complaint

Mrs R has complained about the advice she received from HSBC Bank Plc to transfer her existing pension policies into a Self Invested Personal Pension (SIPP) with a third party insurance company and commence phased income drawdown.

background

The advice was provided in 2007. At that time Mrs R was aged 60 and received a total annual income of around £11,000 from part-time employment and her state pension.

The fact find document, completed at the time of the sale, recorded that Mrs R required an additional tax-free income of around £10,000 per annum to supplement her existing earned and pension income, until she retired fully.

Mrs R's complaint was investigated by one of our adjudicators who issued an adjudication explaining why he considered that the complaint should be upheld. In summary the adjudicator said:

- The required £10,000 income could only be obtained using Mrs R's existing pension policies. The advice to transfer to a SIPP was not unsuitable.
- Given Mrs R's age and financial circumstances at the time of the advice, it is likely that annuity deferral was recommended because the SIPP could have provided the required income without annuity purchase.
- The funds, in the proportions recommended by the adviser, do not appear to be unsuitable taking account of HSBC's assessment of Mrs R's attitude to investment risk which seems to be credible.
- To achieve the required income of £10,000 a year, the adviser recommended that Mrs R begin phased income withdrawal with the tax-free cash (of around £65,000) being paid over a number of years. However, this strategy involved risk in that the tax-free cash was calculated annually and the funds could have reduced significantly in value.
- There is no reason why HSBC could not have advised full income drawdown, at 0% income withdrawal, where Mrs R received the £65,000 tax-free cash at the outset to be invested risk free.
- This strategy is preferable as it would have provided the required tax-free income of £10,000 for more than five years until Mrs R fully retired. This approach would also have guaranteed the required income and would have presented no risk to the tax-free cash.

To provide Mrs R with fair redress the adjudicator recommended that HSBC should undertake a loss assessment.

Both parties were asked to respond to the adjudication.

Mrs R agreed with the adjudicator's findings. HSBC disagreed saying, in summary:

- If invested within the SIPP, the tax-free cash would not have been subject to tax. However, if it was taken out of the SIPP and placed in a deposit environment, a 20% tax rate would have applied to any growth.

- Placing the full fund into drawdown and taking full tax-free cash would have exposed the residual fund to a potential income tax charge of 55% in the event of Mrs R's death.
- The tax free cash sum held outside the pension would form part of the Estate in the event of Mrs R's death, and would therefore be potentially liable to 40% inheritance tax.
- One of the adjudicator's key arguments is that the tax-free cash, invested in a deposit environment, would be free of risk. However the adjudicator has acknowledged that the recommended funds were suited to Mrs R's attitude to risk - if the objective was to remove risk entirely, this could have been achieved within the SIPP.

The adjudicator responded to HSBC explaining that, having reviewed the points HSBC had made, he was not minded to depart from the opinion reached in the adjudication. In summary the adjudicator said:

- Mrs R's primary objective was to provide the income. The tax free cash could have been invested in a way to secure the amounts payable and earn some interest. The tax would not have been a major consideration.
- The likelihood of Mrs R's death before she took all of the pension benefits was low. There were other ways that inheritance tax could be avoided at lower cost with no risk.
- Mrs R's complaint is not that she wanted to avoid all risk - it is that she was informed that it would be possible to take £10,000 of the tax-free cash each year until the total had been depleted. She was not made aware that the remaining tax-free cash would vary relative to the value of the investment. Taking the tax-free cash from the SIPP and investing this into a savings account would have protected the value of the tax-free cash from stock market fluctuations. The tax-free cash could then be used to achieve Mrs R's recorded objectives.

As HSBC did not agree with the adjudicator's assessment, it was agreed that the matter should be referred to me.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same conclusions as the adjudicator and essentially for the same reasons.

Mrs R required an annual income of £10,000 until she fully retired, at which point the income she required from the pension would be likely to change. The income could only be provided by using Mrs R's existing pension policies. Transferring to a SIPP allowed the income to be taken without buying an annuity. Given that Mrs R's income requirements are likely to change when she fully retires I can understand why an annuity was not recommended.

In my view, the advice to transfer to the SIPP was not unsuitable.

However, I do not think that Mrs R should have been advised to commence phased income drawdown. The funds were at risk after incurring charges and the product was complex requiring a review each year to establish how much income should be taken and which funds it should be taken from. Mrs R has since told us that she did not want complexity.

There were some inheritance tax advantages and benefits in the event of Mrs R's death before she took her full pension benefits. I do not consider that those advantages outweighed the security that I am satisfied Mrs R wanted for her income in the short term. The charges on the tax free cash and volatility because the amount of tax free cash depended on the value of the undrawn pension fund were risks that I am satisfied Mrs R did not want to take.

I consider that HSBC should have instead advised full income drawdown without taking income. This would have provided access to the pension commencement lump sum which could then be invested risk free in order to provide the required tax-free income of £10,000.

This recommendation would have guaranteed the required income and would have protected the tax-free cash from investment volatility.

my final decision

I uphold Mrs R's complaint and direct HSBC Bank Plc to carry out a loss assessment, and then compensate Mrs R for any resultant losses, on the following basis:

1. Compare the total tax-free cash that Mrs R has received with the notional tax-free cash she would have received had the maximum been taken at outset. HSBC should add interest of 8% per annum simple to the notional and actual amounts from the date of payment until settlement date. HSBC should pay the difference directly to Mrs R. This represents Mrs R's past loss.

2. Establish the current transfer value of Mrs R's SIPP assuming she took maximum tax-free cash at outset on a 'clean' basis ie before investment into the funds that were selected (excluding the cash fund).

3. Compare this to the actual transfer value of the SIPP using the same calculation date. If this shows that Mrs R has suffered a loss, HSBC should pay the difference into the SIPP grossed up for charges. If this is not permitted, HSBC should pay this sum direct to Mrs R net of basic rate tax to reflect the tax that would have been paid on the income.

4. If this calculation shows that Mrs R's fund has not suffered a loss, any gain may be offset against the tax-free cash losses as in 1.

5. HSBC should pay a further sum of £250 as compensation for the distress and inconvenience that Mrs R has suffered as a result of the incorrect advice.

Roy Milne
ombudsman