DRN-4342264

The complaint

Mr C complains that HSBC Life (UK) Limited failed to provide clear information regarding the tax implication of his investment. He's also unhappy that HSBC increased its annual management charge.

What happened

Mr C invested £5,000 per month into a Maximum Investment Plan ("MIP") with HSBC between April 2011 and February 2022. HSBC didn't provide Mr C with any advice. Mr C surrendered his MIP for a value of just over £680,000, having invested a total of £645,000.

Mr C complained to HSBC in December 2021 as he felt the information HSBC gave about the MIP was misleading. He said the MIP was supposed to be suitable for higher rate taxpayers, however, he says the tax charge he incurred over the lifetime of the policy was much higher than anticipated.

He said he would have been better off if he's held the same funds directly instead of in the MIP and so he felt HSBC should look to put him back in the position had he done so. He also felt that he was entitled to some compensation for the stress HSBC had caused him.

HSBC considered Mr C's complaint but didn't uphold it. HSBC said it had provided details of the tax treatment of Mr C's MIP throughout the product literature. This included the confirmation that HSBC is subject to corporation tax on any income and capital gains and that deductions are made to cover this liability. As well as that the maximum applicable tax rate is 20% but lower rates apply for tax on funds that pay dividend distributions and that for tax purposes, Mr C would be treated as having paid tax at a notional rate of 20% even where the actual amount deducted from his account is less.

Mr C remained unhappy with HSBC's response and so he referred his complaint to this service for an independent review.

One of our investigators considered Mr C's complaint but didn't uphold it. In summary, they said:

- Mr C's MIP was a 'qualifying policy' meaning, under HMRC rules, it must have a term of at least ten years, premiums paid at least annually and have a life assurance policy included which shouldn't be less than 75% of the total premiums to be paid. If these conditions are kept, then the proceeds at maturity will are paid out free of further tax to the policyholder.
- Tax is also paid during the term of the MIP as HSBC is subject to corporation tax which is passed on to the Mr C. They said this was all explained to Mr C in the product literature provided to him and didn't find it to be misleading.
- They acknowledged that Mr C was unhappy with the level of tax deducted, but they were satisfied HSBC has demonstrated that his tax rate was in line with the rate provided in the product literature.

Mr C didn't accept the investigator's findings. In summary, he said:

- The only point at which the tax and charges burden is relevant is when he cashed in the MIP and this shows that he paid just under £30,000 in total on his total gross gains of just under £88,000 – which he says equates to 34% paid in tax.
- Mr C felt this amount was more than the rate provided in the product literature and suggested it was because losses in one fund cannot be offset against profit made.

As Mr C remained unhappy, the complaint has been passed to me to decide.

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 hope Mr C won't take it as a discourtesy that I won't be responding to each submission or every point he has raised. The purpose of my decision isn't to do that, but rather to explain my findings on the key issues. I understand Mr C received no investment advice from HSBC and so my decision will not focus on whether the policy was suitable for him. Instead, I will only consider whether HSBC gave Mr C fair, clear and not misleading information regarding his investment.

The crux of Mr C's complaint is that he believes he has paid far too much tax on his investment, despite HSBC saying the MIP was suitable for higher rate taxpayers.

MIPs are a regular premium savings plans which allows investors to save for a period of ten years or more. They are a 'qualifying policy' if they meet rules set out by HMRC that will allow certain types of life insurance investment plans to pay out benefits either on death or surrender tax free. If the rules are adhered to, any growth from the investments is free from higher and additional rate income tax and capital gains tax. For a life insurance investment policy to be qualifying it must meet the following rules:

- A policy must be for a term of at least 10 years.
- Premiums must be at least annual and paid for 10 years or until death.
- Life assurance equivalent to 75% of the total premiums paid must be included.

The insurance company issuing the MIP, in this case HSBC, is liable for corporation tax on gains made within the MIP and an investor is deemed by HMRC to have paid tax at 20%, although the effective rate of tax is typically lower.

To meet its overall tax liability, HSBC used the following rates in the MIP, and HSBC says the these rates have been the same through the life of Mr C's investment:

- Income units: 19.25%
- Accumulation units: 18.25%
- Funds with an interest distribution: 20% The rate for an income unit should be higher than an accumulation mutual fund.

I understand Mr C was invested in three funds and was using accumulation units. Therefore the applicable rate HSBC applied to his realised gains was 18.25%.

Having considered the information provided to Mr C when he took out the investment, I'm satisfied the product literature set out all of the above information clearly. Furthermore, the policy document explained how tax would be calculated and deducted:

> *"Tax deduction. This is a deduction to cover tax we pay to HM Revenue & Customs on the growth of your underlying investments. It is calculated daily, based on the funds held in your plan and deducted on a monthly basis."*

It's important to note that the rate of tax is calculated on a daily basis and so whilst I appreciate Mr C has provided his own calculations to demonstrate he's paid a higher rate of tax than 18.25%, I don't think his calculations are accurate. I say this as the figures he's supplied are the figures totalled at the end of his investment. But this isn't how his tax has been calculated. His figures are not reliable as he's taken the accumulated figures rather than considering that his investment growth would have fluctuated daily and so the level of tax deducted would have also changed on a daily basis. To get a more accurate figure you would need to consider the growth on each of his individual investments on each day and consider each individual premium value change, in order to understand the level of tax deducted.

I think it would be impractical for HSBC to provide the calculations for this over the entire period of Mr C's investment, but I've seen that it did provide calculations for 2021 which showed that he was paying an effective tax rate of 17.83%. I have no reason to question the accuracy of these calculations and as this rate is within the advertised rate, I'm not persuaded HSBC has provided unclear or misleading information to Mr C about the level of tax he would pay.

I also understand that Mr C feels he would have been better off had he owned each of the individual investments directly, rather than holding them in his MIP, as he could have potentially benefited from using his annual capital gains allowance. He also says HSBC's point made on capital gains tax free trading the product literature was misleading. The policy brochure explained:

> *"**CGT-free trading***
> *You can trade between funds held within the policies in your plan without triggering a charge to capital gains tax. This gives you freedom to rebalance or adjust your portfolio without capital gains tax implications which can be a constraint to investment decisions with direct investment into collective schemes."*

I appreciate Mr thinks the above statement is misleading as it states that CGT free trading is a benefit when he feels it isn't. However, in certain circumstances and depending on how the underlying investments have performed, it can be beneficial to have not triggered capital gains tax. And so I don't agree that statement is misleading. Whilst it may be true that Mr C would have been better off holding his investments directly, HSBC didn't provide him with any advice, and I don't think the information given to him was misleading. As such, I can't say that HSBC has acted unfairly.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 23 April 2024.

Ben Waites
Ombudsman