DRN-4053190

Financial Ombudsman Service

The complaint

Mr and Mrs S have complained that HSBC failed to inform them of a discount available on their investment portfolio once Mrs S was in receipt of her HSBC defined benefit (DB) pension, causing them to incur unnecessary charges.

What happened

Mr and Mrs S explain that they first met with an HSBC adviser in November 2009 about the possibility of transferring some of their investments to HSBC after receiving an inheritance. Their investments were at that time spread between a number of banks, some cash ISAs and a share portfolio with a broker of £128,000, entirely within ISAs. And they felt as a result that they were overexposed to cash at a time when returns on cash were historically low.

The 2009 suitability report noted that Mr and Mrs S "may look to retire in three years however this was not set in stone and this may change depending on circumstances". It noted they were not seeking an income from the investments at that time. It also recorded that Mrs S had preserved pensions with HSBC and another bank, and that they'd discussed the barrier to drawing these until after age 55 if she didn't access them before March 2010.

Mrs S didn't seek further advice on this issue. The fact that the estate of the last survivor would potentially pay inheritance tax was also discussed. They paid 3% of the sum (about £90,000) transferred to HSBC although they appear to have declined the recommendation to put this under an HSBC investment management agreement (IMA) in favour of investing directly into what I understand was a cautious 'fund of funds' arrangement.

HSBC provided further investment advice to Mr and Mrs S in November 2010. It recorded that Mrs S was anticipating taking pension benefits at 55 in summer 2012. Mrs S has told us she was only working part time. She had around six years' service in the DB scheme having been made redundant in 2002. Her normal retirement age was 60 (summer 2017). HSBC's suitability report dated November 2010 recommended leaving about £225,000 of their total assets intact but consolidating £250,000 into its Premier Investment Management Service (PIMS) for another 3% initial fee.

This was a discretionary management service with the £250,000 they invested reaching a threshold for the total management fee to be 1.5% instead of 2.5%. However they believe the adviser should have told them a further 50% discount would become available to anyone drawing an HSBC pension. An annual review arrangement was also put into place.

Mrs S retired shortly before her 55th birthday in 2012, having been made redundant from her part time role. At that time, she obtained an early retirement statement from the HSBC pension scheme as if benefits were to go into payment shortly after her 55th birthday. She chose to defer taking pension benefits. Mr S also retired and the PIMS was used to top up their household income. Mrs S later obtained three further quotes of early retirement pensions before the HSBC pension went into payment at normal retirement age in 2017.

During an annual review meeting on 6 August 2019, Mr and Mrs S received a 'Q&A' document that indicates HSBC was rectifying a problem it had identified whereby some of its employees and pensioners hadn't received the discount on PIMS annual management

charges to which they were entitled. It confirms that its previous IMA platform had a 25% discount, and this was increased to 50% on the launch of PIMS on 1 November 2010 (where existing IMA accounts were converted to PIMS).

HSBC had taken the view in this Q&A sheet that staff became eligible for the discount as soon as they informed the adviser that they were drawing an HSBC pension, because the pension was administered by a different organisation. In Mr and Mrs S's case missed capital growth within the portfolio was added to the overpaid charges because the charges had been met by cashing in investments at the time. HSBC said it was providing the refund this way to be consistent with what it expected the Financial Ombudsman Service would have asked it to do if Mr and Mrs S had raised this issue by way of a complaint.

HSBC wrote to Mr and Mrs S on 14 August 2019, confirming that it had now refunded charges of about £4,063 plus missed growth of £295 directly into their investment account. And it had rectified the position with the correct discount applied going forward.

Mr and Mrs S formalised their complaint about a year later. They made a number of points about the calculation – including that HSBC knew Mrs S had drawn her pension because anti-money laundering checks were done on the source of the tax-free cash sum from the pension, which was paid into PIMS. They also argued that there was a further consequential loss arising from HSBC's failure to inform them of the discount.

Had they known, Mrs S could have taken her HSBC pension from age 55, or even possibly earlier – because the savings on fees would have exceeded the early retirement reduction, and the pension would of course have been paid earlier. They felt that there had been a responsibility on HSBC to tell them about the discount for HSBC pensioners, as a succession of relationship managers had been aware of Mrs S's pension entitlement.

In response, HSBC was willing to alter the start date of the refund to Mrs S's 60th birthday, meaning an extra payment of about £214 gross (including a small amount of interest because it wasn't able to credit it back to the PIMS account at the same point as the previous compensation). It also clarified the refund only applied to the annual management charge (which was previously 1.5% including VAT, before discount); not any other ongoing product charges or transaction costs which vary with the amount of activity on the portfolio.

However HSBC wasn't willing to provide compensation for any consequential loss. It said the discount was granted when an account holder became eligible, and was a discretionary benefit for pensioners – not a contractual product feature, guarantee or inducement. It felt that Mrs S had made a decision about when to draw her pension in a manner consistent with any other HSBC customer. Mrs S had never sought retirement planning advice from HSBC. And it hadn't given any further advice at the annual reviews of the investments.

As they referred the complaint to this service almost the full six months after they reached deadlock with HSBC a number of further issues had also arisen. Those I have included in my investigation are:

- They felt HSBC had repeatedly tried to change the narrative of events and denied it was responsible for the consequence of its errors, causing significant distress.
- They would have been entitled to a discount on their previous investment arrangements too, if Mrs S had drawn benefits from her HSBC pension before the government put the minimum pension age up to 55.
- They were thinking about moving their accounts at the conclusion of this complaint because of their loss of trust in HSBC, but expect the 2.75% exit fee to be covered by HSBC (in addition to the costs of taking initial advice from another party).

Mr and Mrs S also made the following comments on the investigator's proposals to resolve the complaint:

- A reduced DB pension taken early would have kept Mrs S below her personal allowance even after age 60, as she only now has £945pa of taxable income. Thus she would now be 'saving' on tax and this should also be factored into the calculation.
- They could have moved other investments to HSBC immediately to apply for the IMA service in 2009, and obtained the further discount (25% at that time) by taking her pension before the minimum age went up. So, they would also like compensation in respect of both initial fees they have paid for what turned out to be flawed advice.
- On the claim of no ongoing advice, they had seven different relationship managers over time with HSBC and each year they were asked about their attitude to risk, what capital and income they received and expected to receive in future.
- They require payment for professional advice to consider any offer of compensation proposed by this service.
- The allowance for fees they shouldn't have has to take into account the loss of tax advantaged growth in their investment account.
- HSBC had a 'sustained and deliberate policy of withholding information' for over 9 years, causing them to carry out weeks of work to uncover it – and more than £200 compensation for distress and inconvenience was warranted.
- They expected two different calculations to be carried out on the alternative scenarios that Mrs S drew pension benefits in both 2009 and 2012 – and to be able to choose the most advantageous one, as that is how they go about making all financial decisions.
- Whilst Mrs S was currently in good health, her parents did not live for many more years once they reached her age - so it was important they made the right decision.

My Provisional Decision of 7 March 2023

I began this decision by acknowledging points Mr and Mrs S had made which I *wouldn't* be considering further, because they variously related to the exercise of HSBC's discretion, arose out of her former contract of employment (as opposed to the provision of a financial service), were without merit (or not supported by sufficient evidence), or unlikely to have caused material distress or inconvenience. My explanations were given in full in the provisional decision. The complaint points I wasn't considering further were:

- Mr and Mrs S thought HSBC had now changed the way it split up the charges on the PIMS account in order to reduce the element that benefited from the discount.
- They were concerned at how many other ex HSBC staff had been affected by the same issue, and whether it amounts to discrimination that the existence of the discount scheme is only advertised in places accessible to current staff.
- From what they could ascertain of information available to current staff, they believed that the initial advice fees they paid should also have been zero.
- HSBC had made it as difficult as possible for them to piece together what happened by responding to their Data Subject Access Request in an unrecognisable order.
- HSBC was apparently seeking to terminate the PIMS agreement because they'd refused to sign a form. They were unwilling to do so as *"The form plays with the definition of what is advice which is one of the very areas of semantics upon which HSBC are relying for their defence to our claim"*.

In the rest of my Provisional Decision I said:

Mrs S believes HSBC was under a duty to establish that she was a deferred HSBC pensioner – and then highlight that from the point she drew that HSBC pension she was entitled to a discount on the charges for its discretionary managed services. This is because HSBC recommended a discretionary service for her and Mr S's investments both in 2009

and 2010. Not because HSBC was giving advice on her pension, because it's clear that it wasn't. In fact, on the 2010 fact find the adviser noted that she wasn't interested in retirement planning as she was happy with her existing pension arrangements.

And for the avoidance of doubt I don't think it would have been reasonable to expect HSBC to offer unsolicited advice that Mrs S should access her DB pension early, simply because it knew (or should have known) of a discount that this would bring to the management of her other investments. There were many other factors that would go into considering whether to take this type of pension arrangement early - including taxation, longevity, early retirement factors, what point other pensions Mrs S was entitled to would be paid from, and so on.

Consequently, I think Mrs S's complaint rests on the level of information disclosure HSBC was bound to make as a result of recommending its discretionary management service to her in 2009, and then again in 2010. And I've proceeded here on the same basis as the investigator: it seems to be common ground (and HSBC has not disputed) that the relationship manager Mrs S spoke to on these occasions was likely aware that Mrs S was an ex-HSBC employee with pension rights.

I'm mindful that the page about pensions on the fact find HSBC has provided from 2010 is blank, but in my view that's likely because Mrs S had already said that she was happy with (and hence didn't need to discuss) those arrangements. That doesn't mean she didn't mention her past involvement with HSBC altogether and, on the balance of probabilities I find it likely that she would have done so – not least because she and Mr S were about to enter into new financial arrangements with a bank she had an affiliation to in the past. If HSBC disagrees that this was likely to have been the case, it should explain why.

I've then reached the same view as the investigator that on being recommended a new financial service Mr and Mrs S were, like any prospective investor, entitled to full disclosure of the charges and what criteria made them payable. This comes from the regulator's principles for businesses (PRIN) but also the specific rules in COBS 2.2.1R, 6.1.9R and others that the investigator mentioned. Where, as in this case, those charges were affected by whether the client had an employment relationship with HSBC, I think it would have been incumbent on the adviser to mention what the discount available was – if only because of its relevance at a later date when it was perhaps more likely Mrs S would be drawing her pension (and on the assumption that the discounts remained the same in future).

HSBC has not suggested that the investigator's conclusions (which I agree with) are incorrect. Again, if it disagrees with this it will need to explain why. Like the investigator, I think it's reasonable to conclude that the availability of this discount would then have been a major factor in Mrs S deciding whether to accept the recommendations HSBC was making to her and Mr S in 2009 and 2010. But I also share the investigator's view that it's not as clear cut that Mrs S would have drawn her DB pension right away in 2009, as it would be by 2012.

The discount payable in 2009 was only 25%. Mr and Mrs S were earlier on in an existing relationship with the previous discretionary broker and they evidently had reasons for not wanting to move all the funds over at that time. More importantly, Mrs S was still earning a part time salary (noted to be £27,000 in the 2010 fact find) and expecting to retire at 55.

So, taking this pension early would likely cause extra tax to be payable, at a time when she didn't need the income - and all things considered, result in an early retirement reduction I'm not persuaded she would likely have been willing to accept for the marginal gain on management costs. In fact I think it's also possible and she and Mr S might have delayed moving the rest of their stockbroker's funds over to HSBC for another year or so, because they would have become more focused on the period of much lower charges from when Mrs S accessed her HSBC pension at her intended retirement age of 55. I can't therefore safely conclude she would have acted to access the pension in 2009.

By the time Mrs S was next entitled to draw her DB pension in 2012 however, she had moved a total of £250,000 over to the HSBC platform – and the discount on management fees had increased to 50%. She was now no longer working. So I think the investigator was right that there's a clear case for saying the saving on management fees was worth accepting a lower tax-free cash sum and early retirement reduction on the HSBC pension for – as the pension income wouldn't in any case have been taxed, and she and Mr S could then have arranged to take less income from the portfolio to account for the extra pension.

Where I part company with the investigator, and Mr and Mrs S, is in the necessity of undertaking a complex calculation that factors in all these differences. As a service we do aim to put consumers back in the position they would have been in, had the business not made its error. But that does not always mean redressing a complete chain of consequential actions - when it's not clear they are the main cause of the loss.

As I'm minded to uphold Mr and Mrs S's complaint, my role is to decide what fair compensation should look like. And there are often different ways of arriving at an outcome that would broadly look fair in the circumstances. In my view, the actuarial value of a DB pension taken early should be roughly the same as one left until normal retirement age, although in my experience members of these schemes are prone to take the view that the early retirement factor overcompensates for the early payment of the pension: the factor in Mrs S's case seems to have been just under 5% for each year taken early.

Mrs S has acknowledged in her complaint that other members of her family haven't lived a great many years, but I think this was known to her at the time she deferred beyond age 55 – as was the potential that by waiting to normal retirement age there was a greater possibility some of the pension could become taxable in retirement, than if she took it early. Yet Mrs S still decided to leave the pension until age 60. So I can't fairly say there was an obvious advantage to taking it early apart from the information she didn't have about the discount on her investment management charges. And that is the cause of her loss.

I also think it's likely to be disproportionate to the impact of what went wrong in this case for HSBC to incur the costs of several complex calculations when there is no obvious source of loss – other than the management charges – that Mrs S wouldn't already have been reasonably aware of at the time she made her decision to defer the pension in 2012. She evidently had already weighed up that decision very carefully. I accept it's frustrating for Mrs S to now find a key factor was missing from her decision, and I don't dispute that she would most likely would have drawn the pension early if she had taken the impact on management charges into account. But I think that HSBC also refunding the management charges to the PIMS between her 55th and 60th birthday will provide fair redress in this case.

I'm fortified in my conclusion that HSBC ought to have been made aware – by 2012 at the latest – that the discount applied, because it knew (or ought to have found out) that she and Mr S had both retired at the age they had both originally intended to, and the PIMS portfolio was being used to provide them with further income. I also think Mrs S has made a fair comment that HSBC would have had further knowledge of her drawing the HSBC pension because of the anti-money laundering checks carried out on her tax-free cash entitlement.

I also set out proposals for compensating Mr and Mrs S, which I'll return to later.

Responses to the Provisional Decision

HSBC acknowledged the decision and said it had no comments, other than to confirm there are no exit fees in respect of the PIMS. Mr and Mrs S also confirmed the same, so it's

puzzling why they were seeking compensation for a claimed fee of 2.75% previously (it didn't read to me as the charge for a new adviser, as they also claimed for that separately).

Mr and Mrs S revisited some of their previous points and made the following additional comments, which I've grouped under these broad headings:

Ongoing situation with HSBC

- Had HSBC taken their comments and requests for information more seriously, the referral to our service and all the stress and inconvenience could have been avoided.
- Other than seeking a resolution to their complaint, they do not harbour ill will to HSBC. If there continue to be problems they will continue to be unhappy with PIMS.
- They don't agree their delay in referring the complaint to this service exacerbated the ongoing difficulties they're still having with HSBC. They needed to spend six months requesting and sorting through the DSAR and gather other information from their annual review meeting, rather than waste our time on a misconceived case.
- They were struggling to understand my comment that 'poor understanding within the business of its staff benefits' can be anything other than the fault of HSBC.
- At their June 2021 review HSBC demanded that Mr and Mrs S sign a 'no advice given' declaration, which they weren't willing to do as this was previously used as HSBC's defence for why it hadn't told them about the fee discount. The adviser asked upwards if they could amend the wording and the only solution available was to leave the annual review pending the outcome of this complaint. That has prevented them from carrying out the 2022 review too.
- They want to know what fees and charges were payable both for opening and operating the proposed account and their actual fund in 2009, and a PIMS account in both 2010 and 2012. Mrs S had *"a strong nagging belief that she has seen an HSBC note/details to the effect that the discount scheme extended or still extends to eligible members being able to get free/discounted financial advice of the sort we paid for in 2009 and 2010."*

Outcome

- The information they were denied about the 25% and then 50% (from November 2010) discount to management charges would have fundamentally altered their decision to proceed with the discretionary service in 2009.
- The fact they were cost/fee sensitive is fully illustrated in 2010, when they ensured their investment level reached the threshold of £250,000 to reduce fees to 1.5% instead of 2.5%.
- They reminded me that HSBC had already recorded Mrs S was a deferred HSBC pensioner in 2009 and that she was considering whether to take those benefits before the minimum pension age increased to 55. But they did not even offer 'generic advice' that drawing her pension early would entitle her to the discount.
- They were struggling to understand my comment that 'poor understanding within the business of its staff benefits' can be anything other than the fault of HSBC.
- They maintain that HSBC's approach to disclosing staff discounts continues to lack transparency. I should not have described its rectification as a proactive step and should acknowledge that HSBC have had to be 'coerced' into paying the right amount.
- As a result, a much higher payment should be made for distress and inconvenience.

Elements to be included in the loss calculation

- The logic of upholding their complaint *"…must lead inexorably to the view that all losses suffered as a result of HSBC's failure to provide that information at each and every financial advice meeting, annual review and other ad hoc meetings must make HSBC liable for all consequential losses…"*

- Similarly, if they choose to move their investment away from HSBC it will be as a direct result of its errors and is likely to cost them initial fees of £5,400 - £7,500. Recognition of that is surely equitable.
- They also paid fees of 3% each time they sought the financial advice report and joined the investment schemes in both 2009 and 2010. If you purchase a product or service that is faulty you would expect a full refund – why doesn't that apply here?
- The fee discount scheme says that trading costs aren't payable, but HSBC is now charging them those same costs under a different name (transaction costs) and these totalled £1,152.98 since 2018. These should be reimbursed.
- My proposed solution was a 'short cut' to calculating their loss when the investigator had already proposed a more complex calculation factoring in the actuarial value of the DB pension taken early. They would be prepared to accept it but *"require details of all the input figures and methodology"* so they can agree this in advance.
- The 2019 HSBC rectification scheme had an uplift for lost investment growth of 8%pa - what percentage was I going to propose for the period from 29 August 2012?
- If compensation can't be put fully back into the ISA, their understanding is that compensation is tax free - can HSBC confirm that this is correct? Otherwise it will have to be increased further to allow for future tax payable. They believe the previous rectification payment was paid directly into the ISA.
- I said I had provisionally decided it would be fair in all the circumstances for *"HSBC to refund another five years' charges*" - is that in addition to the refund for 2012-17?

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.

Mr and Mrs S's comments about the ongoing situation with HSBC relate to points that I said in the Provisional Decision I wouldn't be considering further. I have thought about what they said carefully, but I need to recap what I said here.

It was Mr and Mrs S's choice to delay referring their complaint to us whilst they gathered more information, but I don't think they needed to do this. We have an inquisitorial role to get to the bottom of any complaint, and they would still have received an investigator's view and possibly a Provisional Decision too, before the outcome became final. We don't expect people to need expert assistance and, by the same token, we wouldn't always expect it to take the full period of six months allowed to formulate a complaint.

The fact that Mrs S was already being close to deciding to draw her pension in 2012 or perhaps 2009 (because it was small) gave them a clearer argument than perhaps other clients would have had, that the amount HSBC should pay in respect of the non-disclosure of the fee discount should be increased. But it was still an issue on which Mr and Mrs S, and HSBC, can legitimately disagree. When that happens, disputes can be referred to the ombudsman service whose outcome HSBC has to abide by.

I didn't mean to imply that HSBC was not responsible for a poor understanding within the business of its staff benefits. However this is the issue HSBC was already attempting to address in its rectification scheme. Mrs S's case didn't fit the standard basis of that scheme and they then disagreed about what HSBC should do. So I remain of the view that some of the difficulties Mr and Mrs S are now facing managing their ongoing relationship with HSBC could have been avoided by them coming to our service sooner.

I don't need to request any information (hypothetical or actual) of fees and charges to decide this complaint, so I won't be agreeing to Mr and Mrs S's request for more information which appears to be based solely on a hunch that other people are getting more of a discount than

they are. As I said in the Provisional Decision I see no logical reason why, having identified there was a problem with its communication of the discounts and setting out to put this right, HSBC is treating Mr and Mrs S differently to others.

My understanding is that HSBC provided a financial advice service when it recommended Mr and Mrs S to use PIMS (and the service before that) in 2009 and 2010. But it no longer provides advice once they are on the platform as a discretionary service involves delegating the investment decisions (and hence the need to provide advice) to the fund manager themselves. That seems to be the basis of the non-advised declaration which is completed when they have a review with HSBC to update the details of their circumstances which are then used to make discretionary decisions.

I remain of the view that it is for Mr and Mrs S, and not me, to decide how they approach this ongoing relationship with HSBC. Other than it being bound to follow my decision (if Mr and Mrs S accept it), I don't require an admission of liability to be made by HSBC – my aim is to ensure that it rectifies what has gone wrong. And I can't see how it would have harmed Mr and Mrs S's complaint about advice they received in 2009 and 2010 for them to sign a declaration that they are not getting advice in 2021.

Regarding the outcome I reached on the complaint itself, I understand the strength of Mrs S's feeling that she would have drawn her pension in 2009 and not 2012. But at the same time, she acknowledges in responding to the Provisional Decision (with my emphasis) that "*The only thing we can say **with certainty** is that we would have thoroughly investigated the pros and cons as they appeared at that time. Without a calculation to assess those pros and cons in 2009 we will never know what would have been most beneficial and what we would have decided."*

The point here is that it wouldn't necessarily have become a 'no brainer' for Mrs S to decide to draw her pension in 2009, when she still intended to work for some years. As I noted in the Provisional Decision, she had decided not to draw those benefits despite the fact that as they would be reduced, she would likely pay no tax on them (in combination with her state pension) in later retirement. There is an element of flexibility in leaving the benefits deferred, but as a result of which they increase, that Mrs S would have lost.

In my view, a decision to take the benefits earlier than 2012 would also more likely than not have been aligned with committing a greater amount of funds to HSBC's discretionary services than Mr and Mrs S actually were willing to at the time. I take their point that the whole cost/benefit analysis of moving funds to the HSBC platform would have been changed by the application of the discount, but not to such a great degree when the discount was only 25% compared to when it increased to 50%.

Mr and Mrs S gave the explanation in response to my Provisional Decision that *"We did not transfer all our funds initially as we were not aware of any cost benefit in doing so and wanted to see HSBC performed before consolidating our funds with them."* So costs were not the one and only consideration, and for good reason. They already had an arrangement with another fund manager and it made sense to see them running side by side as a comparison for a period of time.

Elsewhere Mr and Mrs S have also said (again with my emphasis), *"Had we been given full information we feel we would, as you have agreed in your provisional decision, have taken [Mrs S]'s pension in 2012 at the latest **and perhaps** in 2009."* I think this reflects that we cannot be sure that Mrs S would have taken her pension in 2009. My view is that I cannot safely conclude here that it's more likely than not Mrs S would have done.

However that still leaves HSBC's culpability for the more likely impact that knowledge of a 50% fee reduction would have had on Mrs S's decision to draw her pension in 2012. I'm

satisfied that redress is payable for the added loss of the discount from 2012 (my remark about five years' worth is a reference to this and is not an additional award).

I don't dispute Mr and Mrs S's remarks that HSBC wasn't transparent originally about the fee reduction – that is why their complaint is being upheld. But I'm not going to comment on what HSBC is doing or should be doing in other cases, as that is not the matter in front of me. I can't fairly say it should have been obvious to HSBC that the ombudsman service would uphold this complaint, as it is a nuanced situation. And I don't think the fact that they exercised their free right to bring their complaint to our service because of a disagreement with HSBC (which I would not describe as HSBC having to be 'coerced') requires an uplift to the amount being proposed for distress and inconvenience.

Putting things right

To provide fair compensation, HSBC UK Bank Plc must recalculate the total value of the additional discounts that could have been applied to the PIMS management charge if Mrs S's HSBC pension had gone into payment on her 55th rather than her 60th birthday. It should then credit this back to the account in the same way as it did with the first payment.

That means including an uplift for the lost investment growth on each fee, based on the actual funds they were invested in. That is what HSBC did in its first calculation - a simple interest rate was only used for expediency on the small corrective payment of £214. So to be clear here, I expect HSBC to recalculate the total value of the discounts Mr and Mrs S should have been given, and ensure that the portfolio is uplifted to the correct value on the date of this Final Decision, taking into account the two payments it has already made.

I'll respond here to Mr and Mrs S's point about other losses. I've already accepted it's likely Mrs S would have drawn her HSBC pension in 2012 rather than 2017: that is a step she would have taken before any loss could be suffered. I am not ignoring that this would have happened, but this would have resulted in a lower amount of pension income spread over a longer period of time. We don't know whether she will be better or worse off from that aspect alone because it depends how long she lives. And any higher tax payable because Mrs S delayed taking the pension was in my view something she could have foreseen when she decided not to take it in 2012.

Overall, I'm not anticipating that factoring the timing of Mrs S taking her pension into the calculation will, in and of itself, make a significant difference to the award I'm making. It could be viewed as broadly cost neutral. What I'm seeking to do here, in resolving the complaint quickly and informally, is to focus on the main cause of the loss.

I'm not investigating the suitability of HSBC's discretionary services for Mr and Mrs S and in order to obtain the discount for which they're claiming, they would have needed to receive and accept the advice to use these services. So that isn't a basis for the initial charges to be refunded. If they do want to change discretionary manager in the future then, as I've said, this will involve a further holistic review of all their assets and objectives, which is potentially a further benefit to them that I cannot reasonably expect HSBC to cover the charges for.

Mr and Mrs S say trading trading costs 'aren't payable' under the arrangement. I think they mean trading costs (also known as transaction costs) don't *qualify* for the fee discount. I don't think HSBC would ever have been in a position to discount the trading costs given that they are suffered in bulk by all customers' funds collectively. I can't see any basis for Mr and Mrs S to expect these to have been discounted.

I said in my Provisional Decision that it may not be possible for HSBC to add the compensation to the ISA. Mr and Mrs S say that it did this with the first payment, but there could be reasons why the status of a compensatory award for poor execution of an advice

service might be viewed differently by HMRC, which I'm not going to attempt to second-guess here. The Financial Ombudsman Service is not a tax authority.

I'll reiterate what I've said previously, which is that it would be fair for HSBC to establish with HMRC (or from its own understanding of tax treatment) whether it can add the further compensation, or some of it, to the ISA too. If it isn't able to achieve this, I'd expect it to explain why to Mr and Mrs S and ensure that they aren't adversely affected by any tax payable.

I said in the Provisional Decision that many of Mr and Mrs S's arguments for more than £200 compensation for distress and inconvenience seemed to be founded in a belief that HSBC was purposefully being difficult or had intentionally sought to deprive them of benefits to which they were entitled for years. I didn't share that opinion, and I would add here that a poor understanding of the staff benefits within the business is not the same as wilful ignorance.

I think HSBC did the right thing in communicating with all clients affected when it became aware that clients weren't getting discounts they were entitled to. Mr and Mrs S take exception to me saying this. But it is relevant as if HSBC had kept that discovery to itself and not offered to make amends once it became aware there had been an issue historically, then clearly a higher payment would have been warranted for the upset caused.

As I said above I'm not going to get involved in the details of Mr and Mrs S's ongoing discussions with HSBC except to say nothing in its behaviour stands out to me as being threatening or intimidating. It seems to me that HSBC wants to move on from this complaint as much as Mr and Mrs S do. So in my view, compensation of £200 for the distress and inconvenience caused would be fair and reasonable compensation in this case.

HSBC must increase the distress and inconvenience element of the compensation to £400 if (and only if) it isn't able to add any of the compensation for overpaid ISA charges back into the ISAs. This is not a further payment for financial loss but in acknowledgement of the added inconvenience of Mr and Mrs S not having all the funds where they should be.

HSBC must provide a summary of its calculations for Mr and Mrs S to see what are the total additional charges it is refunding, and the missed growth it is adding to those charges. I don't consider HSBC has to do anything more than this, as the information comes straight from the computer system from which they were deducted in the first place and I have no concerns about the accuracy of that system.

My final decision

I uphold Mr and Mrs S's complaint and require HSBC UK Bank Plc to calculate and pay them compensation as set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 25 April 2023.

Gideon Moore
Ombudsman