

complaint

Mr S is dissatisfied at the poor level of service and advice that HSBC Bank Plc ("HSBC") has provided with regard to his Self-Invested Personal Pension Plan (SIPP). He has also said that in light of their decision to stop providing advice on pension transfers he has been forced to find a new pensions manager with the associated costs this entails.

Mr S believes that the commission that was paid when he set up the SIIPP was to cover on-going management and advice of his SIPP. Therefore he wants HSBC to compensate him in recognition of all the additional costs he has incurred as a result of their errors. He does not consider that the offer that HSBC have made of £1,000 to be sufficient to properly compensate him.

background

Mr S arranged his SIPP through HSBC in January 2010 with regular monthly contributions of £5,000 being paid. Commission of £9,000 was paid to HSBC, which was deducted from the SIPP over a period of 12 months.

The SIPP was seen as an appropriate pension plan as Mr S was considering using it to purchase his business premises at a later stage. The process to transfer the property to the SIPP did commence in 2012.

The purchase of the property by the SIPP did not run smoothly, initially due to incorrect figures being provided by HSBC in relation to how much the SIPP could borrow. This resulted in Mr S having to inject funds from his own business to ensure the transaction could proceed. A further miscalculation with regard to VAT resulted in further funds needing to be found at short notice.

Following the completion of the property transfer, Mr S approached HSBC to arrange for an existing personal pension arrangement he held to be transferred to the SIPP to reduce the reliance on borrowing. However, HSBC advised that due to an internal policy change they were no longer undertaking pension transfer business.

Mr S spoke with the SIPP provider to be advised that he would need to appoint a new manager if he wanted the personal pension transfer to take place.

Disappointed with the situation, Mr S contacted HSBC in April 2012 stating that he was seeking compensation as follows:-

• Refund of the SIPP fee	£9,000
• Legal fees incurred in property purchase	£7,660
• Interest (O/D) due to delays	£ 415
• Interest on mortgage due to delays	£ 375
• 'compensation' to his business	<u>£2,500</u>
	<u>£19,950</u>

HSBC responded saying that they felt no specific loss had been incurred but acknowledged the poor level of service received and therefore offered £1,000 as compensation.

Dissatisfied with this offer, Mr S referred his complaint to this service stating that he felt £13,000 to be a more realistic offer of compensation. One of our adjudicators investigated

the complaint and set out his opinion that the offer made by HSBC was reasonable. In summary he said:-

- It was understandable that Mr S felt he had not received the level of service that he could expect from HSBC.
- With regard to the compensation that Mr S felt was due to his business, the adjudicator said that this should be raised separately with HSBC and should be viewed independently from the complaint Mr S had brought in his personal capacity.
- Having reviewed the documentation from the time of the advice, there was no indication of an agreement being in place to say that the initial commission paid of £9,000 would cover on-going advice. He considered that it was clear from this documentation that it was only paid in respect of the initial advice that was provided to establish the SIPP.
- The legal costs incurred in the transfer of the business premises to the SIPP would have been incurred regardless of any errors and delays caused by HSBC.
- It was not unreasonable for HSBC to cover interest costs which Mr S said were incurred due to their errors, when he had to use some of his own funds to ensure the property purchase proceeded.

The adjudicator recommended that Mr S accept HSBC's offer of £1,000 as he felt that it covered the interest costs Mr S had identified, together with a payment to reflect the distress and inconvenience that had been suffered.

Mr S rejected this offer. He appreciated what the documentation stated but said that this was completely different from what he was told, which was that the £9,000 paid in the first year of the SIPP's life was for all future advice as well. This he said was supported by the fact that the adviser had carried out additional work after the initial advice without charging a fee.

He questioned the assumption that this work had been done at the adviser's discretion and asked which bank would do additional work for free when they could charge for it. As he was changing his adviser from HSBC to accommodate the personal pension transfer, he felt a refund was due to him.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same conclusion as the adjudicator and for broadly the same reasons.

Where there is a dispute about the facts of a complaint I have to come to a decision based on the balance of probabilities; in other words what I consider is most likely to have occurred in light of the evidence that I hold and the circumstances at the time.

I appreciate that Mr S has said that he was told that the initial commission that was paid on his SIPP would cover all future advice. However the documentation from the time indicates that the commission was only in respect of the initial advice that was provided. Therefore, in the absence of any documentation from the time which would support the verbal assurance which Mr S says he was given, I am unable to conclude that any contractually binding agreement was in place to provide on-going advice without further charge.

I acknowledge that the adviser did provide subsequent help and advice without a charge being made. However, it is not unusual for an adviser not to charge for all the advice and assistance he provides to his clients. The fact that the HSBC adviser did this would not lead me to conclude that there was an agreement in place to provide all future advice on the SIPP without further charge.

I appreciate that Mr S contends that the provision of that future advice, at no charge, is of itself sufficient to show that the commission he paid was intended to cover all future advice.

I note his comment that it is unheard of for banks to provide services free of charge; that may or may not be the case but even if the initial commission was intended to cover future advice costs, I do not consider it likely that this would have been an arrangement entered into by HSBC on an entirely open ended basis. I am persuaded that some form of documentation defining the scope and quantum of such future advice would have been provided to Mr S.

Whilst not given particular prominence in the Terms of Business document given to Mr S at the time of advice, I note that in the section headed 'Acting on your instructions', it says *'Where we have given advice, we will follow your instructions and arrange any required transactions on your behalf as soon as possible. We will not give you any further advice unless you request it'*.

In my opinion, HSBC's decision to stop offering advice on pension transfers was a legitimate business decision. I appreciate though that this caused Mr S considerable inconvenience as he needed to seek advice from a different adviser in respect of the further pension transfer he wished to implement. However I consider that it is more likely than not that had HSBC provided this advice they would have charged a fee or received commission.

Accordingly, I have concluded that as there is no documentation to suggest that when the SIPP was set up that HSBC would be under an obligation to provide such further advice without charge means that it would be inappropriate for me to recommend that the initial commission be refunded.

Whilst of little consolation to Mr S, I do though acknowledge that initial commission of £9000, when measured against monthly contributions of £5000, is a significant sum; however, I am not persuaded by the evidence I have seen that I should conclude that Mr S only accepted this relatively high cost because he had a reasonable expectation that he would receive future advice from HSBC at no additional cost.

However, HSBC has accepted that there were shortcomings in the level of service it provided to Mr S and therefore offered Mr S £1,000 by way of compensation.

I appreciate that this means the offer in excess of the interest costs incurred is small. However the payments that this service awards for distress and inconvenience suffered tend to be modest. In the circumstances I consider £1000 to be appropriate and at the upper end of what this service would award in similar circumstances.

my final decision

I do not uphold this complaint.

I consider the offer by HSBC Bank Plc of £1,000 to be fair and reasonable. It is now a matter for Mr S to decide if he wishes to accept this offer.

Terry Connor
ombudsman