DRN-4790878

The complaint

Mr D and the estate of Mrs D complain that some investment advice provided in 2006 by HSBC Global Asset Management (UK) Limited ("HSBC") was unsuitable.

What happened

Mr D, and his wife Mrs D, were given advice about their investments by HSBC in 2006. Sadly Mrs D passed away in 2011. Mr D is the sole executor of Mrs D's estate. So Mr D has brought this complaint to us both on his own behalf, and on behalf of his late wife's estate. And Mr D has been assisted in making the complaint by a claims management company. But, for ease, in this decision I will simply refer to communications as if they were with, and from, Mr D.

I issued a provisional decision on this complaint in March 2024. In that decision I explained why I only thought part of the complaint should be upheld. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

> *Mr D, and his wife Mrs D, were given advice about their investments by HSBC in 2006. Sadly Mrs D passed away in 2011. Mr D is the sole executor of Mrs D's estate. So Mr D has brought this complaint to us both on his own behalf, and on behalf of his late wife's estate. And Mr D has been assisted in making the complaint by a claims management company. But, for ease, in this decision I will simply refer to communications as if they were with, and from, Mr D.*
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> *Mr and Mrs D met with a representative of HSBC in 2006 to discuss some investments. Shortly before, Mr and Mrs D had completed the sale of a business that they jointly owned and had received some cash proceeds. After repayment of a mortgage, and some other expenses, Mr and Mrs D told HSBC that they had around £220,000 to invest.*
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> *HSBC assessed Mr and Mrs D's attitude to risk, and agreed with them that they matched a medium risk profile. Mr and Mrs D said they had previously had some limited exposure to investments and were looking to achieve some returns on their investment but with only a moderate risk to their capital. Based on their other sources of income at that time they anticipated a monthly shortfall of £575 that they were seeking to meet via investment income.*
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> *HSBC provided Mr and Mrs D with a series of recommendations. It proposed splitting Mr and Mrs D's planned investment across three providers. It said Mr and Mrs D should place £100,000 in a bond provided by a firm I will call S, with £75,000 invested in a managed fund and the remainder in a property fund. It said Mr and Mrs D should also invest £80,000 in a bond provided by a firm I will call L, with £68,000 invested in a low-risk distribution fund and the remainder in a property fund. And finally HSBC advised Mr and Mrs D to invest £40,000 into HSBC's Portfolio Management Service.*

Mr and Mrs D accepted HSBC's recommendations and made the proposed investments. Mr and Mrs D's investments were consolidated into different funds when they took new financial advice from another firm in 2009.

HSBC has decided that some of the advice it gave to Mr and Mrs D was inappropriate. So it has offered to pay redress in respect of the investments that were made via its Portfolio Management Service and the investment made in the managed fund provided by S. But it didn't think the other three investments it had recommended were inappropriate for Mr and Mrs D's circumstances at the time. Unhappy with that response Mr D brought the complaint to us.

As I've said earlier, HSBC has already offered Mr D compensation in relation to two of the investments it recommended. The basis of that compensation is in line with what I would expect to be paid in circumstances such as these. So I won't be considering the suitability of those two investments in isolation in this decision. But I will bear them in mind when I now go on to look at the suitability of the remaining investments that HSBC recommended.

I think it is important that I consider the recommendation that HSBC made as a whole. In any investment strategy, the component parts will vary in risk. It is the responsibility of the advisor to ensure that the recommendation as a whole, and the investments that a consumer makes, match a measured and agreed attitude to risk. So whilst some investments might be of a slightly higher risk than the overall measurement, generally I would expect to see them balanced by investments of a lower risk.

I also need to be mindful that the advice was given to Mr and Mrs D more than 15 years ago. And over that period of time sentiments about various investment classes, such as property in this case, have changed. When considering the complaint I need to bear in mind the economic environment and outlook at that time, rather than how some investments might be viewed today.

When Mr and Mrs D met with HSBC they discussed their attitude to risk, based on their investment experience and their financial needs in the future. Mr and Mrs D had recently retired and sold their business so they were left with an income shortfall that they needed to bridge using their investments. And, given that they had now retired, their capacity for future earnings was much less than it would have been had they still been working. But Mr and Mrs D had paid off many of their liabilities following the sale of their business, and retained a cash deposit to be used in the case of emergency.

HSBC assessed Mr and Mrs D's attitude to risk as being at a medium level. The raw data suggested that Mr and Mrs D were just above the middle of that risk banding. So, given what I have said above, it seems reasonable that Mr and Mrs D might have been willing to take some limited risk with their investments provided they had sufficient secure assets to bridge the income shortfall that I've mentioned above.

The recommendations that HSBC made, at an overall level, did provide Mr and Mrs D with some investments intended to produce income. Mr and Mrs D said their monthly shortfall was around £575. The investments that HSBC recommended were expected to produce a monthly income of around £900 so meeting Mr and Mrs D's income objectives.

In its advice report HSBC noted that the investments it had recommended, when taken together, were more cautious than its assessment of Mr and Mrs D's attitude to *risk. But it said that it thought that appropriate given Mr and Mrs D's limited future capacity to generate further funds should any capital be lost, although it would not entirely meet Mr and Mrs D's objective of generating investment income.*

Taken individually I accept that some of HSBC's recommended investments might be considered to be unsuitable for Mr and Mrs D's circumstances. And that appears to be the conclusion that HSBC has reached when offering the compensation to Mr D. But I'm not persuaded that the remaining three funds are such that they alone, or in combination with the remaining investments, should be considered unsuitable.

Two of the funds into which Mr and Mrs D were advised to invest were property funds. In total around 17% of their investment was placed into those two funds. But when HSBC gave the advice, in 2005, property funds were seen as investments that would be expected to produce regular returns with low levels of volatility. Many of the current concerns around the liquidity of investments in funds of that nature were not present at the time this advice was given.

I accept that the other two general investment funds also comprised an element of property investments. HSBC estimated that would mean a total of around 25% of Mr and Mrs D's investments in the funds offered by L and S would be in that sector. But I don't consider that to be an unreasonable recommendation at that time. As I've already explained, for an investment portfolio seeking regular and consistent income returns, property funds would have seemed an appropriate match.

The remaining investment I need to consider here is the £68,000 invested into the distribution fund offered by L. That fund was invested across a range of different asset classes. Around 40% was in equities – mainly UK equities. Around 13% was in property. And the remainder was invested in corporate bonds. The fund guide from the time explained that distribution funds were popular with cautious investors looking to take the next risk step up from a deposit account. And HSBC's recommendation explained that this was a cautious investment product operating below Mr and Mrs D's measured risk attitude.

So I am satisfied that, when this recommendation was made in 2005, the distribution fund offered by L, and the two property funds offered by L and by S, were reasonable investments to be recommended to Mr and Mrs D. The funds did not exceed Mr and Mrs D's measured, and agreed, attitude to risk either individually or when considering their portfolio as a whole. And they provided the income and growth potential that Mr and Mrs D had set out as their objectives.

I appreciate my decision will be disappointing for Mr D but I don't currently think HSBC needs to pay more compensation than it has already offered.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. HSBC says that it accepts my provisional findings. And it has confirmed that it has paid the compensation I set out, to Mr D, in May 2022 and January 2023. Mr D didn't agree with my provisional findings and has sent some further comments. Although I am only summarising here what Mr D has said, I want to reassure him that I have read, and carefully considered, his entire response.

Mr D says that a longer period of time should have been allowed to pass before the advice was given to allow him and his wife to assess their likely needs over the coming years. Given they had retired they had no capacity to bear any future losses. Mr D says that my decision downplays the level of equities that were contained in the distribution fund offered by L.

Mr D says that, as early as 2002, concerns had been growing about the liquidity of property funds. He says suitable advice would have generally only seen 5-10% of assets being held in such funds – whereas the recommended investments were over double that. And he noted that the amount of income the portfolio was expected to generate was significantly higher than was required – he says that suggests the level of risk was far higher than necessary.

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.

As I set out in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr D and by HSBC. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I have carefully considered the additional comments that Mr D has made in response to my provisional decision. But I am sorry to tell him that they haven't caused me to alter my findings on his complaint. I would however like to comment further on some of the matters he has raised.

I think there is a distinction between funds that only invest in property, and more general investment funds that have some property investments as part of a balanced fund. I think any liquidity concerns that might have been present about property investments would have been far lower in the latter. But I am still not persuaded that the amount invested into the property funds was inappropriate. As I said in my decision, Mr and Mrs D appeared to have little need for the capital that was being invested. They had an income shortfall that was met by the recommendations, and they held a cash emergency fund should any unexpected expenses arise. And if capital had been needed at short notice, the majority of their investments were not directly in property funds that might suffer liquidity restrictions.

Mr and Mrs D approached HSBC for advice about their investments. So they appear to have been confident that they had a clear picture of their future plans, what capital they needed to retain to pay any tax liabilities and to purchase a new home, and therefore the amount of capital they had available for longer term investment. So within those parameters I don't think it was for HSBC to second guess the directions that had been given by Mr and Mrs D. The information from the time does suggest that HSBC explored Mr and Mrs D's future plans with them to ensure they were happy with the investment approach and timescales. But I don't think HSBC was in any position to advise Mr and Mrs D they should not invest their monies – that might have led to a complaint that potential future growth had been lost.

I have reviewed the information that was provided by L about the composition of the distribution fund when the investment was made in 2006. That showed 35.27% was held in UK Equities, 3.66% in European Equities, and 2.66% in Far Eastern Equities. That totals an equity composition of 41.59%. I think it reasonable that I described that in my provisional decision as being around 40%. It is certainly far less than the 49% that Mr D thought to be the case when he made his comments.

And I'm not persuaded that the portfolio that was recommended to Mr and Mrs D exceeded their appetite for risk. Nor do I think that is demonstrated by it generating greater income than they might have needed. The suitability report that Mr and Mrs D were given set out the risk profiling they had agreed, and compared that against the risk profiles of the various investments as determined by the fund managers. If anything, the overall recommendation given to Mr and Mrs D was lower risk than the attitude to risk they had agreed.

On balance I remain satisfied that, when this recommendation was made in 2006, the distribution fund offered by L, and the two property funds offered by L and by S, were reasonable investments to be recommended to Mr and Mrs D. The funds did not exceed Mr and Mrs D's measured, and agreed, attitude to risk either individually or when considering their portfolio as a whole. And they provided the income and growth potential that Mr and Mrs D had set out as their objectives.

HSBC has confirmed that it has already paid the compensation that I set out in my provisional decision. I repeat those directions below so that they will provide Mr D with a legally binding decision should he consider that the appropriate compensation hasn't been paid. But my expectation is that no further payment will need to be made by HSBC.

Putting things right

If it hasn't already, HSBC should pay compensation to Mr D, and the estate of Mrs D, as set out below.

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr D as close to the position he would probably now be in if he and Mrs D had not been given unsuitable advice.

I think Mr and Mrs D would have invested differently. It is not possible to say precisely what they would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr and Mrs D's circumstances and objectives when they invested.

What should HSBC do?

To compensate Mr D fairly, HSBC must:

- Compare the performance of each of Mr and Mrs D's investments listed below with that of the benchmark shown.

- A separate calculation should be carried out for each investment.

- HSBC should also add any interest set out below to the compensation payable.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
HSBC Portfolio Management Service	No longer exists	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement
Managed fund	No longer exists	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement

For each investment:

Actual value

This means the actual amount paid or payable from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, HSBC should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum that Mr and Mrs D paid into the investment should be added to the *fair value* calculation at the point it was actually paid in.

Any withdrawal, income or other distributions paid out of the investments should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if HSBC totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically. If any distributions or income were automatically paid out into a portfolio and left uninvested, they must be deducted at the end to determine the fair value, and not periodically.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr and Mrs D wanted Income with some growth with a small risk to their capital.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to their capital.

- The FTSE UK Private Investors Income ***Total Return*** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr and Mrs D's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put Mr D into that position. It does not mean that Mr and Mrs D would have invested 50% of their money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr and Mrs D could have obtained from investments suited to their objective and risk attitude.

- The additional interest is for being deprived of the use of any compensation money since the end date.

My final decision

My final decision is that I uphold this complaint and direct HSBC Global Asset Management (UK) Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr D and the estate of Mrs D to accept or reject my decision before 7 June 2024.

Paul Reilly
Ombudsman