Financial Ombudsman Service

## complaint

Mr and Mrs A have complained that advice they received individually from HSBC Bank Plc in 2006 to invest lump sums and regular contributions in an investment comprising an individual savings account (ISA) and an open-ended investment company (OEIC). They are represented in their complaint by a third party adviser.

## background

Mr and Mrs A's complaint was investigated by one of our adjudicators, who concluded that it should be partly upheld because the fund recommended for Mr A's ISA (the Fidelity American fund) and one fund recommended for Mrs A's OEIC (the J P Morgan Premier Equity Growth fund) presented a degree of risk that was not consistent with their 'medium' approach to investment.

The adjudicator recommended that Mr and Mrs A should receive redress based on a comparison of the return they might have received from an index representing a mix of 'medium' risk investments for their respective capital sums.

The business agreed with the adjudicator's view and confirmed that Mrs A had surrendered the units in the J P Morgan Premier Equity Growth fund in May 2013. Otherwise, all their investments have remained in force to-date.

In response, although Mr and Mrs A's representative agreed with the adjudicator's recommendation to uphold the complaint, it questioned the basis of redress. While Mr and Mrs A may have been advised jointly, their investment experiences were very different and they were likely to have invested differently with their respective capital sums. Accordingly, it would expect the redress methods proposed for each of them to take into account their respective investment experience.

With this in mind, it pointed out that Mrs A previously held all her capital on deposit and it is reasonable to conclude that, if she should not have been advised to invest in the JP Morgan Premier Equity Growth fund, she would have retained this capital sum on deposit. A more appropriate rate of redress for Mrs A, therefore, would be an average rate for fixed rate bonds.

On the other hand, Mr A's capacity to replace loss was about to be reduced with his forthcoming retirement and his portfolio showed that he had only invested relatively small amounts over time. It, therefore, believed that a more appropriate rate of redress for him would be a comparison of the return his capital sum received from the Fidelity American fund and a return equivalent to 50% matching the average return from fixed rate bonds and 50% in line with the APCIMS Stock Market Income Total Return Index ('APCIMS Index').

It asked the adjudicator to reconsider her position on the basis of redress.

As the adjudicator was not inclined to change her view, the complaint has been referred to me for review.

## findings

I have considered all the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I find that I agree with the conclusions reached by the adjudicator, and for essentially the same reasons.

As both parties have agreed in principle with the view of the adjudicator, and the dispute concerns the basis of the redress recommendation, I do not propose to dwell on the merits of the advice other than to repeat that I agree with the adjudicator's conclusions.

This decision, therefore, concerns whether the basis of redress proposed by the adjudicator is fair and reasonable in the circumstances.

My understanding of Mr and Mrs A's financial situation at the point of sale is that Mr A earned a good income from employment and that Mrs A was a housewife and a non-taxpayer. Mr A did have previous experience of risk-based investments and all their capital sums on deposit were held in Mrs A's name. At that time, they were making a large monthly contribution to deposit-based savings accounts.

If I consider the advice Mr and Mrs A received individually against their respective financial positions in isolation, I would appreciate the points made by their representative regarding the basis of redress.

However, I am inclined to believe that Mr and Mrs A held capital sums on deposit in Mrs A's name because she was a non-taxpayer, which enabled them to receive interest from these accounts without deduction of income tax. While I do note that some of these capital savings came from an inheritance, it is reasonable to assume that the large monthly contribution they placed on deposit in Mrs A's name came from Mr A's income.

On the other hand, Mr A held investments which utilised his annual tax-free allowance and were consistent with a 'medium' attitude to risk.

Mr and Mrs A were quoted as being disappointed with the current rates of interest they were receiving from these deposit accounts. Therefore, it seemed reasonable to have advised Mr and Mrs A to switch two capital sums of £7,000 held on deposit to an ISA in Mr A's name and to an ISA in Mrs A's name, thereby obtaining similar tax benefits on the return they enjoyed by holding £14,000 on deposit in Mrs A's name.

In order to give this capital sum potential to achieve a return in excess of deposit rates, it was necessary for Mr and Mrs A to adopt an attitude that tolerated a 'medium' degree of risk, especially as regular contributions available for investment would have come from Mr A's income.

Therefore, while I agree that Mr and Mrs A may have been given altogether different recommendations if they had been advised separately, I am inclined to believe that they were advised jointly and that the advice they received considered Mr A's financial position and approach to investment, as well as Mrs A's tax status.

Accordingly, I agree that the two funds which represented a degree of risk that was greater than 'medium' were unsuitable for Mr and Mrs A's needs and that any redress should be based on a comparison with a return the two capital sums would have received from a 'medium' risk investment.

**fair compensation**

To compensate Mr and Mrs A fairly, HSBC Bank Plc should put them as close to the position they would probably now be in if they had not invested the capital sums in the Fidelity American fund and the J P Morgan Premier Equity Growth fund respectively.

I consider that Mr and Mrs A would have invested differently, although it is not possible to say *precisely* what they would have done differently. However, I am satisfied that what I set out below is fair and reasonable given their circumstances and objectives when they invested.

**what should the business do?**

To compensate Mr and Mrs A fairly, the business should

compare

- the performance of Mr and Mrs A's respective investments in the two funds

with

- the return illustrated by the FTSE APCIMS Stock Market Income Total Return Index ('APCIMS index') over the same period of time

As Mrs A has already surrendered her investment, loss should be calculated at the date of surrender, to which interest at 8% per annum simple should be added to-date.

Loss should be calculated separately for Mr and Mrs A and, if one redress calculation produces a gain, there is no redress payable for that investment. However, any such gain should not be offset against a loss that might occur on the other investment.

**why is this remedy suitable?**

I have chosen this method of compensation because:

- Mr and Mrs A wanted growth and were willing to accept a 'medium' investment risk.
- The APCIMS index comprises diversified indices representing different asset classes, mainly UK equities and government bonds. Although it is called income index, the mix and diversification provided within it is close enough to allow me to use it as a reasonable comparison given Mr and Mrs A's circumstances and risk attitude.

**how to calculate the compensation**

The compensation payable to Mr and Mrs A is the difference between the *fair value* and the *actual value* of their investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

***actual value***

This means the value of the investment if terminated on the date of calculation.

***fair value***

This is what the investment would have been worth if it had obtained a return using the method of compensation set out above. To arrive at this value the business should:

- work out what the original investment would have been worth, if it had performed in line with FTSE APCIMS Stock Market Income (Total Return) index to the date of calculation

***additional capital***

Any additional sum that Mr and Mrs A paid into the investment should be added to the calculation from the point it was actually paid in so it starts to accrue a return in the calculation from that point on.

***withdrawals and income payments***

Any withdrawal or income payment that Mr and Mrs A received from the investment should be deducted from the calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

**further information**

- The information about APCIMS index can be found in the website of the Association of Private Client Investment Managers and Stockbrokers or the FTSE Group.

**decision**

My final decision is that I uphold Mr and Mrs A's complaint in part. I require HSBC Bank Plc to pay Mr and Mrs A redress representing the overall loss they have suffered in accordance with the guidance set out above.

Kim Davenport
**ombudsman**