DRN-4125172

The complaint

Mr and Mrs P complain that they were given unsuitable investment advice by HSBC UK Bank Plc, referred to as "HSBC". They are being assisted by a claims management company (CMC).

In summary, the CMC says that they were advised to invest in high-risk products – namely various Selected Investment Funds (SIFs) – but given their inexperience the advice was unsuitable. So, to put things right, they'd like compensation based on what they would've received had they been advised to invest in lower risk products.

What happened

In 2007 Mr P was recommended the following:

- SIF ISA – initial contribution of £333 a month invested in the JPM Europe Fund.

Mrs P was recommended the following:

- SIF taxed plan - £5,000 invested in the Perpetua UK Growth, and £5,000 into the JPM Europe Fund.
- SIF taxed account. Initial contribution of £333 a month into Schroder Global Properties Fund.

One of our investigators considered the complaint but didn't think it should be upheld. In summary, she said:

- In 2007, Mr and Mrs P met with an adviser regarding investment advice. A fact find was completed dealing with their finances, aims, and risk appetite. It was recorded that their objective was "capital growth".
- In the risk assessment it was recorded that they accepted the possibility of higher returns by increasing exposure to equities and of a negative return increase. The assessment questionnaire also revealed that some funds could perform poorly.
- Mr and Mrs P had previous investment experience – including in the following:
    - Investments in guaranteed bonds, mini equity and cash ISAs, stocks/shares, and a Personal Equity Plan (PEP) which was invested in global financial collective investments with equities.
- They were advised to invest in a diversified and mixed portfolio – when viewed collectively, it matched their attitude to risk and objective for capital growth.
- Although they say they were cautious investors, HSBC assessed them as balanced risk investors prepared to take some risk.
- Given their answers to the risk questions, they didn't match the profile for cautious risk investors.
- Mr and Mrs P's portfolio contained diversified mixed funds. Some were invested in 'more risk' real estate holdings, whilst others in more secure established European holdings. For the most part the portfolio was invested in known European stock. So overall the portfolio was balanced and consistent with their attitude to risk.

Mr and Mrs P disagreed with the investigator's view and asked for an ombudsman's decision. In summary, the CMC made the following key points:

- The vast majority of Mr and Mrs P's holdings – ISAs, PEPs, and shares – were low risk.
- The equity ISAs were fixed term structured products with capital guarantee.
- The shares were held in Friends Provident – acquired when they were first listed in the stock market and given to Mr P because he held an account – and HBOS, which were given to Mr P as he was an account holder when Halifax initially demutualised.
- The only genuine capital at risk product Mr and Mrs P had was a tax efficient PEP believed to be relatively low risk – having shares in high dividend paying banks and insurance companies. Although the investment performed well, it wasn't comparable to the later investments which was for a greater amount.
- In retirement, Mr and Mrs P wanted to spend time living in the UK and abroad. They wouldn't have wanted to gamble with funds (earmarked) for an early retirement, especially if this would delay their retirement.
- Whilst overall they had a reasonable cash reserve, the majority of this was already locked into fixed term accounts. They were also already taking a risk that their structured products might mature with no gain therefore taking a further risk was unsuitable and didn't meet their objective.

The investigator having considered the additional points wasn't persuaded to change her mind. In summary, she said:

- Mr and Mrs P's previous investments may have been at a different risk category, however their investment knowledge grew with experience which was gained from exposure to different investments.
- Their past investment experience (more likely than not) broadened their appetite for risk.

The CMC made the following observations:

- It doesn't accept the investigator's points about retirement age. Standard age for retirement was 65 (and has been since the 1940's). Whilst they wished to retire early, this wasn't something they would've risked retiring at the normal age for.
- The paperwork shows the retirement age for the product as 65 years of age.

As no agreement has been reached, the matter has been passed to me for review.

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.

Having done so, I agree with the investigator's conclusion for much the same reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Mr and Mrs P say, I can't safely say that they were given unsuitable investment advice.

Before I explain further why this is the case, I think it's important for me to note I very much recognise their strength of feeling about this matter. The CMC has provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope they won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised under a separate subject heading, it's not what I'm required to do in order to reach a decision in this case. My role is to consider the evidence presented by the CMC and HSBC, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case.

In deciding what's fair and reasonable, I must consider the relevant law, regulation, and best industry practice, but unlike a court or tribunal I'm not bound by this. It's for me to decide, based on the information I've been given, what's more likely than not to have happened.

I don't uphold this complaint. Given that the issues are quite narrow, in brief, I do so for the following reasons:

- Based on the answers provided, I can't safely say that Mr and Mrs P were advised to invest in products that were too high risk for them. I agree with the investigator that overall and on balance, they were advised to invest in a diversified and mixed portfolio which, when viewed collectively, matched their balanced attitude to risk.
- In other words, the investment was affordable, met their objective for growth and didn't involve more risk than they would've wished for. I note, based on what the business says, that just over 60% of the portfolio was in non-risk based deposits following the 2007 advice, which I don't think is unreasonable for them given their objective.
- Despite what they say, I'm not persuaded that they were cautious risk investors, so I don't agree that they shouldn't have been advised to invest in products with greater risk. Therefore, in the circumstances and on balance I don't agree that they're entitled to any compensation as suggested by the CMC. I'm also mindful that they were – more likely than not – provided with key documentation that made reasonably clear the nature and operation of the policy including the risks involved.
- I'm mindful that they accepted the possibility of higher returns by increasing exposure to equities (as well as of a negative return), which isn't consistent with a cautious risk investor. I note their objective was capital growth, and on balance I'm satisfied that based on their answers provided they were willing to take a greater risk to achieve this aim and were aware that there was a risk to capital.
- I'm mindful that they had an identified shortfall in retirement that they wanted to address and would need to take a risk-based approach to fulfilling this need - and were in a good position to achieve this. I note they had savings and owned their own home but that their son was paying the mortgage.
- It's arguable that given how their ('capital at risk') PEP performed, Mr and Mrs P were prepared to take a greater risk for a better return on their investment. Having previously held lower risk investments probably meant that they were able to make a meaningful comparison and consequently were prepared to take a greater risk with a portion of their funds going forward, in order to achieve their objective.
- I'm mindful that lower risk investments weren't and aren't without risk, so they weren't risk averse in any event, and were willing to take some risk to achieve a better return. In any case, based on what the business says they had the flexibility to alter their risk appetite, as well as the funds they were invested in, if their needs changed in future.
- I note HSBC made clear the following:
    - *"Our records show that when Mrs P (name anonymised) withdrew the sum of £3,623.64 from her taxed plan to transfer into her ISA, the monies were switched into the HSBC World Selection Balanced Fund at her request. She also requested that the total amount of £700 invested into her taxed plan on a*

monthly basis from 10 November 2010 to 10 March 2011, was also invested into the HSBC World Selection Balanced Fund."
    - This doesn't suggest that Mr and Mrs P didn't know what they were doing.
- I should also point out that our service doesn't generally consider complaints about investment performance alone, which can be dependent on a number of factors – such as the stockmarket for example – which are outside the control of HSBC. Based on what the CMC says, it seems the investment didn't do as well as Mr and Mrs P might've hoped, but in the circumstances that's not something I can blame the business for.
- It's only with the benefit of hindsight the CMC might be able to say that other investments might've performed better, but that doesn't mean the recommendation by HSBC at the time was unsuitable.
- I'm satisfied that Mr and Mrs P weren't without investment experience either, and that they broadly understood risk and what it meant for their capital. On balance, I also agree with the investigator that exposure to different investments will have increased their experience, and appetite for risk such that they on balance they knew what the wanted. In any case, I don't think they were made to do anything that they didn't want to.
- On the face of the evidence, and on balance, I can't say that this investment was unsuitable despite what the CMC says about their plans regarding retirement. On balance, I'm satisfied that Mr and Mrs P – more likely than not – wanted to retire early (and split their time living in the UK and abroad) and were willing to take a greater risk to make that happen. It was recorded in the fact find that they wanted to retire as soon as possible – their 'dream' was retirement in five years' time – and that's why they bought a property abroad which they owned outright. On balance, I don't agree that they would've seen this as a gamble. On balance I think they probably would've seen this as an opportunity to make their dream a reality.
- If Mr and Mrs P were unhappy with the recommendation, they could've cancelled at any point during the cooling off period. I'm satisfied that they will have received regular statements and invitations to investment reviews but haven't, until the CMC's complaint letter, raised any issues. This suggests that they probably weren't unhappy with the advice from HSBC.

I appreciate that Mr and Mrs P will be thoroughly unhappy that I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what they want to hear. Whilst I appreciate their frustration, I can't safely say that HSBC gave unsuitable investment advice.

In other words, on the face of the available evidence, and on balance, I can't uphold this complaint and give them what they want.

My final decision

For the reasons set out above, I don't uphold this compliant.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 8 December 2023.

Dara Islam
Ombudsman