DRN-4394991

The complaint

This complaint is brought on behalf of the estates of Mrs W and Mr W, via a claims management company, which is acting for the representative now responsible for dealing with matters relating to Mr and Mrs W's estates.

The complaint concerns the suitability of investment advice provided to Mr W by HSBC UK Bank Plc in 2006. Acting on HSBC's recommendation, he invested £34,000 in the Guaranteed Capital Account ('GCA') and £4,000 into an Individual Savings Account ('ISA') with funds invested in the HSBC Growth Fund of Funds.

The CMC presented the complaint as follows, saying (in brief summary) that HSBC's advice to Mr W was unsuitable because:

- given Mr W's health and generally unstable circumstances, HSBC should have advised him to protect his underlying capital from any options that could result in a nil-return and the risk of his savings being significantly eroded by inflation
- Mr W was categorised as an investor willing to take a 'Medium Risk' with his investment although there appears to be no basis for this and it was an inappropriate categorisation bearing in mind Mr W's priority for capital protection
- Mr W was a first time investor and reliant on HSBC's advisor's expertise
- the recommendation to invest over one third of his free assets was excessive
- the terminology of the GCA created an illusion of security for inexperienced investors and an appropriate recommendation would have been a fixed rate bond which would have protected Mr W's capital and provided a guaranteed rate of interest and the security that he needed at the time
- the HSBC Growth Fund of Funds further exposed Mr W's assets to equities when he had no prior experience of investing.

What happened

I understand that the GCA matured in January 2013 and the ISA was surrendered in March 2010.

In response to this complaint, HSBC didn't think the advice it gave was unsuitable. It mainly said the advisor had completed a fact finding document and there had been a full discussion with Mr W to establish his attitude to investment risk and his investment aims. HSBC said the products were explained to Mr W, including the risks, and that he'd had time in between meetings with the advisor to reflect on the advice provided before deciding to go ahead. So HSBC didn't uphold this complaint.

One of our investigators considered the complaint and after careful consideration, ultimately thought that HSBC hadn't done anything wrong. She said that Mr W's financial situation at the time, his investment objectives of income and capital growth and the information she'd seen showing that HSBC had classified Mr W as willing to take a medium risk with his investments meant she couldn't say the investment advice had been unsuitable.

In response, the CMC disagreed, saying that:

- the investigator had reached her final view only after making allowance for the fact that Mr W had kept back around £12,000 in cash when HSBC had originally suggested investing this. But Mr W had gone on to invest this money in ISA's shortly after the start of the next tax year. The CMC argued that Mr W had essentially followed the advice of the HSBC advisor (which the investigator had initially thought might not be suitable because he would've invested too much of his money). The CMC said this meant Mr W did not in reality have the extra cash reserve that the investigator had taken into account when reaching her decision not to uphold the complaint.

- In relation to the GCA, Mr W wasn't in a position to take a gamble with this portion of his capital and not in a position to gamble with the risk-free interest that it could have generated in a savings account or fixed rate bond. The CMC put things this way: '…*Given our clients circumstances it was essential that they were made aware of risks involved in a product of this type particularly the extraordinary circumstances that would have been required for the return to be greater than a risk-free product*.'

So the complaint comes 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.

The crux of this complaint seems to be that the advice to invest in the GCA and HSBC Growth Fund of Funds was unsuitable because it risked too much of Mr W's capital and exposed him to too much investment risk given his personal and financial situation and the fact he was a first-time investor.

The fact find shows that Mr W had received a lump sum of £97,000 from an inheritance – the bulk of the money had been paid into a savings account and the balance at the time was just under £91,000.

Mr W was already receiving his state pension (£101 weekly) along with other pension income (a further £100 per week) and he was also still working on a self-employed basis and earning around £140 each week – although he planned to stop work within the next year. He lived in secure rented accommodation with his wife, who also had some paid work and she brought in a small income to contribute towards the household costs. Mr and Mrs W had no dependents. Mr W was overdrawn by around £200 at the bank and he had around £6,500 worth of outstanding debt, including credit cards and an outstanding personal loan. Mr W also had £1,200 in a cash ISA.

The capital lump sum Mr W inherited enabled him to clear his outstanding liabilities, which is what the advisor recommended. Mr W used £6,508 to repay debt, retained £8,000 in cash for emergencies, he set aside £20,000 for a new car, £1,000 for holidays and gifted £5,185 to his wife. This left him with £50,091 to invest.

HSBC had recommended he invest this in the following way:

- £34,000 in the GCA to hold for 6 years
- £4,000 invested in a stocks and shares ISA - HSBC Growth Fund of Funds
- £12,091 invested in HSBC Growth Fund of Funds Feeder ISA, to take advantage of the tax benefits ISAs offer by switching funds automatically each tax year

 Mr W was also advised to fund a cash ISA from some of the £8,000 he kept as emergency funds.

In the event, Mr W chose to retain more of his money in cash savings at the time – he kept the £12,091 as part of his emergency funds, giving him a total of £21,291 available in cash to cover any unexpected spending needs or unplanned costs arising.

Mr W had been able to eliminate all his debt and his day to day living costs were otherwise modest and easily affordable out of income. He had a cash reserve that would've likely been more than ample when he had no reason to think the money was needed for anything in particular and he'd made provision already for planned spending. I find Mr W had capacity to absorb some investment loss if necessary, he was in a strong enough financial position to be able to invest and I don't feel he was advised to invest too much of his capital.

The fact find completed by the advisor shows that Mr W's investment aims were capital growth and income. Given these investment aims, I think Mr W needed to invest in a risk-based investment. I've thought carefully about whether Mr W would have been comfortable with the level of risk he took when he invested in the way he did. And, looking at his needs and circumstances in 2006, I can't conclude that he was advised to invest with too much risk. I'll explain why.

From the information HSBC has provided, I think it's fair to say that HSBC did take steps to identify and verify Mr W's risk approach. I've been provided with information about the questions I think it's likely he would've been asked and seen how he responded. HSBC said this indicated that it classified Mr W as an investor who would be comfortable taking a 'Medium Risk', which it explained as follows:

'*You are defined as someone who is a balanced investor, or in other words someone who is willing to accept a reasonable amount of risk with their money, holding a balanced portfolio of equities, bonds and cash instruments. You are also willing to accept a greater risk of losses for the benefit of potential gains over the longer term*.'

I think that's a broadly fair assessment of the information Mr W provided – he seems to have indicated that:

- he wanted the chance of higher returns than cash and fixed interest products by increasing exposure to equities
- he was open to considering alternatives to deposits
- he didn't want to lose money in the short term but he'd be comfortable with a balanced style investment such as UK Equities
- he would be prepared to lose money on an individual fund and still be pleased if overall performance showed a reasonable return.

Looked at overall, I'm satisfied that risk was discussed with Mr W and that, despite his lack of investment experience, he would most likely have understood that risk increased with the potential for making money. He seems to have been prepared to invest for the medium/longer term. I haven't seen anything to show that he wasn't prepared to take a medium risk to achieve his objectives of income alongside capital growth – which I think it's fair to say a medium risk fund would have offered potential to deliver.

With this in mind, I've first looked carefully at Mr W's investment in the GCA. I've kept in mind that structured deposits have a higher risk compared to a fixed deposit, which not only guarantees return of capital but also a rate of interest. And I've thought about whether, even if Mr W might have understood that his capital was protected and he wanted to prioritise this, he might not have understood how the return would be calculated or what it would be linked to. And whether, even if Mr W had realised the way it worked and the risk of obtaining little or no return, he may not have opted for it – or he might have wanted to risk less of his money this way.

The product literature described the GCA as follows:

'*The HSBC Guaranteed Capital Account is a fixed term deposit account. It provides you with an attractive rate of income on 50% of your initial subscription, while benefiting from interest linked to any growth of the FTSE 100 Index on the remaining 50% of your subscription, over a fixed term. Your initial deposit will be returned in full after maturity, provided you make no withdrawals over the term of your Account*.'

This meant that half of Mr W's £34,000 deposit in the GCA would generate income over the fixed term and half would provide interest linked to any growth of the FTSE 100 Index (after averaging over the last twelve months).

I think Mr W would've been able to understand the basic principle behind this account – at least, enough to know if it could offer him the sort of investment potential he was looking for. And at the time, I think he might reasonably have thought that one of the advantages for him of the GCA over the longer term could be having the chance of a return that would beat what he could reasonably have expected from a savings account or money market returns, whilst at the same time protecting his capital – which was a priority for him.

To my mind, the GCA reflected what Mr W told the advisor he wanted to achieve - he'd said he wanted some stock market interaction but without the capital risk. The GCA offered a capital guarantee but also the potential for growth – plus the chance to have an income as well. Mr W had told the advisor he wanted to boost his chances of getting an income that would ideally double his current monthly disposable income. The advisor said that the income from the GCA on present figures would be around £87 monthly – which matched what Mr W had said he'd wanted (stating also that returns couldn't be guaranteed).

From the notes I've seen in the fact find, I am satisfied that the advisor highlighted the main features of this sort of investment and explained to Mr W about the value of spreading risk and how he could do that by holding this investment in a range of smaller diverse funds. It seems that Mr W said his priorities were to obtain a capital guarantee and the best rate possible on his income so he didn't wish to diversify the £34,000 he had to invest.

Mr W was also confident that he wouldn't need access to his capital for other purposes before the end of the six year term he wanted to sign up to. In the event, Mr W made withdrawals in 2011 and 2012. There had been an option to invest for three and a half years and the longer term exposed Mr W to potentially significant loss and surrender penalties for longer. But the notes record the advisor discussed this with Mr W and ultimately it was his choice to choose the term he felt was right for him. I can't fairly say the advisor should have known when Mr W might need to access this money. So I don't feel this is enough of a reason to uphold the complaint.

HSBC said this sort of structured account was a compromise whereby an investor continued to face the uncertainty over the gain achieved, if any, but was shielded from capital loss. That protection was provided at the expense of limiting the gains available with an unprotected investment, but still offered the potential to improve on deposit-based returns.

The GCA was recommended with the aim of outperforming the market and whilst the return Mr W got on this investment was impacted by the crash in the financial markets a few years later, this wasn't reasonably foreseeable at the time. He received income totalling £2,394.74 from the GCA.

All in all, I've not found enough to fairly say that the GCA recommendation wasn't suitable for Mr W or make a finding that too much of his available funds were invested in the GCA. It offered Mr W a balance between protecting underlying capital, which was key feature for him, whilst broadening his available investment options – which was also important to maximise his potential investment gain. Given Mr W's particular circumstances and requirements at the time in 2006, and keeping in mind what he wanted his money to achieve for him and his attitude to risk, on balance, I don't feel that I can fairly say the GCA recommendation didn't broadly suit those needs.

Thinking about the HSBC Growth Fund of Funds, HSBC has provided a copy of the product literature from the time Mr W invested in 2006 and this gives a useful insight into the composition of the fund, as follows.

'*What does the Fund aim to do?*
The objective of this portfolio is to provide medium to long term capital growth. The fund will invest in a diversified portfolio of regulated collective investment schemes that in turn invest in equities and bonds predominantly in the UK with some overseas exposure.'

The fund was invested in a mix of equities - around half were UK equities - and it included some more volatile products, balanced by less risky investments, which would fit the overall description of 'Medium Risk'. From his discussions with the advisor, I think Mr W understood that investing at less risk to his capital didn't offer the potential for growth he was looking for.

I've noted there were no withdrawals from the ISA. Given Mr W's attitude to risk in 2006, his needs and investment objectives and the opportunity this investment offered him in terms of potential investment gain, whilst spreading some of his overall investment risk, I haven't seen enough to be able to say this fund was too risky or otherwise unsuitable for him.

The fact that there may have been other more suitable/less risky funds which could have been considered isn't a reason to uphold this complaint because I have found that the advice given was suitable.

In coming to my decision I've taken carefully into account everything the CMC has said in response to the investigator's view.

Whilst I agree that Mr W's investment experience was something that the advisor needed to think about when advising on investments, it is not the only thing that had to be considered. The fact someone is a first-time investor does not automatically mean that only investment in low risk or no risk investments should be recommended. This would effectively deprive first time investors of the opportunity to make bigger investment gains than they could otherwise achieve, which seems unfair to me.

I don't agree that Mr W's health condition was a good enough reason to think it fair to rule out investment risk at the expense of limiting his opportunity to make investment gain. Investing in a savings account or a fixed rate bond wouldn't automatically protect against the risk of savings being eroded by inflation over time – and it would likely make it harder to beat inflation.

He and his wife were in a secure financial situation and I can understand why, with no dependents, being prepared to take a balanced or medium degree of risk with a proportion of his investment pot seemed attractive to Mr W.

I don't consider the fact alone that Mr W decided to invest the £12,000 or so he'd originally kept back changes the outcome here. I think it demonstrates that Mr W understood that he could take advantage of being able to invest in whatever way best suited him as his intentions or circumstances changed. By deciding to invest further, some five months or so after speaking to HSBC's advisor, I think Mr W probably understood that he was potentially increasing his chances of gaining an investment return over and above what he could expect to achieve just keeping the money on deposit – and he now felt comfortable risking more of his money with this objective in mind.

I consider that the original recommendation to invest this money was suitable in any event as I have found above that he appeared to be comfortably able to absorb a degree of investment loss.

To sum up, I consider that the investment advice HSBC provided to Mr W in 2006 was suitable, given his particular circumstances and financial situation and investment aspirations.

My final decision

For all these reasons, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estates of Mrs W and Mr W to accept or reject my decision before 22 November 2023.

Susan Webb
Ombudsman