DRN-4972984

Financial Ombudsman Service

The complaint

Mr E has complained about the annual charges applied to his investment account held with HSBC UK Bank Plc ('HSBC').

Mr E is represented in bringing his complaint but for ease of reading I will refer to 'Mr E' in my decision.

What happened

In 2012 Mr E says he was assured by HSBC that if he invested more than £500,000 in his HSBC Premier Investment Management Service ('PIMS') portfolio the annual charge on his account would be reduced from 1.5% to 1.0%. When he received his annual statement ending October 2023 the total costs amounted to 1.55%. Mr E thought he had been overcharged and raised his concerns with HSBC.

HSBC responded to his complaint on 6 March 2024;

- It outlined the annual management charges that were applied to the account before and after October 2013 and further changes made in 2015 and 2020.
- It said the Annual Management Charge only formed part of the total charges and the 1.55% included other charges.
- It concluded the account hadn't been overcharged.

Unhappy with the outcome, Mr E brought his complaint to the Financial Ombudsman Service. Our investigator who considered the complaint didn't think HSBC needed to do anything more. He said;

- There was no evidence to say that charges would be reduced to 1% if the portfolio exceeded £500,000.
- HSBC had changed its charges over the years but that was a commercial decision for HSBC to make.

Mr E responded to say that he had recently been informed by HSBC there had been a non-disclosure of fees and commissions, and he hadn't been informed of the increase in charges for a period of time. He provided a copy of his Investment Management Agreement and initial Financial Planning Report, the annual review documents and notes, a copy of his most recent 'Costs and Charges Statement' and email confirmation from HSBC that in 2010 there were no advice charges for PIMS.

He said these evidenced he had never been informed of changes in charges during his annual reviews and they should have been discussed with him. He didn't know VAT was payable on top of the fees. He had been misled and HSBC hadn't been transparent about his fees.

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.

After doing so, I've reached the same conclusions as the investigator and broadly for the same reasons. I'll explain why.

To uphold Mr E's complaint, I need to be satisfied he was charged additional fees without being made aware of them.

HSBC hasn't been able to provide all of the relevant documentation from the times of the changes to charges relevant to Mr E's complaint. When the evidence I have is incomplete, or the testimony is contradictory, I have to base my decision on the balance of probabilities and what I consider to be most likely what happened.

HISBC's Premier Investment Management Service is a discretionary managed service offering model investment portfolios to investors after establishing their financial circumstances, objectives and risk tolerances etc. It provides an annual review of a customer's circumstances etc to ensure their chosen model portfolio remains suitable.

I understand Mr E was invested in HSBC's PIMS service from October 2010 when around £156,000 was invested in the 'balanced' portfolio. Top ups were made over the years and Mr E says in 2012 he was informed by his HSBC adviser that if he invested more than £500,000 the charges would be reduced to 1%. Mr E added a further £100,000 in March 2012.

<u>The initial charges information</u>

Mr E has provided a copy of the original Financial Planning Report he received on 25 October 2010. I can see that under 'Payment for our Advice' it said;

> 'I have provided you with a document giving details of the cost of our services and we discussed whether these should be made directly by the payment of fees or indirectly through commission paid by the product provider. You confirmed that you wished to proceed on a commission basis.'

Under the 'Fees and Commissions' section – 'Commission Based Advice' it said;

> 'The fees, commission and charges for our Investment Management Account are shown on the insert headed 'What it Costs' enclosed with our Investment Management Agreement brochure.
>
> …I have also given you a Fact Sheet which shows you the new charging structure for the Equity & Collective portfolio.'

The initial advice letter of 25 October 2010 said;

> 'My recommendations relate to new or existing products from companies which are partly or wholly owned members of HSBC Group. For full details please refer to the 'Loans and Ownership' section of the 'Keyfacts about our Services' document I provided you.'

I can see the documents enclosed were the product brochures, Key Features Documents, Terms and Conditions and a Simplified Prospectus. I also assume Mr E saw the Investment Management Agreement brochure as part of the onboarding process.

I've reviewed PIMS 2009 Terms and Conditions as provided by HSBC. This sets out the charges. It says;

> '15.10 Where collective investment schemes are held within the Portfolio, these are subject to separate annual management fees, charged by the underlying fund manager. Indicative costs are outlined in our current pricing literature and are available on request. Any changes to these costs will be included in your periodic statement.'

And I note the from the updated Terms and Conditions similar terms are included which suggests to me this type of statement about collective investments has likely always been updated and referred to;

> '13.14 You may be responsible for fees or costs including any taxes, registration fees or AMCs charged on any underlying collective investment schemes, dilution levies or adjustments.
>
> 13.15 Where collective investment schemes are held, these are subject to separate annual management charges, charged by the underlying fund manager which in some cases may be an Associate. Additional charges such as dilution levies may also apply. Costs are outlined in our Model Overview documents, the Costs and Charges Disclosure Documents and are available on request from your Adviser.'

The 2010 Investment Report clearly sets out the amount of collective investments held as part of Mr E's portfolio, and the various management charges associated with those collectives. It's clear from the valuation that these management charges were over and above HSBC's AMC. They are listed as 'Associated Company's Annual Management Charge' where it says;

> 'During this reporting period, one or more HSBC collective investment funds were held as part of your taxable portfolio. As a result of this, the relevant associate company of HSBC receives an annual management charge. The information shown below provides you with details of this charge.'

It is clear Mr E agreed at the time to pay fees via commission rather than directly. I think this is most likely why Mr E received confirmation from HSBC recently that confirmed 'that back in 2010 when you took out the investment there were no advice charges for PIMS.'

I also asked HSBC about this, and it confirmed Mr E wouldn't have paid an advice fee for the advice and the adviser would have been remunerated for the sale as per the policy at the time. Clearly there wasn't a charge for the advice Mr E received in 2010 but this was paid for via commission.

<u>Changes to the charges</u>

The charges made by HSBC also changed over the years. HSBC is entitled to do this in line with its Terms and Conditions and as rules have changed such as the Retail Distribution Review in 2013. But HSBC has an obligation to let its customers know of any variance to its terms and conditions which would include changes to its charging structure.

As already mentioned, HSBC hasn't been able to provide all the relevant charges documentation over the years, but it has been able to confirm when Mr E joined HSBC the fees were one Annual Management Charge ('AMC') and the charges were split between the tiers;

Portfolio value	Rate
Up to £250,000	1.5% (+VAT)
£250,000 to £500,000	1.1% (+VAT)
£500,001 +	0.8% (+VAT)

Mr E's initial application form shows that he invested just under £156,500 and was to be charged an AMC of 1.5% which tallies with the above. Mr E has commented that he wasn't advised at the time that VAT would apply to the fee, and I can't see this referred to on the initial application fees section. But that section also refers to the AMC as being 'As per standard published tariff' and while I don't have sight of that document, I think on the balance of probabilities it most likely would have detailed that VAT was added to the AMC as HSBC was providing a service which would be subject to VAT.

I also think it likely Mr E would have seen that document as he signed the application confirming he had 'received the Investment Management Agreement literature and had agreed to the Investment Agreement Terms and Conditions.' I think the 'literature' would likely have included HSBC's tariffs.

The charges changed in 2013 and the portfolio was no longer split for charging purposes but levied on the portfolio as a whole rather than being split between the tiers. The PIMS brochure from the time is the earliest document HSBC has been able to provide. Regarding the charge it said 'the more you invest in the service, the lower the annual management charge';

Portfolio value	Rate
Up to £250,000	1.5% (+VAT)
£250,000 to £499,999	1.25% (+VAT)
£500,000 to £999,999	1.0% (+VAT)
£1,000,000	0.8% (+VAT)

This ties in with what Mr E says he was told but is most seem likely this was in 2013 rather than in 2012 or it maybe he was informed in 2012 in advance of the new fee structure being introduced.

The document went on to say;

> 'The unit trusts and OEICs held within PIMS may be subject to separate annual management fees charged by the underlying fund manager which in some cases may be another company in the HSBC group. **These fund charges are in addition to our PIMS AMC. Please speak to your adviser for further details or refer to the PIMS factsheets to obtain total annual costs for each PIMS model**. [original emphasis]

As in 2010, the emboldened section of the above applies in Mr E's case as he held collective investments such as unit trusts and OEICS. In its response to Mr E's complaint, HSBC outlined all the further changes to charges over the period he has been invested with HSBC.

And as mentioned above, HSBC has an obligation to inform its customers of any changes to its charging structure. HSBC hasn't retained copies of all of its notifications which I don't find surprising given the amount of time that has passed, and businesses aren't obliged to keep documents indefinitely. But HSBC has been able to provide a sample copy of the 2020 letter sent to its customers detailing the new charging structure which explained;

> 'Currently there is a single charge which covers safe custody of your holdings as well as the management of them.
>
> In the future this will be split into a Custody & Administration charge (no VAT is applicable on this charge) covering all assets that we have in safe custody for you, and an Annual Management Charge (AMC) that will apply to the assets where we provide discretionary investment management services. This AMC is subject to VAT. This is described on page 4 of the Terms and Conditions. The table below sets out details of the new charging arrangement compared to the current charging arrangement.'

The new charging structure;

Portfolio value	Current Annual Management Charge (AMC)	New Annual Management Charge (AMC)	New Custody and Administration Charge	Overall Impact on Your Charges
0 - £499,999	1.25% (+VAT)	1.00% (+VAT)	0.25%	-0.05%
£500,000 - £999,999	0.95% (+VAT)	0.75% (+VAT)	0.25%	+0.01%
£1,000,000 +	0.75% (+VAT)	0.55% (+VAT)	0.25%	+0.01%

Again, and like the above quoted statements it went onto explain that for unit trusts and OEICS held with PIMS, separate annual management fees may be applied by the underlying fund manager.

The letter provides details of all charges that could affect the account holder and confirmed that the Terms and Conditions would be effective from 1 April 2020, but customers wouldn't need to do anything unless they didn't agree to the changes.

The statement Mr E has provided, and which gave rise to his concerns, relates to the charges for October 2022 to October 2023. The 'Costs and Charges Breakdown' table shows the following applied during that period;

Cost Category	Service Costs %	Product Costs %	Total Costs and Charges %
Ongoing Charges	1.24	0.17	1.41
Transaction Costs		0.14	0.14
Total Costs and Charges	1.24	0.31	1.55

Explanatory notes confirmed that;

- Service Costs – included all costs and charges in relation to the provision of the investment service including one-off charges ongoing charges, transaction costs, ancillary service charges and incidental costs. The costs and service were the account fees, AMC (plus VAT) and ancillary service charges.
- Product Costs – included all costs and charges relating to the portfolio such as

management fees for the ongoing charges figure of each fund held, stamp duty, transaction tax/fees, foreign exchange costs.

I asked HSBC further about this as I didn't think they were detailed enough for Mr E to be able to breakdown what any of the costs related to.

For the Ongoing Charges it explained this is the sum of the annual management charge plus VAT that had been 'posted' to Mr E's portfolio for the period of the Costs and Charges. To further explain what it meant by 'posted' it gave an example of the Costs and Charges being for the period of 1 August to 31 July and the fee charging date being the first day of the month, then it would include the fee posted on 1 August. This is despite that fee being accrued across the previous month and the figure is expressed as a percentage of the average portfolio value which is included in the Costs and Charges.

Turning again to the collective investments Mr E held and the additional costs they incurred, HSBC has said the Product Costs and how they are calculated are explained in the Costs and Charges and represent the sum of the charges within the funds held in the portfolio during the period. There are many additional charges within collective investments – which ties in with what was said in the above Terms – and the portfolio would have held dozens of funds across the year and at various weightings so HSBC couldn't point to any particular one which was the detail I was looking for. These figures are again expressed as a percentage of the average portfolio value, so while HSBC can't direct me any one particular source of the charges, I can appreciate the difficultly in establishing this even though this isn't satisfactory for Mr E.

HSBC provided over 2,000 pages of statements for the periods covering 2010 to 2023. But to help understand the charges further it highlighted the Capital Cash Statement for the period 1 October 2023 to 31 December 2023 which includes the period Mr E has referred to. With reference to the Service Costs as an example, on 10 October 2023 there were four charges posted to the account, two for Custody and Administration fees of £34.04 and £20.62 and two Management fees of £125.69 and £74.26 – totalling £254.61. These were for the Cost and Charges period for the year from 27 October 2022 to 26 October 2023.

Additional Custody and Administration and Management fees totalling £551.29 were posted on 27 October 2023 and HSBC has said if the 10 October 2023 charges of £254.61 hadn't been triggered on 10 October – when they shouldn't have been – then they would have been outside of the Costs and Charges period. So, this would have reduced the Service Costs and Charges as identified above of 1.24% (£7,646.31) as per the Costs and Charges Statement Mr E received to 1.2% (£7,391.70). The fees posted had been accrued for the period 28 September 2022 to the 10 October 2023 so was more than a year which is why they are higher as a percentage on the Costs and Charges period.

So, it looks like there was some sort of error when the 10 October 2023 fees were triggered when they should have been applied on 27 October 2023, and if they had been correctly applied then the Service Costs and Charges percentage figure would had been 1.2%. The Service Costs includes the ongoing advice fee, and AMC amongst other charges so while I might have provided more detail than Mr E was expecting in the breakdown of the Service Costs, but I wanted to provide some sort of an example of a breakdown of the figures.

Overall, after reviewing the statements, I can't see that any of those costs may not have applied to Mr E's portfolio. He held collective investments which would incur ongoing charges etc and there was also some US$ transactions as examples. So, from the information presented to me, I don't think those charges were wrong.

I accept the Costs and Charges Statement is confusing, particularly as it doesn't tally with Mr E's expectation, and in the above example exacerbated by what seems to have been an error in the timing of the application of the fees. But the Statement itself, and inclusion of the total cost is a regulatory requirement that HSBC must abide by. So, I don't find that HSBC has done anything wrong here.

<u>Was Mr E made aware of new charges</u>

I've reviewed HSBC's Terms and Conditions, and it can vary both its Terms and the charges it imposes on accounts. But it must notify its customers when it does so. Mr E says that he hasn't been advised of any changes during his annual meetings with his adviser. However, if HSBC had written to its customers separately to inform them of changes to its Terms, then I think it would be unlikely an investment adviser would feel the need to further mention such changes during a meeting unless prompted by the customer.

And looking at the sample correspondence HSBC has provided, I think it more likely than not that HSBC did write to Mr E each time there was a change to its Terms. And Mr E could make contact if he didn't agree with those terms. I asked HSBC for any data logs it may have to evidence the change in Terms was sent to him. It was unable to do so but confirmed all pricing changes were always communication to affected customers which I think is likely considering HSBC's regulatory obligation to do so. And Mr E has received other correspondence from HSBC over the years which would suggest it holds his correct address so there's no reason for me to think that he didn't receive other correspondence that detailed changes to its Terms or that they weren't sent.

Taking all the above into account, I don't uphold Mr E's complaint. I'm satisfied the initial charges information was given correctly, the information presented indicates the charges are correct and I think it most likely Mr E was updated when the Terms were changed.

My final decision

For the reasons given, I don't uphold Mr E's complaint about HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 18 April 2025.

Catherine Langley
Ombudsman