DRN-5100087

The complaint

Mr and Mrs B complain about the Annual Management Charge ('*AMC'*) charged by HSBC UK Bank Plc, on their Premier Investment Management Service (PIMS).

In summary, they say that HSBC is wrong not to apply the 50% staff discount to their account going forward.

What happened

Based on what Mrs B says, I understand that she and her husband Mr B were invited to invest in the HSBC PIMS product in 2012. Because Mrs B was a staff member at the time, they received a 50% staff discount ('the discount') on the AMC.

Although in 2017 Mrs B was made redundant, their wealth manager confirmed that they would retain the discount. HSBC says that this information was incorrect.

I understand that Mr and Mrs B made their last investment in January 2022, to utilitse their ISA status, which took them over the £500,000 threshold qualifying them for the lowest staff charge rate.

Whilst checking over their statements in November 2023, Mrs B noticed that their charges had increased significantly. Whilst querying the point with a new wealth manager who had started in early 2023, she was notified by HSBC that the discount had been removed on 18 January 2022 when they'd made their last payment.

In due course Mr and Mrs B complained to HSBC. In a Final Response Letter (FRL) dated 19 January 2024, HSBC (partially) upheld the complaint. In summary, it said:

- Mr and Mrs B weren't eligible for the discount after Mrs B's employment with HSBC ended in 2017.
- Although they were no longer eligible for the discount, their wealth manager should've advised them that the discount was being removed on 18 January 2022.
- It was sorry for the surprise caused when they realised an increase in their fees.
- To put things right it offered to refund the difference between what Mr and Mrs B expected to pay and what they paid, between 13 January 2022 and 12 January 2024. In other words, between when the changes came into force and when Mr and Mrs B complained, having been made aware of the issue.
- It offered 50% of the total fees amounting to £5,639.69 – in line with the 50% discount – comprised of: £2,648 relating to Mrs B's ISA fees, £2,970.08 relating to the Mr B's ISA fees, and £21.25 relating to the taxed account fees.
- It offered to refund these amounts to the respective accounts they were taken from – along with any investment loss (had the additional sums not being deducted) – or alternatively, a separate account of their choosing.
- In addition to the above, it offered £200 compensation for the distress and inconvenience caused.
- It made clear that it wouldn't be able to apply the staff discount going forward.

Mr and Mrs B accepted the redress offer – electing for the redress to be paid into their respective PIMS accounts. As a result, HSBC paid £5,639.69 into their respective accounts. In an email dated 2 February 2024, HSBC also indicated that might take some time to work out any investment loss.

In the meantime, Mr and Mrs B referred the complaint to our service via our complaint form dated 15 February 2024. In the main they remained unhappy about HSBC's decision not to restore the discount going forward. They say that despite Mrs B being made redundant in 2017, they checked with their wealth manager and confirmed that they'd still receive the discount.

On 21 March 2024, following additional calculations, HSBC confirmed that Mr and Mrs B had been disadvantaged by a further £399.11, which it paid back into the respective PIMS accounts, namely:

- £80.43 in the taxed account
- £150.31 in Mrs B's ISA.
- £168.37 in Mr B's ISA.

One of our investigators considered the complaint but didn't think it should be upheld. In a view dated 21 May 2024, he made the following key points:

- An email from the wealth manager dated 2 February 2021 confirmed that Mr and Mrs B would be moved into the lower tier of the AMC.
- The key documentation confirmed the following:
  - Portfolio value up to £499,999 has an AMC of 1% plus VAT.
  - Portfolio value from £500,000 to £999,999 has an AMC of 0.75% plus VAT.
  - Portfolio value of £1,000,000 plus has an AMC of 0.55% plus VAT.
- Although the staff discount wasn't specifically mentioned it was likely applied which is where the 0.9% charge comes in.
- An internal memo from the wealth manager dated 14 January 2022 states: "*remove staff discount customer no longer qualifies*" which appears to coincide with Mr and Mrs B's last investment at the time.
- In any case, Mr and Mrs B ought to have been notified of the removal of the discount in line with its terms and conditions which they weren't.
- HSBC confirmed that the discount was completely removed in November 2022 for new staff, whilst existing staff remained eligible subject to the following criteria:
  - Existing staff and their spouses (spouse definition includes civil partners in all instances).
  - Staff pensioners drawing their pension, and their spouses, or widow/widowers.
  - Staff pensioners who have elected to take their pension as a lump sum, and their spouses, or widow/widowers.
  - Widow or widower of deceased staff member, in possession of a death in service lump sum.
  - Staff pensioners who opted out of the pension scheme.
- The eligibility doesn't include staff that have been made redundant, therefore he doesn't uphold this part of the complaint.
- Based on the evidence HSBC's offer of compensation is fair and reasonable.

Mr and Mrs B disagreed with the investigator's conclusion and asked for an ombudsman's decision. In summary, Mrs B made the following key points:

- She's surprised by the investigator's findings based on whether she was entitled to the staff discount post her redundancy.
- Her and Mr B's complaint is that HSBC isn't honoring the discount their wealth manager maintained they'd receive once their investment in the PIMS portfolio exceeded the £500,000 portfolio value. This rate happens to be the staff discount being applied.
- Regardless of the discount, HSBC should honour the ongoing charge rate they were promised by their wealth manager that HSBC appointed.
- If they weren't eligible for the staff discount when she was made redundant, why was it maintained for six years? Presumably to encourage more investment – they invested more, and then the rate was increased.
- The investigator's view implies that HSBC can alter a charge rate on an individual client basis at a whim.
- If the mistake was made by the wealth manger, its not their problem. They never asked for the discount to be maintained, their wealth manager told them that it would.
- They don't accept the £200 compensation for the distress and inconvenience caused.
- From the email dated 30 November 2020, it was confirmed that they'd be charged 0.9% if their investment exceeded £500,000. The wealth manager confirmed that it would be "*the total ongoing charge – so is inclusive of all transaction, product and administration costs*".
- They made further investments on the basis that their charge would be lowered to 0.9%, but this isn't being honoured going forwards.
- Although the discount wasn't specifically mentioned in the above correspondence, the wealth manager's email dated 11 November 2020 has a PDF attachment which states "*AMC 50% discount*" under the charges table. The 0.9% can only be achieved by including the staff discount.
- The investigator's view is contradictory in that it suggests the discount must've been applied but goes on to state that none of the documents specifically mention the discount which is unhelpful.
- The internal memo of 14 January 2022 (referred to by the investigator) states that there was a staff discount which had been removed. This shows that the discount had previously been applied.
- The discount was the basis of the promised 0.9% overall charge rate once their investment reached £500,000. To then increase the charge rate just as they increase their investment further to exceed £500,000 (to qualify for the 0.9% rate) is underhand to say the least.
- In case the ombudsman thinks this case is purely about her eligibility for a staff discount:
    - She's a pensioner, and she transferred her HSBC pension pot to Scottish Widows to buy an annuity and receive some tax-free cash – the process was initiated prior to their discovery of the issue with PIMS. The transfer completed on 26 January 2024.
- Contrary to the investigator's view, they didn't say that HSBC refused to refund any fees. They stated at the outset that it had repaid the excessive fees which were charged due to the staff discount being removed, and that it would calculate the extent to which they'd been disadvantaged.
- Their complaint is that the agreed reduced charge rate of 0.9% wouldn't be reinstated going forward.

The investigator having considered the additional points wasn't persuaded to change his mind. In summary, he said:

- The main issue stems from allowing Mr and Mrs B to continue with the staff discount

whilst not meeting the criteria.
- He understands their argument that their wealth manager didn't honour the ongoing charge once PIMS exceeded £500,000 but the rate can't be viewed in isolation, especially when its significantly reduced by a staff discount that continued to be applied in error.
- HSBC acknowledged that it didn't give Mr and Mrs B 30 days' notice, regarding any change to the discount, so has refunded the additional charges – effectively applying the discount until the complaint had been finalised.

As no agreement has been reached, the matter has been passed to me for review.

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.

Having done so, I'm going to uphold this complaint although there is no change in outcome.

I do so on the basis that HSBC accepts some wrongdoing, and has, a consequence, offered and paid the greater part of the redress (arising from the key part of the complaint) prior to the case being referred to us.

It subsequently paid the remainder of the redress – which only forms a small part of the overall redress – owing to the calculations that had to be carried out. Nevertheless, I note Mr and Mrs B had accepted the greater part of the redress – prior to the case being referred to me for a decision – except for the £200 distress and inconvenience payment which they now appear to disagree with.

I note that HSBC accepts that it failed to notify Mr and Mrs B of its decision to remove the discount on 18 January 2022.

As a result, it offered to refund 50% of the total fees paid – between 13 January 2022 and 12 January 2024 – amounting to £5,639.69 – along with £399.11 investment loss and £200 compensation for the trouble and upset caused making a total of £6,238.80.

Because HSBC (partially) upheld the complaint, the key issue for me to consider is redress. Having done so, I think the above redress, is fair and reasonable in the circumstances. Including the £200 compensation for the distress and inconvenience caused – taken in totality – which accounts for the relatively short period they became aware that there was an issue regarding their discount.

I uphold this complaint, in summary, for the following reasons:

- I note that Mr and Mrs B were eligible for the discount when their investment started in 2012, and Mrs B still worked for HSBC. However, based on what HSBC says, their eligibility ended when Mrs B stopped working for HSBC in 2017.
- I note Mr and Mrs B say that they were told by their wealth manager at the time that they'd continue to be eligible for the discount, despite Mrs B being made redundant. However, based on what HSBC now says, I'm satisfied that they were – more likely (than not) – given incorrect information by their wealth manager at the time.
- Given my conclusion above, it's likely that any discount they received was applied in in error.
- Despite what Mrs B says, I don't think this was done deliberately to encourage them to invest more money.

- Whilst I note Mr and Mrs B did in fact go on to invest more money, possibly motivated by more favourable rates – which isn't something I can blame HSBC for because it's entitled to set its rates – the rates increased because the discount was taken away and all this roughly coincided with the error coming to light.
- HSBC concedes that their wealth manager continued to note the discount in their correspondence, and they were given the impression that the discount would continue to apply. But it's unlikely the wealth manager would've done so had they been aware that the material information was incorrect.
- In other words, the mistaken undertaking that Mr and Mrs B would receive the discount wasn't an absolute undertaking, come what may, even if they weren't entitled to it.
- On the face of the evidence, and on balance, I'm satisfied that Mr and Mrs B were erroneously told, and/or led to believe, that they would continue to receive the discount even though Mrs B was no longer employed at HSBC.
- It is unlikely that the wealth manager would have agreed to continue the discount if they became aware Mr and Mrs B weren't entitled to it.
- On the face of the evidence, and on balance, I'm satisfied that if the mistake hadn't been made, Mr and Mrs B would've been required to pay the full AMC since 2017. In which case, HSBC also wouldn't have been required to notify them of any changes, because they wouldn't have been receiving the discount in the first place.
- However, because of the error, and all the parties proceeding as if Mr and Mrs B were entitled to the discount, HSBC has correctly decided to uphold this complaint and offer compensation. Mr and Mrs B will no doubt have suffered a loss of expectation at the very least. But this doesn't entitle them to the discount going forwards.
- On the face of the evidence, and on balance, it's arguable that Mr and Mrs B received the benefit of the discount between 2017 (when it should've been cancelled) and 2024 (when they became aware and complained). In other words, they received the benefit for six/seven years when they had no entitlement to this.
- Even if Mr and Mrs B had been legitimately entitled to the discount since 2017, which on balance I don't believe they were, the eligibility would've stopped after HSBC removed the discount as of 18 January 2022. So, there's no basis upon which to ask HSBC to continue to provide the discount going forwards.
- I'm also mindful that based on what HSBC says, the discount was a 'discretionary internal policy' which isn't covered under the product terms. So it's something that HSBC could decide to take away in any case. It's not for me to tell HSBC how it should run its business.
- Had Mr and Mrs B been furnished with the correct information in 2017, on a balance of probabilities I think it's more likely (than not) they would've continued with the investment rather than going elsewhere. It's arguable that they're still keen to continue with HSBC but would obviously like the discount to continue too.
- The above notwithstanding, Mr and Mrs B aren't eligible for the lower AMC rate, that also includes the discount, despite investing more money into PIMS given my findings above.
- I also note that going forwards, in light of the recent terms and conditions, Mr and Mrs B wouldn't be eligible for the reduced fee in any case.
- In conclusion, despite the error, I can't ask HSBC to continue to honour a discount that Mr and Mrs B weren't eligible for in the first place. Although it appears they received the discount for around six years because of HSBC's error, this isn't a basis upon which I can ask HSBC to continue to provide the discount going forwards regardless of what the wealth manager said.
- Moreover, given that as of 18 January 2022 HSBC removed the discount, they wouldn't be eligible in any case.

I appreciate Mr and Mrs B will be unhappy with my decision. Furthermore, I realise my decision isn't what they want to hear. But on the face of the available evidence, and on balance, despite what they say, I'm unable to give them what they want.

My final decision

For the reasons set out above, I uphold this complaint.

HSBC UK Bank Plc's had paid a total of £6,238.80 compensation comprised of the following, which I think is fair and reasonable:

- 50% of the total fees paid – between 13 January 2022 and 12 January 2024 – amounting to £5,639.69. Along with £399.11 investment loss for the same period – making a total of £6,038.80, paid into the respective PIMS accounts.
- Plus £200 compensation for the distress and inconvenience caused.

If for any reason there is an issue with payment, HSBC UK Bank Plc should pay the above redress unless it has done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs B to accept or reject my decision before 19 March 2025.

Dara Islam
Ombudsman