

## **The complaint**

Mr S complains, through a representative, that HSBC UK Bank Plc provided unsuitable investment advice when it recommended Mr S to invest £300,000 in an HSBC onshore investment bond for growth, set up as an HSBC Discretionary Gift Trust for the benefit of grandchildren.

This complaint is made with the agreement of all the trustees but, to keep things simpler, I'll just refer to this as Mr S's complaint.

## **What happened**

In 2018 Mr S received a six figure payment which represented the proceeds following the sale of his share in a business which had been held in an escrow account for the last three years or so.

Mr S arranged a meeting with an HSBC advisor to carry out a review of his financial circumstances and Mr S sought advice on how to invest £300,000 for the benefit of his grandchildren in a tax efficient way, specifically with inheritance tax mitigation in mind.

Following discussion, HSBC advised Mr S to invest the money for his grandchildren in a discretionary life trust. This has resulted in a substantial tax liability being incurred.

Unknown to HSBC, Mr S had an existing trust that had been created within the preceding seven years and he recently found out that this meant a chargeable lifetime transfer, taxed at 20%, arose when HSBC set up the discretionary life trust it recommended. Mr S is mainly unhappy that HSBC didn't do enough to verify his financial situation before making this recommendation.

In response to this complaint, HSBC said that it had been entitled to rely on the information Mr S had provided and, when asked whether he had any trusts in place to help with mitigating potential inheritance tax liabilities, Mr S had told HSBC that he didn't have any existing trusts. HSBC said that if Mr S had made its advisor aware of the pre-existing trust he had set up already with a business I'll refer to as 'C' and what the purpose of the trust was, further information about the trust would have been obtained and this would potentially have changed the recommendation.

Mr S wasn't happy with this response so he brought the complaint to us.

After considering the complaint, the investigator didn't feel this was a complaint she could recommend upholding. She mainly thought that:

- this service wouldn't reasonably expect HSBC to have made further enquiries with third parties to obtain further information about what Mr S had said
- when providing advice, it's reasonable for a business to rely on information the customer provides being correct

- a fact find and financial planning report confirms what was discussed and records that HSBC's advice was given based on information Mr S provided and says that if information was incomplete, this could impact on the suitability of HSBC's advice
- Mr S had declined HSBC's suggestion that someone else could attend the meeting with him
- whilst Mr S didn't recall HSBC asking if he already had existing trusts, the fact find notes "No trusts", so on balance the investigator felt that HSBC did explore this point with Mr S.

This led to the investigator concluding that HSBC's advice was suitable based on the information Mr S provided and she said we wouldn't ask HSBC to do anything more in these circumstances.

Mr S didn't agree with the investigator and asked for an ombudsman to consider the complaint, mainly saying: *'...The key issue ... is the extent to which an advisor relies on what they are told by the lay client – who may not appreciate the reason why certain information is relevant, or may overlook the need to volunteer information as they do not appreciate that it is relevant – rather than following up on information provided by making their own enquiries with other investment companies...'*

So the complaint comes to me to decide.

### **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.

I've looked at the complaint afresh and I've independently reached the same conclusions as our investigator. I'll explain my reasons.

We offer an informal dispute resolution service and we focus on deciding whether a financial business has made any error or acted unfairly or unreasonably. We are impartial and we make our decisions based on a balance of probabilities, making reasonable assumptions where necessary.

I must take into account the relevant law, regulatory requirements and best industry practice when making my decision.

Central to Mr S's complaint, as I understand it, is his view that if the advisor had been more proactive in taking steps to find out about and verify information regarding his financial situation, the existence of the earlier trust would have come to light and the additional tax liability now payable as a result of the establishment of a second trust would not have arisen. So I've made this the focus of my decision.

I've kept in mind that section 5.2 of the Financial Conduct Authority's (FCA) Handbook on Conduct of Business says:

*'Before a firm gives a personal recommendation concerning a designated investment to a private customer, or acts as an investment manager for a private customer, it must take reasonable steps to ensure that it is in possession of sufficient personal and financial information about that customer relevant to the services that the firm has agreed to provide.'*

It's completely understandable that Mr S might not now be able to recall exactly what was said at the time. But HSBC has provided me with paperwork that was completed around the time this advice was provided and I think it's fair and reasonable for me to rely on this as a broadly accurate reflection of what was discussed.

The fact find completed by the advisor shows that HSBC asked Mr S about his existing holdings and Mr S told HSBC about a number of investments, including the investment with C.

There's nothing to suggest however that Mr S identified this investment as a trust. It is simply recorded as '*Other*' under investment type. So I think there was an onus on HSBC to check whether this investment might have implications that HSBC needed to assess and advise on when making recommendations to Mr S. And I find that HSBC did take fair and reasonable steps to ensure its advice was suitable, for the following main reasons:

- under the section on the fact find headed '*Trusts*', information recorded indicates specifically that there were no existing trusts already set up. This suggests to me that HSBC did ask Mr S about this and I've no good reason to think that the information recorded doesn't accurately reflect what Mr S told HSBC at the time. So I find that HSBC wasn't alerted to the fact that the C investment was an existing trust when it might reasonably have expected to have elicited this information had there been a pre-existing trust in place.
- HSBC wrote to Mr S sending him the Financial Planning Report prepared by the advisor. This said that Mr S had declined a review of his existing investment funds held with HSBC and others, including C, and this doesn't seem to be in dispute. But Mr S's reluctance to engage more fully with HSBC and discuss his overall financial situation prevented HSBC finding out information that would likely have influenced its recommendation. I can't fairly hold HSBC responsible for the consequences when the further opportunity to establish more information about this investment was effectively blocked when Mr S said he didn't want to discuss his C investment with HSBC during this advice session. And I don't think HSBC had any particular reason to press Mr S further when Mr S had already told HSBC there were no pre-existing trusts.
- HSBC clearly stated to Mr S that the advice was based on the information he had provided and that if he had forgotten to disclose anything relevant, then this could impact on the suitability of its recommendation. This gave Mr S an opportunity to reflect carefully on the information he'd provided and upon which HSBC had made clear it was basing its advice. In these particular circumstances, I find HSBC did enough to enable Mr S to understand its advice was based exclusively on the limited information he had been willing to provide and that its recommendation could be different if there was missing information as this could impact on the suitability of the advice provided.
- I've taken into account that Mr S said it did not occur to him that there was any particular need for him to '*volunteer*' the existence of the earlier C trust. And I agree that it wouldn't be fair to expect Mr S to have known exactly what relevant information HSBC needed to know in order to make a suitable recommendation here. But this makes no difference to the outcome because Mr S didn't need to know what information to '*volunteer*'. Had he provided accurate information in response to the questions HSBC asked, as HSBC was reasonably entitled to expect him to do, and been willing to engage further to build a fuller picture of his overall finances, I think

it's likely the information about the earlier trust would have been discovered and HSBC would probably not have recommended setting up the second discretionary trust.

- All this leads me to conclude that I can't fairly hold HSBC responsible for the tax liability that arose when it created the second trust in ignorance of the existence of a pre-existing trust, when I am satisfied that it did all that I would reasonably expect it to have done to ensure the suitability of its advice.

I appreciate that Mr S takes a different view to me about the extent to which HSBC should have carried out further investigations to corroborate the information he provided and check it had a full and accurate understanding of his financial situation and, in particular that any earlier investment wouldn't impact on the advice. It has been suggested that HSBC should have followed up on the fact that there were other pre-existing investments of an undetermined type and that the advisor should have either asked for copies of relevant documents or sought a form of authority from Mr S to investigate further before making a recommendation.

But I don't think that's a reasonable expectation when Mr S had made it very clear to HSBC that he didn't want to widen the scope of the review – even to the extent of not involving his wife, whose financial situation was potentially a relevant consideration in terms of the family's overall estate planning.

I would mention here that the ombudsman approach is to also take into account what Mr S could have done differently to mitigate any loss. We expect consumers to take reasonable steps themselves to limit the impact of things going wrong. Looked at overall, having regard to what Mr S told HSBC, the enquiries HSBC made and the fact that Mr S declined to discuss his C investment further with HSBC, I have concluded that HSBC did what it is fair and reasonable to expect it to have done in these particular circumstances.

Given that finding, I have gone on to consider the suitability of HSBC's investment advice more generally.

Mr S wanted to mitigate the inheritance tax liability on his estate and benefit his grandchildren. The money he wanted to invest had been locked away in an account for the last few years and Mr S had significant other assets and an ample income that more than covered his day to day spending needs and planned expenditure. I consider that Mr S was in a strong enough financial position to be able to invest £300,000 to benefit his grandchildren as part of his overall investment plans.

The level of risk associated with the recommended investment appears to reflect his long established risk approach. All in all, based on what Mr S had told HSBC about his circumstances and the information it was entitled to rely on, I find HSBC's recommendation reasonably reflected Mr S's stated objectives, including what Mr S wanted to achieve and what risk he was willing and able to take.

I sympathise with Mr S. I can completely understand that what's happened has been extremely stressful, especially given the amount of money at issue and the complexity of his financial affairs. But in order to uphold Mr S's complaint I would have to find that HSBC made an error or acted unfairly or unreasonably. After having taken into account everything that Mr S and HSBC have told me, I haven't seen enough to show that HSBC did anything wrong or that it treated Mr S in a way that wasn't fair and reasonable. So I can't uphold this complaint.

If I have not referred to every point mentioned during the course of the correspondence about this complaint, that's because I've concentrated on what seems to me to be the core issue I need to address when deciding the complaint. This reflects the fact that we provide an informal complaints handling service as a free alternative to the courts. I appreciate that what I've decided will come as a disappointment to Mr S but I hope that setting things out as I've done helps explain why I've come to this overall conclusion.

### **My final decision**

I don't uphold this complaint for the reasons I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and trustees to accept or reject my decision before 2 February 2024.

Susan Webb  
**Ombudsman**