

## Ombudsman's Determination

Applicant	Mrs S
Scheme	HSBC Bank Pension Scheme ( <b>the Scheme</b> )
Respondent	HSBC Bank Pension Trust (UK) Limited ( <b>the Trustee</b> )

## Outcome

1. Mrs S' complaint against the Trustee is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld), the Trustee should pay Mrs S the total sum of £1,000 for the distress and inconvenience caused by the incorrect information given to her and her late husband.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mrs S' complaint is about the incorrect information that was given to her in 1995, and her late husband in 1998, regarding the pension she would receive from the Scheme in the event of her husband's death.

## Background information, including submissions from the parties

4. Mrs S was married to Mr D, who was a former employee of Midland Bank (now HSBC). Mr D passed away in 1991 and on his death, Mrs S received a spouse's pension from the Scheme of which he was a member.
5. In 1995, Mrs S contacted the Scheme to enquire about the impact of re-marriage on her spouse's pension, and details of her entitlement in the event that she re-married another Scheme member and if he also passed away before her. Her letter dated 28 July 1995 said:

"Following the death of my husband, [Mr D], four years ago I am in receipt of a Bank Widows Pension plus an additional sum for my two sons while in education. Should I wish to re-marry at any time in the future what would be the effect on my present pension and would I continue to receive the payment for the boys as at present. Furthermore, if I were to marry a Bank Pensioner what pension would I qualify for should he also predecease me and bearing in mind that I would be 20 years his junior."

6. The Scheme responded to Mrs S' enquiry in a letter dated 2 August 1995, saying the following:

"We confirm that under the current Midland Bank Scheme Rules should you re-marry your Midland Bank Pension and Children's Allowance would not be affected. If you were to re-marry a Midland Bank pensioner and he predeceases you, you would receive a widow's pension of 50% of the pension in payment to him at the date of death including any pension commuted for a tax free cash sum at retirement. However, if you are 20 years or more his junior then the widow's pension would be reduced by 2/5% for each year in excess of 20 years."

7. Mr S, who was a member of the Scheme just as Mr D was, also sought clarification in 1998 about the impact on Mrs S' spouse's pension in the event of his death after re-marriage. Mr S' letter to the Scheme dated 29 January 1998 said:

"It is likely that I will re-marry this year and the lady concerned is a staff widow who is also in receipt of a pension from the Bank. She is [Mrs S]...

Can you please confirm what her position will be on re-marriage, will she continue to receive her pension in full relating to her late husband [Mr D]. You will notice that she is twenty years younger than I am, so secondly what would be her situation should I die before her after re-marriage. Would she be entitled to a widow's pension from me, and if so, would she continue to receive the pension that she is presently entitled to from her late husband's contributions?"

8. The Scheme responded to Mr S' enquiry in a letter dated 18 February 1998, saying the following:

"Under the current Scheme rules should you remarry, then your second wife would receive a widow's pension of not less than 50% of the pension you were receiving at the time of death including any pension converted to cash. If your wife is more than twenty years younger than you the pension payable is reduced by 2.5% for each year in excess of 20 years. Unfortunately, I am unable to comment on an individual member. However, should a widow or widower re-marry their Midland Bank pension would not be affected."

9. Mr S then married Mrs S in 1999 and they both updated their wills. Mr S' will in 1999 provided that Mrs S should receive 10% of his estate, with the remainder being split between his children and grandchildren.
10. In 2005, Mr S amended his will. The updated version of his will provided that his four grandchildren should each receive the sum of £5,000 and the residual estate should be shared equally between Mrs S and his two children.
11. Mr S passed away in January 2015. Following his death, Mrs S contacted the Scheme about a second spouse's pension. She was informed in March 2015 that the Scheme rules did not permit the payment of two spouse's pensions to the same individual. She was entitled to receive the higher of the two pensions, namely the

spouse's pension of £23,379.84 per year in relation to Mr S. The annual pension of £17,474.40 that she had been receiving in relation to her first husband, Mr D, was therefore stopped.

12. The relevant part of the Scheme rules is within the definition of 'surviving spouse' and the provisions about death benefits. A copy of this was provided to Mrs S. She then made a complaint to the Trustee and, in summary, she said:
  - She and Mr S relied on the information given to them in 1995 and 1998. She expected to receive two spouse's pensions in the event of Mr S' death, in the belief that her pension entitlement in relation to Mr D would not be affected.
  - Mr S made provisions in his will based on this information. If they had been given the correct information in 1995 and 1998, then Mr S would have made greater provision for her in his will. Mr S would have left her 50% of his estate.
13. The Trustee acknowledged that the information given to Mr and Mrs S in the 1990s was incorrect, and did not properly describe the way in which the Scheme rules operated. However, the Trustee was not persuaded that Mr S would have acted differently if the correct information had been given. In reaching this conclusion, the Trustee made the following comments:
  - Mr S granted Mrs S only 10% of his estate in 1999 and this was significantly increased to a third of his residual estate in 2005.
  - It was likely that Mr S wished to make equal provision for his two children and Mrs S, as stated in his will in 2005. This would not be classed as an unusual outcome, and there was no evidence that Mr S would have provided 50% of his estate to Mrs S in 2005.
14. However, in recognition of the distress and inconvenience caused by the incorrect information given to Mr and Mrs S, the Trustee offered Mrs S the sum of £500. Mrs S did not consider this to be adequate compensation and she referred her complaint to us for an independent review.

## **Adjudicator's Opinion**

15. Mrs S' complaint was considered by one of our Adjudicators who concluded that the Trustee should pay Mrs S the total sum of £1,000, an additional £500 to the amount already offered, for the significant distress and inconvenience caused by the incorrect information.
16. However, the Adjudicator was not persuaded to conclude that Mr S would have increased his provision for Mrs S in the updated will of 2005 if he had been aware of the correct position regarding a second spouse's pension. The Adjudicator's findings are summarised below:

- Given the passage of time since the incorrect information was given, and that Mr S had already increased his provision for Mrs S in 2005, it is difficult to say whether he would likely have allocated Mrs S a higher share of his estate, resulting in a lower percentage share for his children.
  - It is equally plausible that, even if the correct information had been given to Mr S in 1998, he would still have wanted his residual estate to be shared equally between Mrs S and his two children. It seems that Mr S' intention in 2005 was to grant a share of his estate to each of his children that was at least equal to the share awarded to his wife.
  - Given this was a re-marriage, and that Mr S already had children and grandchildren from an earlier marriage, there is no evidence to reliably conclude that he would have further increased his provision for Mrs S, in addition to the changes already made from 1999 to 2005.
17. The Trustee agreed with the Adjudicator's Opinion and made no further comments.
18. Mrs S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs S provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mrs S for completeness.
19. Mrs S says that the incorrect information given by the Scheme in the 1990s influenced the outcome of her husband's will in 2005. She argues that Mr S would have given her a higher percentage share of his estate, if the Scheme had responded correctly to their enquiries. In response to the Adjudicator's Opinion, Mrs S requested further information from the firm of solicitors involved in drafting her husband's will in 2005. The solicitors provided a copy of the notes from the meeting in 2005 when the matter was discussed. The handwritten notes included the following sentence from the solicitor:
- "Commented that the provision for [Mrs S] seems fair in view of her entitlement to his pension."
20. Mrs S says that the notes of the meeting show that her pension entitlement was a key consideration at the time her husband's will was amended.

### **Ombudsman's decision**

21. I have reviewed all of the information provided by Mrs S and the Trustee, including the notes of the meeting at which the changes to Mr S' will were discussed. I accept that Mrs S' pension entitlement was discussed at the meeting in 2005. However, it does not necessarily follow that Mr S would then have granted a higher percentage share of his estate to Mrs S, if he had been aware of the correct position regarding a second spouse's pension.

22. It is of course possible that Mr S may have altered his will to further increase his provision for Mrs S, in addition to the changes already made in 1999, and 2005. However I consider it, at the very least, equally plausible that Mr S did not wish to reduce the portion of his estate allocated to each of his children from his first marriage.
23. In conclusion, Mr S' decision in 2005 to grant a share of his estate to each of his children that was at least equal to the share awarded to his wife, falls within the range of likely outcomes that he could have reached, irrespective of the incorrect information given by the Scheme. Therefore, I do not uphold this part of Mrs S' complaint.
24. In terms of non-financial injustice, it is clear that Mrs S has suffered significant distress, especially given the circumstances. The incorrect information had raised her expectations over a period of 20 years. It is therefore my decision that the Trustee's offer of £500 is not sufficient in respect of non-financial loss.

## **Directions**

25. Within 28 days of the date of this determination, the Trustee shall pay Mrs S the total sum of £1,000.

**Karen Johnston**

Deputy Pensions Ombudsman  
16 May 2017