

The complaint

Mr N complains that HBOS Investment Fund Managers Limited (HBOS) failed to warn him about losses to his pension fund held with it.

What happened

The investigator set out the background to this complaint in his view and the facts weren't disputed. With some amendments, I've set out this background below.

On 18 December 2007, Mr N met with an adviser from the Bank of Scotland Investment Service (BOSIS) to review his financial plans.

On 8 February 2008, BOSIS recommended Mr N open a stakeholder pension plan in order to accept the transfers of his existing Scottish Mutual and Equitable Life pensions.

Mr N agreed to BOSIS's recommendation and an ongoing advice service from BOSIS. The transfers went ahead in March and April 2008. Halifax Life Limited now HBOS was the product provider and BOSIS also became part of HBOS.

In 2009 Lloyds Banking Group (LBG) was formed, following the acquisition of HBOS by Lloyds TSB.

The Financial Conduct Authority (FCA) in 2013 introduced the Retail Distribution Review (RDR) which changed the way in which firms could charge customers. And as a result of this Lloyds Banking Group took a decision not to provide advice to customers with funds of less than £100,000. And those with investments over £100,000 would have to actively request it to provide advice. We've been told by the member of staff answering this complaint, that he is unable to say if this was communicated directly to customers who'd previously been offered advice via a mass communication, but this information was displayed on posters etc in branches. And its communications since communicated that customers should seek independent financial advice.

In March 2014, HBOS conducted a review of the pension advice provided to Mr N and concluded his policy hadn't been invested as agreed. It was invested in Portfolio 2 which included lifestyling when it should've been in Portfolio 3 which did not. HBOS compensated Mr N for his lost investment growth and moved his investments into the correct funds. Compensation was also added regarded a comparison with the product he'd transferred from.

In 2019 Mr N called HBOS up but unfortunately a recording of this call is not available. However, the call note says that he asked to switch his funds into the lifestyle funds.

Following this HBOS wrote to Mr N to confirm the switch instruction. This showed the effect of the fund switch:

<i>Halifax pension fund</i>	<i>Unit price (p)</i>	Before switch		After switch	
		<i>Number of units</i>	<i>Fund value (£)</i>	<i>Number of units</i>	<i>Fund value (£)</i>
Gilt & Fixed Interest	171.40	71,731.095	122,947.10	Nil	Nil
High Income	208.30	70,522.010	146,897.35	Nil	Nil
International Growth	282.60	37,104.063	104,856.08	Nil	Nil
Pelican	208.10	74,906.388	155,880.19	Nil	Nil
Gilt & Fixed Interest Fund (L)	171.40	Nil	Nil	309,557.013	530,580.72
		Total	530,580.72	Total	530,580.72

The change applies to all the retirement benefits under the plan.

It also said that the switch only related to his existing units, it would not affect any new contributions.

Mr N's next annual statement showed that the new contributions had been invested in the three funds above (showing nil after the switch), as these are the three funds part of Portfolio 3.

After receiving his annual statement in March 2023, Mr N noticed the value of his pension had dropped significantly since March 2019. Mr N also noticed his pension investments had been transferred almost entirely into the Gilts and Fixed Interest Fund.

On 27 October 2023, Mr N raised a complaint about the performance of his pension and the service he received from HBOS. HBOS responded to Mr N's complaint on 23 November 2023 and, because he wasn't satisfied with the response, the complaint was referred to our service for investigation.

Our investigator looked into matters and felt that the crux of the complaint shouldn't be upheld. However, he said HBOS had given wrong information about Mr N being invested in lifestyling in statements which will have confused matters and caused frustration. And therefore he awarded £100 for the trouble and upset this will have caused Mr N. With regards to the crux of the complaint the investigator explained that Mr N had requested to switch fully into the Gilts and Fixed interest fund, and if that isn't what he'd wanted, he had the opportunity to tell HBOS that and he hadn't. He explained regarding Mr N's point that HFS should've warned Mr N about his fund dropping, that it was just the administrator of his fund and couldn't give him advice.

Mr N responded to say he didn't accept the investigator's view. He felt the key point of his complaint hadn't been addressed, he explained the source of his loss was between March 2022 and 2023 – where due to external factors his investment could no longer be called low risk. He believes HBOS should've warned him and customers like him that the fund was no longer fulfilling its purpose of protecting value within customers funds and to seek independent financial advice.

The investigator responded to say that doing so would stray into financial advice and it was his responsibility and not HBOS to choose the funds he was invested in. He also commented that risk was determined by the investments within a fund and not its recent performance. Mr N felt HBOS had an obligation to give this warning and so asked for an ombudsman's decision.

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.

And having done so I agree with the findings of the investigator and for broadly the same reasons.

Mr N's key point is that HBOS ought to have given him (and other customers like him) a warning about the performance of the Gilts and Fixed Interest Fund when it started suffering losses post March 2022. But I agree with the investigator to do so would constitute financial advice, which isn't something HBOS was permitted to do here. The result of HBOS contacting all customers when the fund started suffering losses (the timing of that and the logistics would also be an issue as many funds will be fluctuating positively and negatively at any one time) would more than likely be that a majority of investors would transfer out of that fund and essentially follow their 'advice'. I say this because I think contacting investors warning them specifically about a fund's poor performance would likely carry the implication that customers should switch out of that fund. But fund performance will fluctuate and had this message been given and then later the fund recovered (crystallising the loss), there would be complaints about the warning being given at the wrong time. So I think doing so would stray into financial advice as it would be perceived as such. And it would also be impractical and could cause more problems than it solves. So, I don't think HBOS did anything wrong in not sending a warning to Mr N about the performance of the fund.

What HBOS had to do was to make sure it gave Mr N enough information so that he was aware of his options and how the policy worked. And given he made a switch in 2019 before he suffered the losses, I think he was aware that the fund selection was his responsibility. The statements also made clear that Mr N could seek independent financial advice – and so by association he ought to have been aware that it wouldn't be providing him with advice.

I appreciate that when Mr N first transferred BOSIS said *'As your circumstances may change, it is important to review your situation regularly. You have agreed that we will contact you, usually annually, to review your circumstances and ensure that any plans you have continue to meet your needs. We will be happy to discuss your situation on a regular basis.'*

Mr N has complained in relation to the losses he suffered in 2022/2023 that he didn't receive these reviews. But I don't think it is reasonable to believe he had an advisory relationship in place 14 years later after not receiving this service. And the subsequent communications he received from HBOS stating he should seek independent advice. As I said above, Mr N made his own decision about his investments in 2019 in any event and so I don't think there is any correlation between his complaint now about losses suffered recently and the reviews he didn't receive many years ago. If Mr N would like to raise a complaint about the initial sale by BOSIS and the lack of reviews, he'll need to direct it first to LSCcustomerservices-Edinburgh@lloydsbanking.com – this contact was supplied by HBOS as part of our investigation.

Mr N suffered losses due to his investment in the Gilt and Fixed Interest Fund. This fund was part of the lifestyling product HBOS offered within the Stakeholder policy. And at five years before retirement if invested in Portfolio 2, money would start to be redirected into the Gilt and Fixed Interest Fund until all funds are invested within it. When Mr N called HBOS in 2019, he was within five years of his retirement date and the evidence suggests he asked to be put into lifestyling. As he was within five years of his selected retirement date, the funds were switched into the Gilt and Fixed Interest Fund.

HBOS sent Mr N confirmation of this, and this is clearly shown within the letter. I understand Mr N says he didn't receive this letter but given he'd called to make a switch I think he would've expected written confirmation, so if he didn't receive it I think at the very least he would've checked his next statement. This showed he'd switched all his money into this fund alongside his new contributions been split across three other funds as part of Portfolio 3 (non lifestyling). This was because as stated in the letter, the switch only related to existing funds, any new contributions would continue as before. Whether this is actually what Mr N requested, I cannot be sure as we only have a short note of the call. But if it was a mistake or misunderstanding on the part of HBOS, customers are required to mitigate their position when they can. And as HBOS confirmed the switch in a letter sent to his home address (which you'd expect would've been received by Mr N) and he received statements showing the fund allocations, Mr N had the opportunity to put right any mistake if there had been one. But he made no changes.

Unfortunately, later the fund in question went on to suffer big losses which obviously given how much of his funds were invested in it, caused Mr N to suffer a big reduction in his retirement pot. And I can understand this must have been distressing for him. But these losses were down to external factors that affected all Gilts and Fixed Interest products, I don't think his losses were down to anything HBOS did wrong.

Mr N was invested in Portfolio 3, following the error discovered in 2014, which didn't include lifestyling but HBOS continued to say on statements that his policy had lifestyling attached to it. This wasn't correct.

It should be said that had lifestyling been attached to his plan (either from 2014 or to his whole plan including ongoing contributions from 2019 following the switch request) Mr N would've had even more money invested in the fund he suffered losses from – the Gilt and Fixed Interest Fund. So I don't think this mistake had any correlation to the losses he suffered. But I agree that this misinformation may have caused Mr N frustration when trying to understand his plan. And I think £100 is a fair and reasonable amount to compensate Mr N for this.

Putting things right

HBOS should pay Mr N £100 for the incorrect information given on his statements regarding lifestyling.

My final decision

I uphold the complaint in part and require HBOS Investment Fund Managers Limited to put things right as set out above upon Mr N's acceptance of my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 18 October 2024.

Simon Hollingshead
Ombudsman