Financial Ombudsman Service

The complaint

Mrs M and the estate of Mr M complain that HSBC UK Bank Plc mis-managed their Premier Investment Management Service account ("PIMS"). They say that:

– HSBC should have recommended the account was opened in joint names; or should have recommended it was transferred into joint names in 2008 to make use of Mr M's capital gains tax allowance.

– Mr and Mrs M's attitude to risk had been assessed as "higher", but the PIMS was invested with a "balanced" risk profile.

– The model portfolio sold to them in 2003 was unsuitable because of Mr and Mrs M's large number of direct holdings.

– HSBC charged fees on the part of the account that it wasn't managing.

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

What happened

At some point prior to 1992, Mrs M opened a PIMS in her sole name managed by HSBC on a discretionary basis. There are no records from the time the account was opened, but it would appear to have been set up with the objective of providing Mrs M with a monthly income and with a moderate risk profile.

In 2003, HSBC moved to a model portfolio approach. It moved Mrs M's PIMS to a model which reflected her objectives and risk attitude. Mrs M had substantial existing shareholdings which didn't fit the new model, and which would have led to a capital gains tax ("CGT") liability if they'd been sold. So HSBC moved those shares into a "feeder account" which it said it would regularly review in order to reduce the holdings over time.

In 2008, Mr and Mrs M met with an HSBC advisor because they wanted to review the PIMS and consider further investment to provide additional income. They also wanted to make gifts to their children to mitigate inheritance tax ("IHT"). It was confirmed they wanted to continue with a medium risk approach. The advisor didn't recommend making any gifts from the PIMS because it would result in a CGT liability and would reduce the capital held which might impact the required income withdrawals in the future.

In 2012 when the annual review took place, it was confirmed Mrs M continued to withdraw £2,000 income each month from the PIMS and that she was happy with the balanced model, which reflected her objective and attitude to risk. It was noted that the feeder account still formed the bulk of Mrs M's assets and that they were continuing to be sold as and when appropriate.

In 2013, when the annual risk questionnaire was completed, Mr and Mrs M were assessed as having a higher attitude to risk. But Mrs M said she preferred to continue with a moderate risk approach for her PIMS. For the previous year, Mrs M had withdrawn income of £12,000 twice a year, but she'd also made capital withdrawals to make gifts to her children and to pay the resulting CGT liability. Mr M had recently closed his portfolio with another provider and HSBC recommended the PIMS was transferred into joint names to allow both their CGT allowances to be fully utilised. It was also agreed that Mr M would surrender a bond and add the proceeds to the PIMS. It was noted there remained a high number of shareholdings in the feeder account, and that this increased the overall risk.

In 2017 it was confirmed Mr and Mrs M had a higher attitude to risk but that they wanted to continue with the moderate risk approach for their PIMS. HSBC confirmed the balanced portfolio remained suitable for them.

In response to Mrs M's complaint, HSBC said it wasn't clear why she'd opened the account in her sole name, but Mr M had investments in his own name elsewhere. Mrs M, and later both Mr and Mrs M, confirmed they were happy to take a moderate risk approach for the PIMS, even though their attitude to risk had been assessed as higher. And it said Mr and Mrs M were aware of the risks of holding the shares in the feeder account and had agreed to the management fees.

Our investigator didn't recommend that the complaint should be upheld as he didn't think HSBC had acted inappropriately.

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

- The model-based investment wasn't appropriate for them. They had too many existing shares where the capital gains were increasing faster than the CGT allowance, so it was impossible for HSBC to ever move all the shares into the model portfolio.

- The feeder account was effectively abandoned by HSBC. It didn't ensure the feeder account remained diversified with the result that in 2012 one of the shareholdings was worth 33% of the total PIMS.

- This put the overall portfolio at very high risk, so HSBC's statement that the PIMS had a moderate risk approach was meaningless.

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.

Firstly, I'm aware that I've summarised this complaint in far less detail than the parties and in my own words. 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.

Secondly, much of this complaint is about things that happened many years ago and where full records aren't available. 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.

Account opening

The first record HSBC has for the PIMS is in 1992, but it's likely the account was opened before then, and most probably around 1987 when Mrs M received an inheritance. I can't conclude with any certainty why the account was opened in Mrs M's sole name, rather than in joint names with her husband. But it's clear, from later evidence, that Mr M had a portfolio in his sole name with a third party and it's likely they decided to keep some of their investments and savings in their own names, as well as choosing to have some joint investments. I don't find this unusual. I don't know if HSBC advised Mrs M to open the account in her sole name. But, if it did, I can't find this was inappropriate.

Failure to transfer account into joint names in 2008

Mrs M says that when she and Mr M met with an advisor in 2008, they should have been advised to transfer the PIMS into their joint names so that it would benefit from both of their CGT allowances. But it's clear from the notes of a later meeting, in 2013, that Mr and Mrs M had been content to keep separate individual investments and that Mr M had a portfolio in his own name. There may have been years when he needed his full CGT allowance for his own portfolio, so there'd have been no CGT saving had the PIMS been transferred into joint names in 2008. In 2013, when HSBC did recommend transferring the PIMS into joint names, Mr M had closed his own portfolio, so the recommendation at that stage was appropriate.

Attitude to risk

Mr and Mrs M's attitude to risk would have been checked by HSBC on an annual basis. Mrs M says the questionnaire in 2008 was completed by the advisor and not her as the first question about investment experience was answered incorrectly. But I think the questionnaire would most likely have been completed during a discussion with Mrs M and she would have provided the advisor with the answers to the questions. She signed to confirm that she agreed with the questionnaire answers and the outcome of medium risk. And, from all the evidence I've seen, I find she, and later her husband, were fully aware of, and comfortable with, the moderate or medium risk profile of the PIMS.

The risk questionnaires that are available from 2013 to 2016 show that Mr and Mrs M were assessed as having a high attitude to risk. But it's clear from the review report in 2017 that Mr and Mrs M agreed that:

"Your overall tolerance to investment risk is higher risk.

Having considered your circumstances, preferences and preferred investment period, you both confirmed the risk profile you want to take for the portfolio is moderate risk."

I don't find any reason why HSBC would have advised that this was unsuitable, especially in view of Mr and Mrs M's advancing years.

Overall, I find Mr and Mrs M's attitude to risk was appropriately assessed and that they were happy with the medium risk profile of the PIMS.

Change to model portfolio

In October 2003, when the account was still in the sole name of Mrs M, HSBC wrote to her to tell her about a change in the way her PIMS was managed. It explained it was going to take a "model portfolio" approach. This was a commercial decision and all PIMS moved across to the new management model. I'm satisfied that Mrs M was moved across to the model that matched her investment objectives and risk profile and, in doing so, HSBC fulfilled its obligations to ensure the PIMS remained suitable for her.

I'm satisfied that Mrs M was given enough notice of the change which gave her the opportunity to discuss it with an advisor if she had any concerns about the new approach. And she could have chosen to close the PIMS if she didn't agree to transfer to the model portfolio.

Feeder account

Mrs M had a number of shareholdings which did not fit the new model. But they had substantial capital gains. I'm satisfied that HSBC made it clear that these shares would be held in a "feeder account" and gradually sold over time, within Mrs M's agreed CGT tolerance, so the proceeds could be added to and invested in the model portfolio. For a number of years, Mrs M gave HSBC full discretion for the sales. In other words, she was prepared to incur CGT if necessary. But I would still have expected HSBC to try to limit any chargeable gains, whilst balancing the continuing suitability of the shares held. In February 2016, after Mrs M had incurred CGT because she'd instructed for shares to be sold so she could gift money to her children, she said HSBC should only sell shares in future if the gains were within her annual allowance.

I accept what Mrs M says about the time taken for the shares in the feeder account to reduce. But I'm satisfied that Mrs M, and later Mr M, were aware of the risks of continuing to hold these shares. And, whilst they wanted a model portfolio with a medium risk, their attitude to risk had been assessed as higher. Mrs M says HSBC shouldn't have disposed of total shareholdings because this led to the feeder account not being sufficiently diversified. HSBC has explained that it wasn't looking to balance or diversify the feeder account, but to sell shares that were furthest removed from the model asset allocation. I don't find that to be an inappropriate approach.

I think it was made reasonably clear that the feeder account would be subject to HSBC's management fees. I think Mrs M, and later Mr M, were fully aware of HSBC's charges and that the feeder account attracted management fees. And whilst HSBC may not have been actively managing the shares in the same way it managed the model portfolio element, it was reviewing them on an on-going basis with a view to selling them and adding the proceeds to the model portfolio. In the circumstances, I don't find the fees to be unfair.

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 and the estate of Mr M to accept or reject my decision before 6 November 2023.

Elizabeth Dawes
Ombudsman