

## The complaint

Mr P complains that HSBC UK Bank Plc mis-sold him a Guaranteed Capital Account (GCA). He's unhappy that he wasn't given sufficient information about the investment to understand how it worked – and as an inexperienced investor he wouldn't have agreed to take it out if he had better information.

## What happened

In April 2006, HSBC advised Mr P to invest £50,000 into a GCA. The account was essentially two parts, the income part (Income Fifty) and capital growth part (Capital Growth Fifty). Each part had £25,000 invested into it. The Income Fifty was designed to provide regular income and the Capital Growth Fifty was aiming to achieve capital growth. The investment matured in May 2011 repaying around £54,000 in capital after tax.

At the time of advice Mr P had recently received an inheritance and was contacted by HSBC to discuss the cash balance he had in his current account. HSBC has provided a fact find that detailed his circumstances at the time. He is recorded as owning a property, which was mortgage free. He had no significant liabilities or debt. He was employed and had disposable income each month. He had no existing savings or investments but did have available cash in a current account of approximately £92,000.

In May 2018, a representative on Mr P's behalf, complained to HSBC as they believed the investment was mis-sold. HSBC didn't uphold the complaint and said the product was suitable for Mr P's needs and risk profile and he was provided with information on how it worked.

I issued a provisional decision in September 2021 – I said I intended to uphold the complaint.

This is what I said:

*"At the time of the advice Mr P's circumstances suggest he was in a position to invest. He had no significant debts, sufficient income and although he had never invested before he did have a reasonable amount of money in a deposit account with HSBC. His representatives say the money came from the sale of a property he inherited when his mother passed away. This is supported by a note in the fact find to say he had sold a second property."*

*The investment and savings section of the fact find says Mr P "wants to tie up to avoid spending" the funds he had on deposit. It is recorded that he was concerned about low interest rates and wanted to consider his options. The fact find also says that he didn't require income and was looking for growth with his savings. His attitude to risk is note as "Willing to take a low risk rather than simply leaving it in cash deposit to have the potential to receive a better return than cash deposits alone can provide or protect its value by countering the effect of inflation over time and understand the risk of capital loss."*

*So, it seems that Mr P did want to invest his money rather than leave it in his deposit account. And his aims at the time were to tie up some of his funds over a medium term - to*

*produce capital growth and wanting to beat inflation. It doesn't appear he was seeking a stock market linked investment or prepared to take risks with his money.*

*In order to try and achieve this objective Mr P was recommended the GCA. This was a capital guaranteed product but as explained above it had two equal parts. The Income Fifty element paid enhanced interest linked to a percentage above the Bank of England base rate and the Capital Growth Fifty element that could produce returns depending on the performance of the FTSE 100 index. On the face of it, given that Mr P was trying to do better than his deposit account without risking his capital, this seems a credible option in the circumstances.*

*But I think when examined in a bit more detail it seems less likely that this is something Mr P would've wanted to proceed with had he fully understood what other options were available to him. I note that the fact find makes a very brief mention of a list of other investments considered. But this reads as a standard list of product types – including things like OIECS and stakeholder pensions. So, I don't think this indicates the advisor provided Mr P with a real consideration of the other suitable alternatives that would meet his needs and aims. There is a reference in the recommendation letter that Mr P was aware the adviser wouldn't normally recommend investing more than £20,000 in one fund to achieve greater diversification – but considering all available options Mr P confirmed he was prepared to proceed on the basis shown. This implies there might have been something else suitable for Mr P. But there's no real evidence of a discussion around the benefits of all the available options – including proper consideration being given to fixed rate bonds, which would have guaranteed Mr P his capital and guaranteed a relatively healthy return on his money to reduce the impact of inflation. Indeed, HSBC says at the time, its three-year fixed rate bond was paying a rate of 4.55% gross per annum.*

*I'm not persuaded the product that was recommended was wholly suitable for the needs and aims identified. Firstly, it was a product that was designed to provide both income and capital growth. Mr P had no need for income – and 50% of the product was designed for this. While I accept he could roll up the interest, it's not clear why a product that was designed for income was considered ahead of other products which could have better satisfied Mr P's clear aim for capital growth only.*

*I don't think the Capital Growth Fifty element of the product would have been particularly easy to understand for an unsophisticated investor like Mr P. As the value of the indices can go up or down, there's a clear risk that, despite holding the investment for five years, you may get little or no return at the end of it.*

*As mentioned above, the fact find provides limited statements about Mr P's attitude to risk, but I can't see that it was established that a stock market linked investment of this type fitted his needs and aims. The sales paperwork doesn't set out how much the "real value" of Capital Growth Fifty part could fall by if Mr P failed to receive any return via the FTSE-linked formula. With interest rates around 4.5% at the time of the advice, this could easily have meant Mr P could see the real value of this money fall significantly by the end of the five-year term. The result of this, means there was a significant risk to the value of Mr P's money – and his ability to achieve his aim of reducing the impact of inflation. But I've seen nothing to indicate the advisor pointed this out. If everything had been explained to Mr P – including alternative guaranteed returns through products like fixed rate bonds, I think this would have made him question the appeal of risking a guaranteed return for what appeared to be very modest returns in the Capital Growth Fifty – according to the illustrations provided by HSBC.*

*Also, as Mr P wasn't an experienced investor, I don't think it's likely he would have had a detailed knowledge of the FTSE's recent track record – including the fairly recent dips it experienced in the years before he invested. So, without the adviser explaining the pitfalls*

*and the potential impact on his returns of poor FTSE growth, I don't think Mr P would have realised the risk he was taking of getting no return on half his invested money after five years. I haven't seen anything in the fact find or suitability letter to suggest this risk was explained to Mr P.*

*It follows that I don't think Mr P would have invested in this product if he was given suitable advice. So, I need to consider how to put Mr P back in the position he would have been but for the advice. I accept, he would not have benefitted from the 'higher' interest on the Income Fifty element without also investing in the FTSE-related element of the product. So any loss calculation needs to be based on the overall return he received on the full £50,000 invested. Given this, I propose that redress should be based on HSBC's three-year fixed-rate bonds offering 4.55% per annum and then using the Bank of England average bond rate after this date. This is because I am satisfied that Mr P's objective was to find a product with higher returns than a standard savings account and he was happy to lock away this amount of his available capital for at least three years (and in practice, five years)."*

HSBC responded to my provisional decision – and provided further comments for me to consider. In summary it said:

The adviser recorded that Mr P was looking to invest his money for capital growth, in a low risk environment and was happy to invest for the recommended term of five years. Based on this it would then be unlikely the advisor would then recommend a three-year fixed rate deposit bond.

It is noted in the fact find that Mr P was willing to take a low risk than rather simply leaving it in cash deposits to have the potential to receive a 'better' return. This indicates Mr P wanted to invest and did not wish to consider cash deposits, whether this was in the form of accessible deposit accounts or fixed deposits. Also, given that Mr P was a tax payer, he would not have benefitted from a gross rate the fixed rate provided of 4.55%, but rather the lower rate of 3.64%.

There would have been other deposit accounts available, not just the fixed rate that has been referred to for the redress calculation. To list all of them and make a comparison along with any other investments like OEIC's seems almost like a process of elimination, which then in turn doesn't make sense for an advisor to understand what a customers' aims or objectives might be.

The GCA had the option to have the income reinvested, which is no different to a fixed rate deposit bond essentially, given that it can also provide a monthly income, or you can elect to have this paid annually. Also, if Mr P had invested his £50,000 into the three-year fixed rate bond, he would have been in a position of holding around £92,000 all on deposit, which itself poses a risk as there is then no diversification.

The reason Mr P received a pretty low return from the Income Fifty element was because interest rates started at 4.5% and ended up at 0.5%. However, he was still receiving 0.5% over the Bank of England Base Rate on 50% of his money.

In respect of the comments about not explaining how much the "real value" of the Capital Growth Fifty part could fall if the FTSE performed poorly - there is only so much an advisor notes in the fact find. Mr P was also provided with documentation which would include the key features and the product brochures. It is documented in the fact find that Mr P agreed that he had seen these, and that they had been explained. Mr P was also sent a cancellation notice giving him 14 days to cancel the investment if he felt that he had any uncertainty as to whether the investment recommendation was right for his circumstances at the time. The

fact sheet which Mr P would have been provided, clearly demonstrates that if there is no growth, or the index fell, that he would only get a return of his capital.

Mr P didn't provide any further submission for me to consider and his representatives confirmed he was happy with the proposed redress methodology.

### **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.

I've considered the further comments and arguments HSBC has provided, but they haven't led me to change the outcome I set out in my provisional decision. I'll explain why.

Firstly, I've considered the comments HSBC has made about Mr P's recorded aims and objectives. While the sales documents say he was looking to save for at least five years, I don't think this means he was looking for only products that precisely matched this term. More likely this means that he was looking to save for the medium term – and there are different ways in which this could be achieved. I also accept Mr P is recorded as wanting to take a low level of risk and wanted a better return than cash deposits. But I don't find this means he wanted to avoid fixed deposits, or they would be unsuitable for him – as this type of investment had the potential meet his aim of countering the effect of inflation.

HSBC argue there is only so much an advisor notes in the fact find in response to my finding that it didn't explained how much the "real value" of the Capital Growth Fifty part could fall if the FTSE performed poorly. It has referred to the product documentation – including the illustration in the fact sheet - that would have been provided to Mr P. Haven't reviewed the information HSBC has sent, I still don't think this would have alerted Mr P to the risk he was taking compared to investing in an alternative fixed rate product that guarantees returns. I've seen nothing to suggest Mr P was an experienced investor and, in my view, was unlikely to have a detailed knowledge of the FTSE's recent track record. So, I don't think the sales information HSBC provides is persuasive in showing the "real value" risk was made clear to Mr P. And I think if it was, he would have decided not to invest in the product.

I have noted the all of the other comments made by HSBC – including those the reasons for low returns on the Income Fifty element of the account. And also, the information about the GCAs ability to reinvest income. These points are understood but don't change my thinking on the overall suitability of the advice.

HSBC has made several comments relating to the appropriateness of using the three-year fixed bond as an alternative investment for Mr P's saving – including the impact of his tax status on returns and diversification. I've also noted HSBC's comments about other deposit options being available and listing them all would be like a process of elimination rather than the advisor understanding a customer's aims and objectives. I can't say precisely what Mr P would have invested his money in - but I have found the GCA was unsuitable for his needs and circumstances. In deciding the fair and reasonable way to compensate Mr P, I need to consider what I think is a reasonable assumption to make. For the reasons I've explained, I think the using the three-year bond and the average rate from fixed rate bonds after that is a fair way to compare Mr P's position but for the unsuitable advice.

Having re-considered all of the submissions again, for the reasons I explained in my provisional decision and those above – I think the recommendation made to Mr P by HSBC in 2006 was unsuitable for his needs and circumstances at the time.

### **Fair compensation**

In assessing what would be fair compensation, I consider that my aim should be to put Mr P as close to the position he would probably now be in if he had not been given unsuitable advice.

I think Mr P would have invested differently. It is not possible to say *precisely* what he would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr P's circumstances and objectives when he invested.

### **What should HSBC do?**

To compensate Mr P fairly, HSBC must:

- Compare the performance of Mr P's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

HSBC should also pay interest as set out below.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Guaranteed Capital Account	Matured	HSBC three-year fixed rate bond at 4.55% BoE average rate from fixed rate bonds of 12 months' maturity	Date of investment Third anniversary	Third anniversary date of maturity Date of maturity	8% simple per year on any loss from the end date to the date of settlement

### **Actual value**

This means the actual amount paid from the investment at the end date.

### **Fair value**

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, HSBC should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

### **Why is this remedy suitable?**

I have chosen this method of compensation because:

- Mr P wanted to achieve a reasonable return without risking any of his capital.
- The HSBC three-year fixed rate bond was an available alternative product. This and the average rate for the fixed rate bonds would be a fair measure given Mr P's circumstances and objectives. It does not mean that Mr P would have invested only

in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to their capital.

- The additional interest is for being deprived of the use of any compensation money since the end date.

### **My final decision**

For the reasons set out above, I uphold Mr P's complaint. My decision is that HSBC UK Bank Plc should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 13 December 2021.

Daniel Little  
**Ombudsman**