DRN-3799123

The complaint

Mr and Mrs C complain that a lifetime income plan ("the plan") recommended to them by HSBC UK Bank Plc was unsuitable as they've incurred a tax liability upon surrender.

What happened

Mr and Mrs C originally received advice from HSBC in 2014. They were recommended the plan to meet an objective of using part of their savings - £130,000 - to generate a guaranteed income for life. The plan was set up to pay monthly income reflecting a guaranteed annual return of 4.1%.

In 2021 Mr and Mrs C received further advice from HSBC, and it was recommended that the plan be surrendered with the proceeds re-invested into alternative products. This surrender created a chargeable event, resulting in a tax liability of around £6,600.

Mr and Mrs C complained to HSBC about this unexpected liability, unhappy that they hadn't been made aware of the risk that it could occur. They said they wouldn't have proceeded with the plan if they'd known. But HSBC didn't consider it had done anything wrong.

In brief, it was satisfied that its adviser, having gathered information about their needs and circumstances, had made a suitable recommendation to invest for the greatest possible level of guaranteed income for life to supplement their retirement. HSBC noted that the documentation provided to Mr and Mrs C had noted key features and risks of the product, including the potential for a chargeable gain to occur if surrendered. It had also been noted that they didn't anticipate the need to access the invested capital.

The complaint was referred to this service, but our investigator also didn't think it should be upheld. She was satisfied the advice had been suitable for Mr and Mrs C given their documented requirement of a guaranteed income for life. She too noted that the financial planning report issued to Mr and Mrs C had mentioned the possibility of a chargeable event upon surrender.

Mr and Mrs C didn't accept the investigator's view. They said, in brief, that the report issued by HSBC had heavily emphasised the general tax efficiency of the plan but, conversely, had failed to stress the possibility of a liability upon surrender. And there'd been no indication given as to what such an amount might be. Also, the report issued later in 2021 following the receipt of further advice had said that the plan wasn't tax efficient and was no longer right for them due to the level of risk involved and associated charges.

The investigator responded to say that the amount of tax liability couldn't have been predicted at the outset. She remained satisfied that the recommendation had met the required criteria and been a suitable way to provide a guaranteed income. She noted the comments about the 2021 advice but stressed the need to consider the 2014 advice in the context of Mr and Mrs C's circumstances at that time.

Mr and Mrs C added final comments, stressing that while the plan had been a lifetime product it had nevertheless been open-ended, and it was reasonable to review investments as time passed. They reiterated that no examples of a potential tax liability had been provided and said that the plan could not have been tax efficient as liability of nearly £7,000 had been incurred. They reiterated that they wouldn't have proceeded with the plan if they'd known this was a possibility. They'd been happy to lose the guaranteed income in 2021 as the projected income on the newly recommended products had been tax free, as they were ISAs, and would provide a similar, if not better, level of income than the plan.

As no agreement could be reached, the matter's been referred 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.

Having done so, I've come to the same conclusions as the investigator and for broadly the same reasons.

The documentation associated with the 2014 advice makes clear that Mr and Mrs C had an objective at that time of using the money in question to provide a guaranteed tax-free income for life. And the plan served that purpose. There was no tax to pay on the monthly income generated by the plan (unless the amount received was increased above a certain level) and that would have continued had nothing changed and Mr and Mrs C had maintained the plan as originally envisaged.

I understand that their circumstances and needs changed and accept that it's reasonable for them to have sought a review of their finances in 2021 in light of this. But I think the 2014 advice must be judged on their circumstances at that point, and in that respect, it seems clear that a guaranteed lifetime income was the objective. I think if a shorter period had been required the adviser would more likely than not have considered different products and made a different recommendation. But based on the information available to him at that time and Mr and Mrs C's requirements at that point, the plan was a suitable option.

I note what's been said about the 2021 advice and the comments made about the plan no longer being suitable. But that doesn't mean it wasn't suitable at the time. Any new recommendation in 2021 was made considering Mr and Mrs C's current circumstances and needs, which had clearly changed. There were other ways that the money could've been invested in 2014 (and it was documented that several were considered) and utilising them may well have led to a different tax situation. But the key point is that the alternatives available in 2014 wouldn't have also met the clear objective of providing a guaranteed lifetime income.

In respect of the limited information provided in 2014 about chargeable events and potential tax liabilities, I can understand why Mr and Mrs C feel that there should've been more focus on this. But the possibility was mentioned in the documentation, and it's important to remember that the plan was a product intended to be maintained for the long-term, with early surrender as such being unlikely.

And, as the investigator noted, there was no way in which to predict what any specific liability would be, as the timings and amounts couldn't be known. And I think that even if there had been an example provided using hypothetical figures, given that in 2014 there was no intention that the plan be surrendered, I'm not persuaded the provision of such an example would necessarily have prompted Mr and Mrs C not to proceed.

My final decision

For the reasons given, my final decision is that I don’t uphold the complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs C and Mr C to accept or reject my decision before 6 October 2023.

James Harris
Ombudsman