DRN-4902156

The complaint

Mr and Mrs S complain that HBOS Investment Fund Managers Limited t/a Halifax Financial Services ("HFS") failed to provide them with the options prior to their Maximum Investment Plans maturing and the plans have now lost their tax qualifying status.

What happened

Mr S and Mrs S took out their respective plans in November 2002 for an initial term of 10 years. Before maturity in November 2012 they were sent their options - which were either to encash the plans or alternatively continue them for a further 10 years. They chose to continue the plans, with a new maturity date of 1 November 2022.

HFS issued a letter on 7 September 2022 about their options with an enclosed payment instruction form if Mr and Mrs S wanted to encash their plans and a continuation option form if they wanted to continue it for another 10 years. They didn't receive this and therefore made no election as to what they wanted to do. Mr S then contacted HFS about the plans on 4 November 2022 asking for paperwork and was told this had been sent in September 2022 and copies would be sent to him.

Mr S followed this up with telephone calls and emails when he didn't receive copies of the documents. HFS then wrote to him on 30 November 2022 with copies of the maturity pack it had issued in September 2022. HFS also stated that as the plan had passed the maturity date it was unable to continue it as a qualifying policy so if it was continued it would be on a non-qualifying basis and that this meant income tax could be payable when money was taken out of the plan. HFS acknowledged Mr S raising a complaint with it by letter dated 1 December 2022 with Mr S emailing it the same date raising various questions.

He subsequently sent various emails to HFS in December 2022 and January 2023 seeking answers to his queries and a response to the complaint. This led to a telephone discussion on 24 January 2023 and HFS sending a final response letter (FRL) to his complaint the same day. HFS upheld the complaint on the basis that it hadn't followed its usual process and sent a chaser letter following the letter of 7 September 2022. The FRL also addressed the questions he had raised in his email of 1 December 2022 which at the same time were addressed by HFS in a separate letter of the same date.

In upholding the complaint HFS confirmed the plans would no longer be qualifying but that as this was due to it not providing the relevant information it would look to honour any tax charges arising. It said that the plans could only be extended for a further 10 years and they couldn't be extended as paid-up plans. It confirmed the plans were still invested in the original funds and explained that it hadn't collected the premium because it didn't know what Mr and Mrs S wanted to do. It paid £500 for the distress and inconvenience caused.

That didn't resolve matters as far as Mr S was concerned and there was ongoing correspondence between him and HFS over the following months with him insisting , amongst other things, that HFS quantify the loss arising from the loss of tax qualifying status and add this to the plans as well as allowing the plans to be continued for less than 10 years and that he could opt to make the plans paid up.

HFS explained that the plans had to be for 10 years – although the money could be taken from them before this, that Mr S and Mrs S couldn't opt to make the plans paid up and that it wasn't possible to add anything to the plans for potential tax losses that might arise.

The correspondence culminated in a letter from HFS to Mr S dated 6 June 2023 in which it said that it was satisfied that the complaint had been fully investigated and responses provided on two occasions and that it wasn't able to provide any different information. It said it considered the complaint closed and that it wouldn't be conducting further investigations or issuing further responses to the complaint.

Mr S then referred his complaint to us and it was considered by one of our investigators who in short thought HFS had provided the information Mr S and Mrs S needed to decide what they should do and that there was no financial loss.

Mr and Mrs S didn't agree with the investigator and made further representations which led the investigator to send a further opinion addressing various points that had been raised. They remained dissatisfied with the opinion of the investigator so the matter was referred to me for review. I issued a provisional decision explaining why I didn't think the complaint should be upheld. The findings from my provisional decision are set out below.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In doing so, I've taken into account relevant law and regulations; relevant regulators' rules guidance and standards; codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time. But I think it's important to note that while I take all those factors into account, in line with our rules, I'm primarily deciding what I consider to be fair and reasonable in all the circumstances of the case.

It is for me to decide what weight to give evidence a party relies on and where there is a dispute about the facts my findings are made on a balance of probabilities – what I think is more likely than not. It is also for me to decide whether I need any further information before reaching my decision. Having considered this I am satisfied I have the information I need to make a fair and reasonable decision.

The purpose of my decision isn't to address every point raised and if I don't refer to something it isn't because I've ignored it but because I'm satisfied I don't need to do so to reach what I think is the right outcome. Our rules allow me to do this, and it simply reflects the informal nature of this service as a free alternative to the courts.

I make this point in particular because Mr S has indicated his unhappiness with the investigator not listing the major operational issues he referred to. I want to make clear to him that I won't be commenting on all the points he has raised as I am satisfied that I don't need to in order to reach a fair and reasonable decision in this complaint.

HFS has accepted responsibility for Mr and Mrs S not receiving their plan options before maturity and the main issues in this complaint are whether what it has proposed to put this right is reasonable and whether it has provided Mr and Mrs S with the information they need to decide what they want to do.

Before I address the key issues in this complaint I think it would be helpful if I explain briefly how the plans work.

The plans have to be for a term of at least 10 years to be qualifying plans under HMRC rules and the sum assured has to be at least 75% of the total premiums payable over the term of

the plan. The plans for Mr and Mrs S at the outset had a term of 10 years with an annual premium of £1,500 – so a total of £15,000 over the 10 year term. The sum assured of £11,250 was the minimum amount of 75% of the total premiums payable

The continuation of the plan for a further 10 years amounts to what HMRC consider a significant variation which means as far as it is concerned the plan is treated for the purposes of the qualifying policy rules as if it is a new policy issued in substitution of the old policy before the variation. So, for the plan to remain qualifying it would need to be for a term of at least 10 years each time it was continued.

Did HFS provide the information Mr and Mrs S needed to make a decision

HFS's communication with Mr S up to it discussing matters with him on 24 January 2023 and writing to him that day wasn't good enough as it didn't provide the information he had asked for in good time, given he and Mrs S were understandably concerned about where they stood with their plans.

However, it did then address the main issues he had raised in its FRL of 24 January 2023, albeit not to Mr S's satisfaction. HFS provided a further response on 21 March 2023 in light of the ongoing correspondence from Mr S before stating in its letter of 6 June 2023 to him that it wouldn't provide any further responses to his complaint given its previous responses.

I don't think this was unreasonable in the circumstances. It had explained the position that Mr and Mrs S were in and the options they had in the FRL of 24 January 2023 – either to encash or continue the plans as non-qualifying. It also provided answers to the questions that Mr S raised about making the plans paid up and about the 10 year term.

I acknowledge that Mr S wanted further information before deciding what to do, but I am satisfied that he and Mrs S were provided with all the information they needed to make a decision as of 24 January 2023. Just because Mr S refused to accept what HFS had said doesn't mean it did anything wrong in maintaining its position on the various matters raised by him following its FRL.

I have explained above why I don't accept his argument that HFS needed to calculate and pay him an amount for the loss arising from the plans being non-qualifying and explain below why I don't agree with his arguments about the plan being made paid up and the term.

Making the plans 'paid-up'

Mr S has argued that he was clearly offered conversion of the plans to paid up and relies on a letter of 28 April 2017 in support of his argument, which he says was in response to his specific request for clarification on this point. He argues that HFS subsequently stated in response to his complaint that the plans can't be made paid-up and that it has provided conflicting information.

The letter of 28 April 2017 states:

"If you are unable to pay your premiums then the plan would become paid-up and if paid-up it is not possible to resume contributions at a later stage. Paid-up plans can continue with the same level of cover and units would be sold within the savings each month to cover the costs of the sum assured until the fund is exhausted. At this point the plan would be terminated and all cover ceases."

This made it clear that the plans would only become paid-up as a result of a failure to pay the premiums. In other words, there was no option to convert the plans to paid up status in

the sense that Mr S could contact HFS and request the plans be made paid up. He (and Mrs S) could of course choose not to pay the premiums and the effect of this would be to make the plans paid-up. However, that is very different to him being offered conversion of the plans to paid up.

In a letter of 21 March 2023 from HFS to Mr S - which was further to its initial FRL - HFS stated:

"I confirm that at this time your policies cannot be paid up. As noted above the policies current status is that they have reached their maturity date. Policies that are in force can only become paid up when premiums are unpaid. However, in this case your policies would need to have the annual premiums paid now for the 10 year extension to commence and so would then be in force and the policies could not then become paid up unless future premiums were unpaid."

This is consistent with what was stated to Mr S in 2017, as it repeats that policies that are in force can only be made paid up if premiums aren't paid. It may be that Mr S has misunderstood the position of the plans at this point. If so I am not satisfied this is because he was given unclear information but so it is clear to him and Mrs S I set out below the current position with the plans.

Ordinarily, where a client hasn't made an election in time there would be no option to continue the plan and the only option would be to take the benefits of the plan – as explained in the letter of 7 September 2022 setting out the options a copy of which was provided to Mr S in November 2022.

However, this isn't what has happened in this particular case as HFS has accepted Mr and Mrs S didn't receive the letter in time and so weren't given the opportunity of making any election. It hasn't therefore ended the plans and paid out the maturity value as it would ordinarily have done.

Mr and Mrs S are therefore in the unusual position of having plans that have matured but have been kept open by HFS pending them deciding whether they want to continue the plans. HFS has not taken the premiums payable since maturity because the effect of this would be to continue the plans as non-qualifying plans when Mr and Mrs S haven't confirmed this is what they want to do.

For the plans to be made paid up Mr and Mrs S would first have to elect to continue them by making the premium payments currently due and then fail to make the future premium payments that become due. In short, they can't make the plans paid up without first electing to continue them. Put another way they cannot currently make the plans paid up without continuing them because if they aren't continued there are no plans to be made paid up as they will be considered as having matured in 2022.

I am satisfied that HFS have never informed Mr S that there was an option to make the plans paid up - whether that be at maturity or any other time - and that he hasn't been provided with conflicting information about the circumstances in which the plans can be made paid up.

Continuing the plan for 10 years

Mr S argues that there is nothing in the agreement between him (or Mrs S) and HFS that refers to the plans having to continue for a further 10 years on each renewal and says that this 'problem' has been ignored.

The plans have to be for a 10 year term to be qualifying plans and this is why the original

term and the term on any continuation has to be 10 years – as I explained above. The provisions of the plan that I have seen, under the heading 'Option', states that at the request of the investor the investment term will be extended for a period ceasing on the tenth anniversary of the date on which the option is exercised and the maturity date altered accordingly.

Mr S appears to be suggesting that this provision only allows for renewal for a further 10 year term at the end of the initial 10 year term and not any subsequent renewals after this. It isn't clear to me that the provisions are worded such that it doesn't allow for subsequent renewals but if I accept his argument, it means the only time that HFS had to offer him and Mrs S any option to renew was in 2012 when the initial 10 year term ended. If that is right then HFS weren't required to give Mr S any option to renew the plans in 2022 and would have done nothing wrong in not notifying him of such an option. In short, if his argument is right then HFS didn't need to contact him and Mrs S before the plans matured in November 2022 and give them the option of continuing the plans as qualifying plans and would have done nothing wrong in not doing so – which would mean the whole basis of the complaint is misconceived and HFS could simply insist that they take the maturity value of the plans.

In any event, regardless of any other argument, whilst Mr S refers to the term being continued for another 10 years as a 'problem' he and Mrs S can still encash them at any time if they are continued, as HFS made clear. In short, this doesn't tie him and Mrs S into continuing the plans for 10 years if they don't want to. In the circumstances I can see no problem with the plans continuing with a term of 10 years or any detriment to Mr S and Mrs S arising from this.

Ongoing fees

Mr S argues that there is no basis for HFS charging ongoing fees as there was no contract running that allows for this. However, as the plans have not come to an end at this time and Mr and Mrs S remain invested it is reasonable for HFS to continue to charge for the administration and management of the plans pending Mr and Mrs S deciding what they want to do.

The current status of the investments

Mr S has said that no one has clarified the status of the investments and whether they are still invested but HFS confirmed in an email to him of 24 January 2023 that both plans were still invested in their original funds and had the same investment terms. Furthermore Mr and Mrs S have received the annual statements for their plans to October 2023 and although he says these aren't clear, they show what they are invested in.

The annual statement also shows that the investments have continued to accrue in value. However, I think it is important to make clear that Mr and Mrs S would only be entitled to any increase in value if they opt to continue the plans.

The annual statement also confirmed that the plans still include a death benefit.

Complaint handling

Mr S has made various comments about HFS's complaint handling but complaint handling isn't a regulated activity and as such not something that generally comes within our remit. It is something that we can consider if it is ancillary to a regulated activity but I am not persuaded that is the case here. In any case, I am not persuaded that HFS's handling of the complaint would warrant me making any award.

What HFS has proposed to put things right

The FRL of 24 January 2023 explained, Mr and Mrs S either take the maturity value of the plans as at the date of maturity or they continue the plans for a further 10 years, making good the premium payments currently due, with the plans then continuing as non-qualifying.

If they opt not to continue the plans but to take the maturity value then this will be the value as at the date of maturity and will be on the basis the plans are qualifying plans. In other words Mr and Mrs S will be in the same position as they would have been in if they had received their options in September 2022 and elected to take the maturity value at that time.

If instead they choose to continue the plans as non-qualifying plans for a further ten years and subsequently encash them, HFS said that it would pay any tax payable that wouldn't otherwise have been payable if the plans had remained as qualifying plans.

I understand Mr S would prefer a calculation to be carried out now to work out the 'loss' and for this to be paid but there is no way of knowing whether he and Mrs S will suffer any loss. This will only be known if they decide to continue the plans and then subsequently encash them as it depends on various factors - in particular the value of the plans at date of encashment and Mr S's and Mrs S's respective tax positions at that time. In the circumstances what HFS has proposed in order to try and resolve the situation – namely that it will be responsible for any tax payable by Mr S or Mrs S if they continue the plans and then encash them - is fair and reasonable.

HFS paid Mr and Mrs S £500 for the distress and inconvenience caused by them not receiving the maturity packs for the plans so that the option of continuing them as qualifying plans was lost. I am satisfied that this is a reasonable amount in the circumstances as they have the option of continuing the plans and whilst this would be on a non-qualifying basis, HFS has confirmed it will pay any tax payable that wouldn't otherwise have been payable."

I gave both parties the opportunity of responding and providing any further information they wanted me to consider. HFS agreed with my findings but Mr and Mrs S didn't. Mr S provided a detailed letter in response which in large part repeated points he had already made. I have however, summarised what I consider are the main points below.

- More than the legal situation needs to reviewed. I should also deal with the failure to handle a complaint within laid down procedures and provide a full explanation of the major mistakes by HFS and need to work positively to secure an equitable result acceptable to customers.

- He suggested to HFS they look at a fresh investment including what their error had cost so they would retain the benefit of the investment funds, which they ignored.

- It's surprising I am of the view they have encountered no loss as there is more to the failure by HFS than pure pound signs and no one has shown any interest in his and Mrs S's health and wellbeing over the past 18 months.

- The annual statements don't confirm all the terms are ongoing and given HFS's attitude it is a large stretch to expect them to believe that HFS are carrying out an extension of the terms in an open ended manner based on this paperwork alone.

- I said that it was reasonable for them to seek information about the plans but this has never been supplied so why do I conclude that their refusal to supply the information is competent.

- His and Mrs S's favoured route was to make the plans paid up and the wording of the email of 28 April 2017 to any reasonable minded person would be taken to mean that option was available on renewal.

- HFS have never said the plans must be extended before being made paid up and my provisional decision would appear to require they fund the uncollected premiums of £6,000 to regain that option which isn't reasonable at this late stage.

- It was HFS's decision not to collect the premiums and the current situation is one that has been totally created by its inactions and it should be requested to provide a solution and provide the figures they have asked for.

- HFS also made a total mess of the complaint handling following it immediately admitting the mistake over the issue of the maturity papers and loss of tax qualifying status.

- I have said that my review doesn't extend to complaint handling but I am required to consider the fact HFS totally failed to comply with all procedures and its back office function was totally inept.

- He has found out through my provisional decision that going back to the position in November 2022 would require revising the investment value back to that date which would leave him and Mrs S with a loss of investment growth and return stretching over 18 months and that is far from a reasonable outcome.

- He feels that inactions and correspondence from our service are required to be brought into play.

- He has made reasonable requests for a current value of the investments and the gains, clarification of HFS's intentions regarding the movement in value of the investments from November 2022 to date, what HFS intend to charge for fees for closing off the investments, the name of a senior HFS employee who will oversee everything, a review by HFS of the customer journey and level of compensation offered.

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 said in my provisional decision, it is for me to decide what weight to give evidence a party relies on and where there is a dispute about the facts my findings are made on a balance of probabilities – what I think is more likely than not. It is also for me to decide whether I need any further information before reaching my decision. Having considered this I am satisfied I have the information I need to make a fair and reasonable decision.

Also as I said in my provisional decision, the purpose of my decision isn't to address every point raised and if I don't refer to something it isn't because I've ignored it but because I'm satisfied I don't need to do so to reach what I think is the right outcome. Our rules allow me to do this, and it simply reflects the informal nature of this service as a free alternative to the courts.

Mr S has provided no new information that would lead me to significantly change the findings in my provisional decision which, for the avoidance of doubt, form part of the findings in this final decision unless I state to the contrary.

Mr S argues that issues that he has raised about our service are required to be brought into play. My role is to consider the complaint made against HFS and whether it did anything wrong and what redress may be payable if it did. Any issues Mr S has with our service is separate and nothing to do with this and I am therefore not going to comment on this further.

Mr S argues that I am required to consider that HFS totally failed to comply with all procedures and that its back office function was totally inept. I acknowledged in my provisional decision that the communication with Mr S before it issued its FRL wasn't good enough in the circumstances and don't think I need to make any further findings in relation to its response to the complaint.

Mr S criticises HFS for not collecting the premiums for the plan but the effect of it doing this would have been to continue the plans when Mr S and Mrs S have not elected to do this, as I made clear in my provisional decision. It therefore did nothing wrong in deciding not to collect the premiums in the circumstances.

There is nothing unreasonable in HFS requiring Mr S and Mrs S to pay the premiums currently outstanding for the plans in order for them to be continued, if that is what they decide to do. This simply puts the plans in the position they should now be in if they are to be treated as continued. It would be up to Mr S and Mrs S whether to continue to pay the premiums due thereafter or default on payment - which would lead to the plans being made paid up.

Mr S continues to argue that HFS should provide an up to date valuation of the plans showing the current value and the gains. However, although the investments within the plans have increased in value as a result of the plans not being encashed they don't have a 'current' value as such because he and Mrs S haven't elected to continue them.

Put another way the plans at this time are matured plans that haven't been encashed – their value being what it was at the date of maturity in 2022 with no tax payable on that value whatever the gains if they are encashed now. Mr and Mrs S aren't entitled to any increase in the value of the investments as a result of them not being encashed unless they elect to continue the plans and make good the missed premium payments.

I can see no basis for asking HFS to spend time and effort on carrying out what would be an entirely artificial valuation exercise based on the assumption the plans had been continued or what the point of such an exercise would be. HFS has already agreed to pay any tax arising if the plans are continued and subsequently surrendered, so Mr S and Mrs S will not be in any different position now to the position they would have been in if the plans had been continued as qualifying plans to date in any event.

I appreciate that Mr S and Mrs S want to know what tax they might ultimately have to pay if they continue the plans and would prefer this to be paid to them beforehand before they encash if they do continue them. But it isn't possible to know what, if any, tax would be payable unless they continue the plans and thereafter decide to encash the plans and there is no way to know what tax may be payable by HFS until they give instructions to encash the plans.

I note what Mr S has said about being surprised I have said they have encountered no loss. He makes the point that the complaint is about more than just pound signs and refers to his and Mrs S's health and welfare over the past 18 months. Firstly, I didn't say he hadn't encountered a loss, I said it wasn't possible to calculate if a loss had been suffered. Secondly, when I used the word 'loss' I was referring to financial loss. I accepted in my provisional decision they had suffered distress and inconvenience but am satisfied that the £500 they were offered by HFS for this is fair and reasonable in the circumstances, taking

account of the fact that HFS addressed the issues raised by Mr S in its FRL of 24 January 2023 and explained what the options were at that time.

Mr S argues that HFS should come up with an equitable solution but it has done so. It has explained that they can either continue the plans as non-qualifying, with HFS to meet any tax liability that arises because of this when the plans are subsequently encashed, or they can decide not to continue the plans and take the November 2022 maturity value.

I am satisfied that HFS has provided Mr S and Mrs S with the information they need to decide what they should do with the plans and that it doesn't need to do anything further at this time. Mr S and Mrs S need to make a decision about which option they want to take and inform HFS accordingly, as the current situation obviously can't continue indefinitely.

Mr S argues that if they do elect to take the surrender value for the plans rather than continue them then he and Mrs S will have lost out on the investment gains they would have had to date. I have already found that their options were made clear in the FRL of 24 January 2023. They could and should have made a decision as to what they were going to do following receipt of the FRL. In the circumstances, HFS isn't responsible for any lost investment gains on the surrender value to date.

However, I did in any event approach HFS about paying simple interest of 8% on the surrender value if Mr S and Mrs S don't choose to continue the plans. Whilst it has said that this is what it would pay if it had deprived clients of their money, which I agree it hasn't done here, it is willing to pay simple interest at 8% on the surrender values to 23 February 2023 - one month after its FRL - if Mr S and Mrs S choose not to continue the plans. I think this is fair and reasonable in the circumstances.

My final decision

I don't uphold this complaint for the reasons I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 4 September 2024.

Philip Gibbons
Ombudsman