complaint

Mr R's complaint concerns an offer by HSBC Bank Plc to compensate him for the mis-sale of an investment in 2011.

background

HSBS reviewed the advice it had provided to Mr R (and his wife, who's made a separate complaint). It concluded that his circumstances were such that he shouldn't have been advised to invest. But a comparison with a no risk return showed that he was actually better off for having invested.

Mr R disagreed. He felt that if he shouldn't have been advised to invest he should've instead been advised to pay off some of his mortgage or other debt. So he should be compensated on that basis.

Our adjudicator didn't agree with Mr R. She said, in brief:

- The adviser was working on the basis that Mr R wanted to utilise his ISA allowance and Mr R had specifically said he didn't want to have his mortgage reviewed. It was also noted that Mr R had told the adviser that he was going to be making a lump sum repayment to his mortgage.
- It was also recorded that Mr R had no credit card debts that needed to be repaid.
- Mr R had said that many advisers had told him that debts should always be repaid before taking out investments. But the adjudicator felt that if this was the case, all advice given regarding investments to customers who had any debt could be seen as mis-sold.
- Mr R's financial circumstances were such that the recommendation to utilise his ISA allowance seemed a sensible objective and the invested money couldn't reasonably be seen as being needed or necessary to pay off any mortgage debt.

Mr R didn't agree with the adjudicator's view. He said, in brief:

- The content of the adviser's report should be disregarded as his advice had been shown to be wrong.
- HSBC had always previously advised paying off debt before investing.
- This approach was generally accepted as good practice.
- Clearly the correct alternative to investing was to pay off the mortgage.

As no agreement could be reached, the matter's been referred to me to decide.

my findings

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've come to the same conclusion as the adjudicator and for broadly the same reasons.

As HSBC has already found that the advice it provided to Mr R was unsuitable, the only matter that remains in dispute is what represents fair compensation for the mis-sale.

When a business has been found to have acted incorrectly our approach is to try and put the consumer back in the position they'd be in if the error hadn't been made. Here HSBC has done the same and taken the view that if Mr R hadn't invested his money it would've instead have been saved in a no risk environment. And making this comparison has shown that he hasn't made a loss – he's actually better off for having invested.

But Mr R disagrees with HSBC's approach. He thinks he should've been advised to reduce his mortgage balance. So compensation should be based upon the rate of interest he was paying on his mortgage – around 4.74%, which is considerably more than the 'no risk' rate that HSBC has used.

I don't agree with Mr R's view though. If, after reviewing his circumstances, the adviser had concluded that Mr R wasn't in a position to invest I think he would simply have not made any formal recommendation at all.

At the time of the advice Mr R and his wife had quite significant savings. It was documented that the savings in fact amounted to more than the balance of their mortgage. They were also already making monthly over-payments to reduce the balance.

So I think that if they hadn't received advice to invest there's no reason to think that they would instead have used the money to reduce the mortgage balance. I think the money would more likely than not have remained on deposit along with all their other savings.

I note what Mr R has said about it being good practice to recommend paying off debt before investing. And this, in a broad sense, is of course correct. But it must also take into account specific circumstances.

There is a world of difference (and cost) between paying off very expensive credit card or other unsecured borrowing and paying off mortgage debt. It's not at all unusual for someone to opt to maintain a mortgage balance while investing at the same time – perhaps because they feel the investment return will outstrip the mortgage rate, or simply because they want to keep the invested money accessible for future use.

In summary, I'm satisfied the approach taken by HSBC in dealing with Mr R's complaint is fair and reasonable in all the circumstances.

my final decision

For the reasons given, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 21 November 2016.

James Harris
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