DRN-3642516

The complaint

Mrs M complains that HSBC UK Bank Plc mis-sold her a capital investment bond, failed to provide on-going advice, and didn't recommend any fund switches. In particular she says the bond wasn't included in a financial review in 2008 which has impacted on her tax position.

The complaint is brought on her behalf by a third party. For ease, I'll refer to everything as if it's been said by Mrs M.

What happened

In June 1987 Mrs M took out an investment bond. Mrs M initially complained that the bond had been mis-sold, but HSBC said there was no evidence that it had advised her to take out the bond, and she accepted this.

But she says the bond should've been included in financial reviews when she met with an HSBC advisor. She says, if it had been included in the 2008 review, HSBC would've suggested encashing it. Instead it recommended encashing assets which resulted in a capital gains tax ("CGT") liability. She wants HSBC to pay that liability. She says her over-arching objective in 2008 was to reduce, or eliminate, her estate's liability to inheritance tax ("IHT"), by gifting her assets. If the bond had been included in her list of assets in 2008, HSBC would've recommended it was encashed and gifted. She did this in 2018 once she'd discovered she owned the bond, but this may result in an IHT liability which she wants HSBC to agree to pay.

HSBC said the bond was most likely taken out following a postal application. It said that, whilst it was documented to be the bond's "servicing agent", there was no evidence that it was obliged to give ongoing advice about the bond, and no evidence that it received commission. It said that in 2008 it was Mrs M's responsibility to make sure the bond was included in the review. And that it didn't advise Mrs M which assets should be sold to raise the money she requested.

Our investigator didn't recommend that the complaint should be upheld. He couldn't conclude that HSBC sold the policy to Mrs M, or that there was any agreement or obligation for it to review the bond or provide ongoing advice. He thought the 2008 review was specifically to consider the requested withdrawal from her investment portfolio and that there was nothing to show that Mrs M had asked for the bond to be included in this review. He didn't think HSBC's advisors would necessarily have been aware of the bond unless Mrs M told them about it.

Mrs M didn't agree. She said, in summary, that:

- She accepts that the investment was her own decision, taken without HSBC's advice.

- The 2008 review was to review Mrs M's IHT position, but HSBC failed to include the bond in the list of her assets. The advice HSBC gave was flawed, because not all of Mrs M's assets were listed.

- HSBC was the servicing agent since the bond was taken out and there's evidence that it received reports about the bond, so it should've been aware of it.

- HSBC was the only financial advisor used by Mrs M since 1987. It should've kept a record of all her investments.

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.

There is a considerable amount of information here but I'm not going to respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

HSBC is not required to keep records indefinitely and there are limited records available from the time of the sale, and from the 2008 review. In cases like this, where the evidence is incomplete, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Both parties agree that HSBC did not recommend the capital investment bond to Mrs M in 1987. So HSBC wasn't responsible for ensuring the bond was suitable for Mrs M and I haven't considered this further.

I'm not persuaded that HSBC was responsible for providing on-going advice about the bond. It didn't advise Mrs M to take it out, and it follows that it's unlikely it agreed to provide any on-going advice about its suitability. There's also no evidence that it received on-going commission from the bond provider. If Mrs M had wanted advice about the bond – either whether investment in the underlying funds should be switched, or whether the bond should be retained or encashed, I find she would have needed to specifically request this from HSBC.

In 2008, Mrs M and her husband met with an HSBC financial advisor. The review was at Mrs M's request because she was looking to withdraw money from her investment management portfolio to gift to her children because she wanted to reduce her and her husband's IHT liabilities. Taking into account gifts Mrs M and her husband had already made to their children, the HSBC advisor concluded that, if there were no changes to their assets that "*your estate would be virtually free [from] inheritance tax by January 2012*". On this basis, and the fact that a) any withdrawal from Mrs M's investment management agreement would likely result in a capital gains tax liability; and b) Mrs M said she continued to require a £3,000 withdrawal from the portfolio each month to supplement her income and the proposed capital withdrawal would significantly reduce the capital value, the advisor didn't recommend going ahead with the withdrawal.

But when the advisor listed Mrs M's assets, the capital investment bond wasn't included. The cash-in value of the bond at this time was around £155,000 and the value paid on the death of Mrs M would have been around £123,000. If the bond had been included in the list of Mrs M's assets, HSBC would most likely have concluded that her estate *would* incur an IHT liability. And it's possible that it would have recommended, or Mrs M may have decided, to encash the bond and gift the money to her children.

Mrs M feels strongly that HSBC was aware of the bond, and it was its responsibility to make sure the bond was included in her list of assets – on an on-going basis and in 2008 in particular. I've considered this very carefully. With the exception of annual reviews of Mrs M's investment management agreement, there was no agreement for HSBC to provide on-going advice about the bond and no agreement to provide general financial reviews. The reviews that took place were at Mrs M's request, including the 2008 review. Whilst HSBC would have kept records of previous reviews for the required regulatory period, I don't find there was any obligation on HSBC to keep a 'live' record of Mrs M's assets. When it carried out the review in 2008, the advisor may have been aware of some of her assets, but it was up to Mrs M to disclose all of her assets and to ensure the list was complete.

Mrs M says HSBC was documented as being the "servicing agent" for the bond and that it received statements. HSBC hasn't been able to explain what its role as "servicing agent" entailed or might have involved. But, as noted earlier, I'm satisfied its role didn't extend to providing proactive or on-going advice about this investment. And, whilst there is evidence that HSBC may have received annual statements at some point during the lifetime of the bond, it looks like it stopped receiving these sometime after 2005. So I'm not persuaded that in 2008 HSBC should have been aware Mrs M held the bond without her telling it.

My final decision

For the reasons I've explained, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 6 November 2023.

Elizabeth Dawes
Ombudsman