complaint

Mr M is unhappy with the advice he received from Midland Bank (now HSBC Bank Plc) to transfer pension benefits from his employer's pension scheme into a personal pension.

background

I set out the background in my provisional decision. A full copy is attached. But briefly:

- Mr M said that he was advised to transfer his pension benefits to fund a new business venture.
- HSBC looked at that advice in 1996, accepted it was unsuitable and offered Mr M redress as part of the industry wide 'pension review'.
- After providing Mr M with a detailed explanation of the calculations, money was added to his policy.

I said that I didn't think that the complaint should be upheld because the transfer had already been reviewed in line with the 'pension review' guidelines.

Mr M has replied. He says that he thinks this is a 'banking issue' rather than a "pension review" one because HSBC recorded this way. He thinks that this means it should be looked at differently. Mr M has referred me to specific documents within the original submissions.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In particular I have read the documentation Mr M asked me to after I issued my provisional decision.

I can see why Mr M may feel that the matter should be treated differently, given that HSBC appear to have said the transfer was a banking issue. But I don't think that how it is categorised makes a difference. Whilst I know that he will be disappointed – I've not changed my mind. HSBC looked at this complaint a long time ago – the crux of which is the advice he was given wasn't suitable - and offered Mr M compensation in accordance with the pension review guidelines – which he accepted.

In all the circumstances I still think that that a fair outcome is that the steps HSBC's took in 1996 mean that it does not have to do anything more now.

I appreciate that it will be frustrating for Mr M that the assumptions used within the calculation have not materialised. But as I said in my provisional decision, the purpose of the review was to have a one-off calculation and the guidance did not require firms to revisit every calculation again.

I've looked at the documents Mr M has sent. I don't think what they say leads me to reach a different conclusion. And I don't agree that the manner in which HSBC defined the complaint makes a difference.

Overall I think the redress method used by HSBC was appropriate given the advice that was given.

my final decision

I do not uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 April 2016.

Dianne Lawson
ombudsman

Provisional Decision – issued 8 October 2015

complaint

Mr M thinks he was wrongly told to transfer from his former employer's occupational pension scheme into a personal pension plan.

background

In 1989 Mr M wanted to fund a new business venture. He met with HSBC Bank plc "HSBC", then trading as Midland Bank plc. He told them that he didn't want to borrow against his home.

As he couldn't borrow against his scheme he was advised to transfer to a private one. After the transfer had been arranged, he was told that he couldn't use his pension savings as security after all. He tried to go back to his old pension, but this wasn't possible. So he continued with his new private pension.

In 1996 HSBC looked at the advice they gave Mr M as part of the Pensions Review. They wrote to him and told him that, as a result of the review, funds would be added to his personal pension. He asked them to explain how they had worked out how much money he would get. In response they set out in some detail what they had done.

At the time, it was intended that the Pension Review would be a one-off exercise. It was understood that in complying with the guidance, firms would not be expected to carry out a further review of the same plan in the future.

The evidence provided by HSBC shows that their review was done in line with the relevant regulatory guidance.

In 2014 Mr M compared what he would get from his private pension against what he would've had got if he'd stayed in his old pension. He then complained that it had been wrong for HSBC to advise him transfer his pension.

HSBS told him that they had already dealt with his problem. The accepted that they'd taken too long reply to him so offered him £150 that he accepted.

We looked into Mr M's problem and told him that we couldn't look at his complaint.

This was because Mr M transfer had been reviewed by HSBC in line with the industry-wide Pension Review. Mr M did not agree with our view and asked that an ombudsman look at his complaint.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr M has said that the complaint shouldn't be looked at as a pension review case at all. He thinks that his problems arose because he was wrongly told that a private pension could be used to secure his new business venture. That wasn't actually possible. He believes that this means that his complaint should be reviewed outside of the pension review process as a banking error. There were many reasons why people were told to transfer away from pensions. Some thought they'd make more money in a private scheme; others were worried about the viability of their employers, or perhaps wanted greater flexibility.

The aim of the Pension Review was to provide consumers who had been mis-sold a pension with redress as an alternative to court action. When they did this review and made additional payments into Mr M pension HSBC said that at "*the time you took out your policy you may not have received the best possible service*". I think it is fair to conclude that "service" included the whole transaction. Including the reason why Mr M wanted to move from his existing occupational pension.

As part of the Pension Review, HSBC compared the forecast value of the benefits Mr M had given up with the likely value of his new personal pension.

I can understand why Mr M is disappointed that the actual value of his pension pot since the review was carried out is less than hoped when HSBS made the extra payments. But I don't think this is their fault. They completed the Pension Review as required, then paid Mr M compensation for their unsuitable advice.

When they wrote to Mr M in 1996 they also told him to get independent advice. They also said that "*by accepting the offer contained in this letter you agree not to take any action against us arising from or in connection with your purchase of a Midland Personal pension Policy. The redress set out in this letter will be the only redress you will obtain as a result of transferring your … pension".*

This means that they don't need to do more now. I think this, even if Mr M is right and he has lost more money than he was compensated for. And even if he was told he could use a private pension in a way that wasn't possible.   This is because the review was intended to put consumers in the same position as if the wrong advice hadn't happened. The assumptions used were used across the board as agreed by the regulator and businesses. In accepting the offer made to him Mr M agreed that this brought the matter to an end.

This point has not been expressly dealt with by the firm. In my view it reframes the existing issue, and is not something new. The reasons why Mr M was persuaded to transfer from his existing pension were known to him at the time of the review, and when he accepted the offer in the terms set out by me above. But as this is a point that the firm haven't had the chance to comment on I invite them to do so now.

There are rules that cover this type of situation – where something has already been dealt with by the firm before a complaint is made to us. They say that:

"The Ombudsman may dismiss a complaint without considering its merits if he considers that:

> *(5) the respondent has reviewed the subject matter of the complaint in accordance with:*
>
> > *(a) the regulatory standards for the review of such transactions prevailing at the time of the review;"*

I know Mr M is unhappy about this but I think that HSBC have properly reviewed the advice given to him. It appears to me that they did what was expected of them at the time. So even if this situation wasn't covered by (a now replaced) rule, I don't think it would be fair to ask the firm to look at this complaint again.

There is something further that I need to think about. The advice was given in 1989. That was before this Service became responsible for this type of complaint.

This means that I need to take into account whether the scheme that would've looked at this type of complaint before 1 December 2001 would also have dismissed it.

They were the PIA Ombudsman Bureau. Their rules said that the "*ombudsman would make no award or recommendation in relation to a complaint about a pension transaction where the ombudsman was satisfied that the transaction had been reviewed in accordance with the regulatory standards for the review (save where the standards did not address the circumstances of the case)".*

I think it likely that the former ombudsman wouldn't have made an award if he'd considered this complaint. So, in deciding to take no action in respect of Mr M's complaint, I am taking the same type of view as the former ombudsman scheme.

my provisional decision

I intend to issue a decision that the Financial Ombudsman Service does not uphold Mr M's complaint as it has already been reviewed as part of the industrywide Review of Pensions.