

## **The complaint**

Mrs M complains HSBC Trust Company (UK) Ltd (HSBC) recommended a flexible with-profits bond which was too low risk and failed to place it in trust.

## **What happened**

Mr and Mrs M were recommended the bond in July 2001 by HSBC after receiving a payment from a separate policy. They understood the bond was to be placed in trust. Mr M has sadly passed away since the complaint was brought to our service, and Mrs M is represented in her complaint. The representative has said the sales letter shows the funds would have been invested considering the objective of capital growth and a balanced attitude to investment risk. He feels this means a moderate risk. It was discovered the bond had not been placed in trust and the bond was sold in January 2019 for £58,541. A complaint was made to HSBC.

HSBC responded to the complaint and accepted the bond hadn't been placed in trust. They made an offer to put things right. This wasn't accepted and the representative contacted our service to ask us to investigate.

Our Investigator agreed the bond should have been placed in trust and said HSBC should provide an indemnity to cover any inheritance tax (IHT) liability which may arise on second death, and which would have otherwise been mitigated. However, our Investigator felt the advice regarding the bond was suitable, including the level of risk HSBC recommended.

The representative didn't agree with our Investigator's view. So, the case has been passed to me to decide. In summary, the representative said:

- The windfall which was received was meant to be included in the existing trust and this is shown in HSBC's report.
- The existing trust was wound up in 2002 and had the investment been included the funds would have been distributed to the beneficiaries of the trust at that time.
- The Investigator wrongly concluded the investment would have continued. The majority of funds were held in the existing trust and £356,000 was distributed when the trust was wound up. Therefore, Mr and Mrs M would have wanted to also distribute this smaller proportion and there has been a loss to the beneficiaries of the trust because these funds were not distributed.
- It is illogical for the Investigator to conclude that HSBC suggested winding this original trust up in 2002 because the Investigator also suggested that HSBC as a trustee had no responsibility to suggest winding up any trust until the representative got involved in 2018.
- HSBC should have suggested putting the windfall money into the original trust as cash and incorrectly put this fund into a lower risk. Mr and Mrs M had a high-risk attitude and HSBC confirmed this with their questionnaires.

## **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.

A considerable amount of time has passed since the policy was sold. This means we don't have all the information from the point of sale. This isn't unusual in the circumstances. So, I've relied on the information I do have which includes a copy of the Financial Planning Report which was sent to Mr and Mrs M on 26 June 2001 to decide what I think is more likely to have happened on balance.

I'd also acknowledge the time the representative has put into making submissions to our service. I want to assure him I've considered everything submitted by both parties. Where a specific point is not mentioned, it's not because I've not considered it but simply because I don't think I need to refer to it to reach the right decision here.

### *Recommendation*

I've reviewed the recommendation letter which was sent to Mr and Mrs M in June 2001. The letter confirms Mr and Mrs M had a windfall payment from Scottish Widows. The letter confirmed their objective to achieve capital growth, and this was the focus of the recommendation because circumstances had arisen inadvertently.

I appreciate the representative's concerns about the risk rating and I recognise the representative has provided a Financial Planning Report from 2013. He has confirmed this is the first time Mr and Mrs M were correctly assessed as having a high-risk attitude. However, the letter from 2001 refers to the advisor having had a conversation with Mr and Mrs M about the recommendation. And it confirms the recommendation took into account Mr and Mrs M's balanced attitude to risk. There isn't anything to show they wanted to invest in a higher risk product at that time.

Whilst we don't have a copy of an assessment or questionnaire from around the time the recommendation was made, I think this is more likely to be because of the passage of time rather than HSBC's failure to appropriately determine Mr and Mrs M's attitude to risk. The reference in the letter to a balanced attitude to risk satisfies me it's likely HSBC made an assessment here. And as Mr and Mrs M went on to accept the recommendation, I'm not persuaded they had concerns about their rating.

I've seen a copy of the fund factsheet from December 2017 which shows the range of assets the fund was invested in. I can see 22% of the fund was invested in UK equities and 29% in overseas equities – but this would change over time. With-profits bonds use smoothing to even out returns over time. This means it's likely they were generally seen as lower risk investments at the time. However, I'm satisfied the bond invested in a range of assets, so I think it was suitable for those with a balanced attitude to risk.

Overall, I'm satisfied this recommendation was suitable for Mr and Mrs M. It met with their objective to achieve capital growth and was also appropriate for the level of risk they were willing to take.

### *Trust*

A key part of the recommendation was that the bond would be held in trust to mitigate future IHT liability. It's been accepted that HSBC did not do this as agreed. I also recognise that this meant they did not monitor the investment and the representative has also raised concerns HSBC should have advised the trustees to surrender the bond sooner.

However, I'm mindful this was a with-profits bond and as such I wouldn't expect HSBC to initiate a switch to a higher risk fund. I'm satisfied HSBC have explained this was a hold product and so switching funds would undermine the benefits of such policies. For example, the smoothing and potential for a final bonus. Also, the evidence doesn't show me circumstances warranted such a switch. So, I can't conclude anything would have happened differently had HSBC correctly monitored the trust.

### *Existing trust*

I've considered the representative's comments and I note he feels strongly the evidence shows the bond was intended to be placed in the existing trust. He goes on to say the policy would have then been surrendered and distributed to the beneficiaries in 2002 when that existing trust was wound up. I've noted the provider states the original policy was surrendered in 2004.

I can't say exactly what would have happened had the policy been included within the existing trust or whether this was possible. But on balance I don't think it's likely the bond would have been surrendered (or the trust wound up) in 2002 (or even 2004 taking the latest date) because this was only within a short time of the bond being taken out.

The financial report doesn't indicate that Mr and Mrs M anticipated they would need access to the funds. The recommendation letter suggests the investment should be held for at least five years which would allow it to meet Mr and Mrs M's objective for capital growth. So, I'm unable to conclude the bond should have been included in the existing trust or would have been surrendered sooner had it been included in the existing trust.

### *Advice to distribute the bond*

Additionally, I'm not persuaded it was for HSBC to initiate the surrender of this bond. It should have been placed in trust and had it been it could have been distributed at a time which was most suitable. I'm satisfied this was ultimately a decision for Mr and Mrs M who had personal knowledge of the circumstances and who had also been appointed trustees. For these reasons, I don't agree HSBC are responsible for the capital gains tax which arose when the bond was surrendered.

### **Putting things right**

HSBC should have put the bond in trust. The bond was surrendered in January 2019 for £58,541.58 which was split equally between Mr and Mrs M. This could give rise to an IHT liability, and this will only be known when both Mr and Mrs M's estates are valued.

Mrs M's share of the bond was gifted away in January 2019, so will be a fully exempt transfer by January 2026. However, the representative and HSBC have accepted Mr M's portion could not previously have been gifted. This is because Mr M had lost capacity and had a lasting power of attorney in place. The representative has let us know that since bringing the complaint to our service Mr M has sadly passed away.

I've reviewed all of the correspondence provided and this includes discussion about what the most suitable trust would have been to achieve Mr and Mrs M's aim. We don't have all the information from the point of sale, so we don't know exactly what trust was intended to be used.

HSBC initially made an offer based on the bond being held in a loan trust. However, they received correspondence from the bond provider which confirmed the trusts available would have been an absolute or flexible nomination trust. Therefore, they've agreed to offer an

indemnity to cover any IHT which arises from the funds because the bond wasn't placed in trust.

Therefore, HSBC should set up an indemnity to cover the potential IHT liability that otherwise wouldn't have been payable had the bond been placed in trust. This must include any IHT liability arising on the growth of the funds which have been invested since the bond was surrendered. We'd expect the representatives for Mr M to be able to evidence the portion of IHT payable on these specific funds when it arises and to be able to provide information to HSBC which demonstrates they reasonably sought to mitigate the IHT liability.

I'm satisfied this is fair and reasonable in all the circumstances of this case. It's not always possible to say exactly what would have happened with certainty. However, this remedy is the most pragmatic way to put things in as close to the position they likely would have been had the bond been placed in trust.

HSBC should also pay Mrs M £500 compensation for the distress and inconvenience caused.

### **My final decision**

I'm upholding this complaint and HSBC Trust Company (UK) Ltd should put things right in the way outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and the estate of Mr M to accept or reject my decision before 21 September 2023.

Laura Dean  
**Ombudsman**