DRN-3410488

The complaint

Mr and Mrs H complain about the advice they received from HSBC UK Bank Plc to take out two investment products in late 2000 – a bond and an investment into HSBC's Portfolio Management Service (PMS). They say the investments were mis-sold and not suitable for their circumstances.

What happened

In late 2000, HSBC advised Mr and Mrs H to invest £58,000 into a bond. Around the same time, they receive further advice to invest £38,000 into HSBC's PMS. The funds in the PMS were distributed into ISAs in their individual names over the next couple of years.

The PMS was fully surrendered in March 2004 – and Mr and Mrs H received just under £32,000 in total for this investment, a loss of approximately £6,000. In August 2006, a partial withdrawal was made from the bond before it was fully surrendered in 2007. Overall Mr and Mrs H made a gain of approximately £13,000 on this investment.

Mr and Mrs H are represented by a CMC. In 2019, the CMC submitted a complaint to HSBC on their behalf. HSBC didn't uphold the complaint. In respect of the bond, it said while a proportion of the fund was invested in equities, it was also invested in fixed interest, gilts, corporate bonds and cash. So, it was very diverse from an asset allocation and risk perspective and would be described as low-medium risk. HSBC said there isn't anything to say this was inappropriate recommendation – and it also made a positive return when it was surrendered.

In respect of the PMS, HSBC said this complaint had been made out of time as Mr and Mrs H complained more than six from the original advice and more than three years after they ought to have known they cause for complaint.

Mr and Mrs H didn't agree with the response from HSBC, so referred it to this service for an independent review.

In June 2021, one of our ombudsmen issued a jurisdiction decision and concluded that the complaint had been made in time, so this service was able to consider the merits of the complaint about both investments.

I issued a provisional decision on the merits upholding the complaint in part – this is what I said:

"There is limited information available from the time these investments were taken out. I don't think this is surprising given the sales took place more than 20 years ago and the investments were surrendered more than 12 years ago. It's not unusual to decide a case based on incomplete evidence. When that happens, I'm required to decide matters based on what I consider is more likely than not to have happened, in light of the evidence I do have and the wider circumstances. And so this is what I've done here.

While there is no point of sale documentation from the advice to invest in the bond, there is some documentation from the advice to invest in the PMS. There is a copy of a suitability letter (dated 18 December 2000), which was sent by HSBC to Mr and Mrs H. I've noted the following information from this letter:

- *Mr H was drawing a pension policy that will give him a £38,00 lump sum and income of approximately £500 per month. It says this was taken earlier than expected and he wants an investment strategy for this money.*
- *This letter focusses only on this objective as it states other areas of financial planning have been covered in previous reports.*
- *The advice took into account Mr and Mrs H's income tax status and their balanced attitude to investment risk for a need for capital growth.*
- *As their objective was for capital growth, the growth portfolio was recommended as this has greater exposure to equities.*

The CMC has provided information to detail what Mr and Mrs H recall about their circumstances in late 2000. This includes that:

- *Mr H was aged 53 and had recently been made redundant and received a lump sum of approximately £16,000 and he had taken up a consultant role earning a decent salary.*
- *Mrs H was aged 50 and worked part-time earning approximately £100 per week.*
- *They had recently had an endowment policy mature - which they used to pay off their mortgage.*
- *They were left with £95,000 in their savings and deposit accounts. Other than the endowment policy, they had no other experience of investing in risk-based products.*
- *They were paying for their son's university fees and expenses.*

In absence of any further evidence, I think it is reasonable to use the above information to help me decide whether the investment advice given by HSBC was suitable for Mr and Mrs H's circumstances.

Bond

HSBC say the fund the bond was invested in had an objective to exceed interest rates and would have been invested primarily in asset classes such as fixed interest securities, gilts and corporate bonds, therefore would have provided for a low risk rating. I accept it is possible the fund was at the lower end of risk scale, but it is still unclear how HSBC came to this conclusion as I've not been provided with any information from 2001 to indicate the fund mix. I have been provided with a fund factsheet from the product provider dated from 2017, but clearly this is a significant period after Mr and Mrs H invested. Nevertheless, this is some evidence I can use to understand what the likely make up of the fund was when Mr and Mrs H invested. This information indicates that the fund was invested around 50% in equities and 40% in lower risk assets (e.g. fixed interest, gilts and cash). So, I think it is reasonable to assume this investment exposed Mr and Mrs H's capital to some investment risk, but there was a decent proportion of the fund in less volatile assets meaning overall it didn't present a high level of risk.

Mr and Mrs H's circumstances suggest they were in a position to take some risk with their savings. They had a reasonable level of income, were mortgage free and after investing still had deposit-based savings to fall back on. Based on my understanding of the fund the bond was invested in, I think the level of risk this presented was suitable for their circumstances. Overall, it seems that they were is a position to be able to invest as recommended. So, I'm not intending to uphold, this element of the complaint.

PMS

Having reviewed the suitability letter, it appears this second piece of advice was specific to this investment and not linked to the previous advice. I say this because there is a note that says the letter focusses only on this objective as it states other areas of financial planning have been covered in previous reports. There is also no reference to this recommendation being linked to a portfolio of advice. So, I think it is reasonable to conclude this second piece advice was specific to the pension lump sum Mr H had recently received rather than a continuation of a portfolio of advice. But when considering whether this advice was suitable, the bond Mr and Mrs H took out around the same time does form part of their overall circumstances, so is relevant to my overall considerations.

HSBC hasn't been able to provide the precise information of the fund make up for PMS at the time, but it has provided a portfolio report from the second half of 2001. This is the best available evidence I have to establish the type of investment Mr and Mrs H were advised to invest in. Mr and Mrs H invested in the growth portfolio. This is described as investing in UK equities as well as overseas markets – with around 10% in fixed interest funds. At the date of this report it indicates that 60% was invested in UK equities, just under 30% in overseas (across Europe, the US and Asia) and around 10% in UK fixed interest. Again, I don't know if this was the precise fund mix that was in place at the time of advice, but considering the proximity to the advice I think it is likely this is very close to what Mr and Mrs H were recommended to invest in.

By advising Mr and Mrs H to invest in the growth portfolio, this is a step up in the level of risk compared to their other savings. The fund report indicates this was the highest risk option available for the PMS – with the two lower risk options being balanced and income. These two alternative options had a greater percentage of funds invested in more secure fixed interest securities. The suitability letter also records that the growth option had a greater exposure to equity-based funds.

While I accept that Mr and Mrs H's circumstances indicate they had capacity to take a risk with this lump sum investment, the fund that was recommended was at a higher level than they had previously invested. They had limited equity linked investment experience until they invested in the bond, but the PMS had a much larger percentage invested in equities – and also exposed them to overseas markets. I haven't seen evidence to support why they were taking a step up in terms of risk so soon to previous advice to invest in lower risk funds. As I've explained, I don't think this was a portfolio of advice as the suitability letter indicates the advice was just for the objective of investing Mr H's pension lump sum. So, I don't think the evidence supports that this higher risk investment balances out their overall portfolio. Had this been the case, I would have expected this to be detailed in the suitability letter.

There is some evidence that Mr and Mrs H's attitude to risk was assessed by the advisor. This mentions that they had a balanced attitude to investment risk with a need for capital growth. But it's unclear how this was established. As mentioned above, there was a balanced option in the PMS, but this wasn't the option Mr and Mrs H were recommended anyway.

Clearly, it's difficult to conclude with any certainty what happened given the passage of time and the resulting lack of documentation. But, on balance, I think (for the reasons mentioned above in my considerations about the bond) Mr and Mrs H were in a position to accept some risk with their savings. But I don't agree they were prepared to accept the level the risk the PMS exposed them to. So, I intend on upholding this part of the complaint."

Mr and Mrs H responded – they had no further points for me to consider.

HSBC responded – in summary it said:

- The submissions from the CMC representing Mr and Mrs H contain inaccuracies. It says there has been different information given about the nature of discussions held with HSBC around the time the two investments were taken out. It also says contradictory information has been given around the level of funds Mr and Mrs H had available for investment – and whether they invested all of their free assets. This means it is difficult to know without a fact find from the time exactly what Mr and Mrs H held in savings and funds available for investment.
- Mr and Mrs H were in a relatively good financial position as they had repaid their mortgage debt, which on balance was most likely there largest outgoing. They had a joint income of £85,200 and Mr H was in a good position to gain employment. They also had £33,000 left on deposit post the two investment recommendations.
- Mr and Mrs H say they surrendered the PMS portfolio because they encountered an unexpected new opportunity to invest abroad. So, despite Mr H being a contractor with 'future uncertainty' this did not impact on them needing these funds to support their lifestyle. It would also seem that the downturn in the markets post 9/11 did not deter them from seeking further investment opportunities. This on balance would imply Mr and Mrs H were comfortable with the PMS investment, even though on surrender they received less than their original investment.
- The half yearly report for the PMS funds dated October 2001 to April 2002 shows the growth fund as holding 71.9% in a mix of UK blue chip companies across a range of equities and fixed interest securities, the remaining 28.1% was held in overseas equities, again the majority of which were well known blue chip companies. In comparison the balanced fund had a holding 76.9% in a mix of UK blue chip companies across a range of equities and fixed interest securities, with the remaining 23.1% being held in overseas equities, there is only a small (5%) difference essentially in the two portfolios. The aim of the growth portfolio was to increase the value of the investment over the longer term. The aim of the balanced portfolio was to essentially provide an income, however this could, if not required, be reinvested.
- Based on experience and taken into account the majority of the funds were both held in the UK, these would most likely both fall into the category of medium risk. Therefore, as Mr and Mrs H had a large income, a growth fund would be more suited to their needs, as opposed to a fund that provided an income. Their portfolio as a whole would have provided 43% of their monies being invested as low risk, 29% as medium risk and the remaining 28% in cash.

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 made by HSBC, but I've not found reason to change the outcome I set out in my provisional decision.

Firstly, I acknowledge the further comments HSBC has made about the accuracy of evidence provided about Mr and Mrs H's circumstances. The advice took place a long time ago and it has been difficult to gather evidence. We do have some point of sale documentation in the suitability letter for the PMS. This is evidence that helps with gaining an understanding of what was discussed when the PMS was recommended – as well as providing some factual information about Mr and Mrs H's circumstances. In the absence of further records from the time of advice, the information Mr and Mrs H have provided as part of their complaint submissions is evidence I've considered to help build a picture of their circumstances. I recognise it is possible this information may not be fully accurate – so I've taken that into account. But I'm also conscious that it is difficult to be precise with recollections from more than twenty years ago. Ultimately, I need to reach a decision on the balance of probabilities – and this is what I've done using all of the information provided by both parties to the complaint.

I also acknowledge the comments HSBC make about Mr and Mrs H's circumstances and their financial position. This does indicate they were in a position to accept some risk – but this doesn't clearly show the level of risk they were prepared to take. I don't agree that the reasons surrounding the surrender of the PMS support that they were comfortable with the level of risk this investment presented. The reasons they've given for surrender don't appear to have anything to do with the original advice. So, I don't think there is a strong argument to link the two situations.

I've noted the further comments HSBC has made about the make of the growth fund option the PMS was invested in. The information provided in comparison between the growth and balanced option supports the conclusion that the growth funds was invested in a higher risk environment – both in terms of UK equities and overseas equities. HSBC says this was only a small increase, but it was still a step up in terms of having more funds invested in assets that contain a higher risk level – and quite different to fund the bond was invested in. HSBC has also reiterated its comments about Mr and Mrs H's overall portfolio after both investments were made. Having considered these further comments, they haven't led me to change my thinking on whether the PMS was a suitable recommendation. I still remain of the view that the evidence doesn't support this to be a portfolio of advice and have the same concerns about the level of risk it presented.

For the reasons above and those in my provisional decision, I find that the bond was a suitable recommendation for Mr and Mrs H, but the level of risk presented by the PMS investment was unsuitable for them. So, I uphold the complaint in part.

Putting things right

In assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs H as close to the position they would probably now be in if they had not been given unsuitable advice to invest into the PMS.

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

What should HSBC do?

To compensate Mr and Mrs H fairly, HSBC must:

- Compare the performance of Mr and Mrs H's PMS 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.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest

PMS	No longer in force	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date ceased to be held	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.

Any withdrawal from the PMS should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if HSBC totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr and Mrs H wanted Capital growth with a small risk to their capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to their capital.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

I consider that Mr and Mrs H's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put Mr and Mrs H into that position. It does not mean that Mr and Mrs H would have invested 50% of their money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr and Mrs H could have obtained from investments suited to their objective and risk attitude.

My final decision

I uphold the complaint in part. My final 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 Mrs H and Mr H to accept or reject my decision before 28 April 2022.

Daniel Little
Ombudsman