, that:

- the SIPP was essentially operated as an execution only service;
- it had told Mr T that contributions would only attract tax relief if made before his 75th birthday;
- it accepted there was confusion, and this was unfortunate, but it thought it had answered all Mr T's queries appropriately; and
- Mr T ought to have known that the CREST form was required from the paperwork, regardless of the phone call on 11 March.

Mr T accepted my decision. He said his pension was now in drawdown so, as he understood it, any redress payment couldn't be paid into his pension. But it could be paid into his Hargreaves Lansdown Vantage Fund and Share Account.

my findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I see no reason to depart from the findings in my provisional decision.

In my provisional decision I accepted Hargreaves Lansdown was offering, essentially, an execution only service. I also accepted it had told Mr T previously about investing before his 75th birthday to get tax relief.

I don't agree however, that it responded to all his enquiries appropriately. For the reasons given in my provisional decision, I think Mr T was given misleading information by it on 11 March. I remain of the view that had Hargreaves Lansdown given Mr T correct information then, he would have returned the CREST form earlier, and likely his account would've been settled before his 75th birthday. He would then have been eligible for tax relief. So, I remain of the view that Mr T has lost out because of this and should pay fair compensation as set out below.

fair compensation

- Treat Mr T's SIPP account as if the shares in question were settled on 18 March, rather than 20 March.

- Pay such amount as may be required into Mr T's pension plan, allowing for any *available* tax relief and/or costs, to increase the pension plan value to what it would have been had the shares in question being settled on 18 March rather 20 March.
- If Hargreaves Lansdown is unable to pay the total amount into Mr T's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid.
- The *notional* allowance should be calculated using Mr T's marginal rate of tax at retirement
- Pay Mr T £200 compensation for the trouble and upset he has been caused by Hargreaves Lansdown not giving him clearer information, including sending him a letter telling him he was entitled to tax relief.

my final decision

I uphold this complaint and order Hargreaves Lansdown Asset Management Limited to pay Mr T fair compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 4 January 2016.

Kim Parsons
ombudsman

copy of provisional decision

complaint

Mr T complains about the delays caused by Hargreaves Lansdown Asset Management Limited (Hargreaves Lansdown) in processing his SIPP contribution. As his contribution was added to his SIPP after his 75th birthday he was no longer eligible to claim tax relief.

background

Mr T asked Hargreaves Lansdown how to invest some shares that he currently owned in his SIPP. It told him how to do this and about the charges involved. He instructed it on 27 February 2014 to invest the shares in his SIPP. This involved Hargreaves Lansdown selling Mr T's shares outside of the SIPP, transferring the proceeds as cash and then buying them back again

within the SIPP. Mr T received a contract note from Hargreaves Lansdown showing that the shares had been sold and bought on 27 February 2014.

The shares weren't settled into Mr T's SIPP account until 20 March 2014, a day after his 75th birthday.

After his 75th birthday Mr T was sent a letter by Hargreaves Lansdown telling him his shares had been settled and he would get tax relief on his contribution. He later was told this wasn't correct. Hargreaves Lansdown apologised and offered to reverse things and repurchase the shares outside of the SIPP free of charge. Mr T declined this offer and brought his complaint to us.

Mr T's complaint was looked into by one of our adjudicators who didn't uphold it. He said, in summary:

- Hargreaves Lansdown communicated well with Mr T. They answered his emails within 24 hours and the content explained their process and their charges.
- Hargreaves Lansdown offered an execution only service and not a discretionary or advisory service. It would not treat a case as urgent unless given clear reasons to do so. Mr T didn't say it was urgent.
- It is not clear whether the CREST transfer form was sent with the contract note. Hargreaves Lansdown chased up the missing CREST form after two weeks, as was its usual process.
- There is a warning note on the contract note that says that the transfer form must be returned three working days before the settlement day. This put Mr T on notice that a transfer form had to be returned.

The adjudicator sympathised with Mr T's situation and said the timing of events was extremely unfortunate.

Mr T didn't agree with the adjudicator's decision and so his complaint has been passed to me to consider.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

When Mr T asked Hargreaves Lansdown on 27 February 2014 to invest the shares in his SIPP he was unaware that he would need to make the investment before his 75th birthday. on 19 March 2014, to get tax relief.

Hargreaves Lansdown was providing Mr T with an execution only service, so it didn't have to point this out to Mr T. When his SIPP was originally set up he was sent information about the tax rules.

Mr T was sent a contract note showing that the shares had been bought and sold on 27 February. On the note it said:

"What happens next:

Buying: Your cheque must reach us at least 3 working days prior to the settlement date (above) unless you have funds in a Hargreaves Lansdown Bank of Scotland Cash Management Account.

Selling: The certificate and transfer form must be received in our office at least 3 business days before the settlement date (above) otherwise settlement will be delayed. You will be liable for any fines/buying in costs which are levied by the Stock Exchange or Crestco due to late settlement.

The shares were certificated shares. Hargreaves Lansdown told Mr T in a later phone call that this type of share usually took ten working days to settle, so his shares would settle into his SIPP on 13 March 2014.

This didn't happen because Hargreaves Lansdown hadn't received a copy of the transfer form (known as the CREST form) back from Mr T. Hargreaves Lansdown said this form would've been sent out with the contract note. I can't say if it was, Mr T says he didn't receive it.

Hargreaves Lansdown contacted Mr T on 13 March to tell him that he needed to send back the CREST form. It says that its normal procedure is *"to wait until the settlement date is reached before chasing clients for pertinent forms"*. Between 27 February and 13 March 2014 Mr T contacted Hargreaves Lansdown on a number of occasions, by telephone, and via its secure messaging service, asking why there was a delay in settling his account with the shares. To summarise he

- e-mailed Hargreaves Lansdown on 4 March 2014 asking why his SIPP was not showing the funds transferred.
- enquired once again on 6 March 2014 this time asking: *"The [named] shares were sold and rebought on 27/2/14 according to the credit note. It is now 6/3/14. Why such a delay?"* Mr T received a response the same day: *"I can confirm that the [named] shares were repurchased within your Vantage SIPP on 27 February 2014. As such there is no delay in making the investment."*
- was told on 11 March 2014 during a phone call the *"shares have been bought"*, there is *"nothing problematic there"* and they *"would be settled on 13 March"*.
- e-mailed Hargreaves Lansdown once more on 11 March: *"Still having not seen the proceeds of the [named] shares registered into my account, I phoned to ask the reason. It was explained that in the case of certified shares, 10 working days is normally required before the money transfer is completed back into my SIPP. This information would have been helpful when I first raised the query."*

Mr T received an apology on the same day: *"Please accept my apologies for not confirming the settlement date of the shares. Please however rest assured that the settlement period for the sale does not affect the date in which we repurchase shares with in the Vantage SIPP as part of a Bed & SIPP instruction."*

Mr T then got an email from Hargreaves Lansdown on 13 March 2014 saying the following:

"Our stockbrokers have confirmed that they are still awaiting the completed CREST Transfer Forms to be returned by you in respect of the sale of your [named] shares. It is not possible for the proceeds to be moved into your Vantage SIPP until you have returned this to us."

It is understandable that after having been assured only days before that his account would be settled on 13 March 2014, Mr T was concerned to find out that he was expected to return a CREST form that he wasn't aware Hargreaves Lansdown needed, or was waiting for.

Hargreaves Lansdown confirmed on 17 March that it had received his CREST form back. His account was settled on 20 March. So it took a week from when Mr T was told the form was missing, until his account was settled. Hargreaves Lansdown then wrote to him after his account was settled telling him that he was eligible for tax relief, not noticing that he had reached 75.

Mr T contacted Hargreaves Lansdown a number of times after the shares had been bought and sold. He could've been told during any of these conversations that the CREST form was missing. I have heard what Hargreaves Lansdown has said about not chasing up missing forms until the settlement date. That may be its usual process. However, here Mr T was given misleading information during the telephone call on 11 March. There was a problem; his account couldn't be settled on 13 March as he was told it would be, because the CREST transfer form hadn't been returned. Mr T wasn't told any of this. I think had he been, he would have returned the form, giving it the same attention he did when he was told about it two days later.

I don't think he would have flagged up to Hargreaves Lansdown the urgency of settling his account before 19 March, his 75th birthday, because he was unaware at that time that this needed to happen to get tax relief. So, I think Hargreaves Lansdown would have processed it within the same timescale as they did.

Had Hargreaves Lansdown given Mr T the correct information on 11 March likely his account would have been settled by 18 March (7 days after) and he would have been eligible for tax relief because this was the day before his 75th birthday.

I am therefore minded to uphold Mr T's complaint and require Hargreaves Lansdown to pay fair compensation as set out below

fair compensation

- to treat his SIPP account as if the shares in question were settled on 18 March rather than 20 March;
- pay such amount as may be required into Mr T's pension plan, allowing for any *available* tax relief and/or costs, to increase the pension plan value to what it would have been had the shares in question being settled on 18 March rather than 20 March;
- pay Mr T £200 compensation for the trouble and upset he has been caused by it not giving him clearer information, including sending him a letter telling him he was entitled to tax relief.

my provisional decision

I am minded to uphold this complaint and order Hargreaves Lansdown Asset Management Limited to pay Mr T compensation as set out above.

Kim Parsons
ombudsman