

Ombudsman's Determination

Applicant	Mrs T
Scheme	HSBC Bank (UK) Pension Scheme (the Scheme)
Respondent	HSBC Bank Pension Trust (UK) Limited (HSBC)

Outcome

1. I do not uphold Mrs T's complaint and no further action is required by HSBC.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs T is unhappy because HSBC calculated the tax on her benefits from the Scheme incorrectly. As a result, part of the benefits she received ought to have been withheld and paid to HMRC as income tax.
4. Mrs T is now being asked by HMRC to pay the outstanding tax amount. However, she has spent the money which it is seeking to recover, and believes HSBC should therefore pay HMRC instead.

Background information, including submissions from the parties

5. On 5 October 2015, HSBC received a request from Mrs T for information about accessing her benefits from the Scheme. HSBC responded explaining her options, and provided forms for her to complete regarding her circumstances and how she would like to receive her benefits.
6. On 14 and 26 October 2015, Mrs T signed the necessary forms to confirm she would be continuing to work but that she wanted to initiate a full fund cash withdrawal.
7. On 28 October 2015, HSBC began to disinvest Mrs T's benefits following receipt of her request for a full fund cash withdrawal. It seems that this process was due to be completed within normal timeframes. However, following a telephone call from Mrs T, in November 2015, HSBC agreed to speed up its process and pay her benefits before December 2015.

8. On 3 December 2015, Mrs T telephoned HSBC to say she had still not received her benefits. By this time, it had been approximately eight weeks since her initial contact asking for information about accessing her benefits. However, it had been less than six weeks since HSBC had received her instructions for disinvestment, and it had not completed this process yet.
9. Notwithstanding this, HSBC agreed to use a notional figure such that it could pay Mrs T a lump sum straight away. HSBC used a notional figure of £40,000 and deducted tax at the basic rate.
10. On 10 December 2015, HSBC emailed Mrs T to remind her that a notional value had been used to pay the lump sum. It confirmed this was £40,000.
11. On 15 January 2016, HSBC telephoned Mrs T to say she had been overpaid. In particular, it said it ought to have applied a higher tax rate to part of her benefits, which resulted in her being overpaid. The telephone call notes HSBC provided indicated that Mrs T told the HSBC advisor during this conversation she was not happy about what had happened. The adviser then said he would contact her again soon to set out options in order to resolve the matter.
12. On 18 January 2016, HSBC emailed Mrs T confirming what was discussed in the telephone call on the 15th January 2016. It also said it would contact her again soon. The email address HSBC used was the correct address for Mrs T at the time.
13. On 26 January 2016, HSBC wrote to Mrs T explaining what had happened and detailed her options going forward. In particular, it said that the wrong tax rate had been applied to her benefits, and as such she had effectively received an overpayment. It suggested several options for her to repay the overpayment, and confirmed that if it did not hear from her it would inform HMRC of the tax underpayment. The address HSBC used was the correct address for Mrs T at the time.
14. The evidence then indicates that HSBC initially paid the correct level of tax to HMRC on Mrs T's behalf. However, when it did not hear from her, it requested a partial refund from HMRC.
15. In particular, on 26 June 2016, HSBC wrote to HMRC and requested a refund. It confirmed that it was aware this would mean Mrs T had underpaid her tax; however, it said that it understood Mrs T was going to deal with HMRC directly. HMRC provided the refund to HSBC, as requested.
16. In August 2016, HMRC wrote to Mrs T directly requesting the outstanding tax due. Mrs T says this is the first time she was made aware her benefits had been paid to her incorrectly. She contacted HSBC and it confirmed what had happened. It explained that part of the benefits she had received in December 2015 ought to have been withheld as tax, and she would now need to pay this money to HMRC.

17. Mrs T raised a complaint, stating that she had now spent the money and it was not reasonable for her to also pay HMRC. She said that HSBC should pay the outstanding tax instead. She explained that she had used the money to help fund the purchase of an overseas property and believes it is therefore not recoverable.

Adjudicator's Opinion

18. Mrs T's complaint was considered by one of our Adjudicators who concluded that no further action was required by HSBC. The Adjudicator's findings are summarised briefly below:-
- There has been an administration error, as HSBC did not tax Mrs T's benefits correctly. Whilst this may have happened because Mrs T asked HSBC to pay her benefits more quickly than normal, HSBC agreed to speed up its normal processes for her. HSBC was still responsible for ensuring her benefits were calculated and paid correctly.
 - However, HSBC has provided evidence that it informed Mrs T, in January 2015, that she had been overpaid. It has evidenced that it did this by telephone, email and letter. Mrs T did not say in response that she had already spent the money by that time.
 - As such, the Adjudicator felt HSBC had sufficiently remedied its maladministration before any injustice took place. In particular, the Adjudicator was persuaded that Mrs T was reasonably aware part of her benefits would need to be paid to HMRC to meet her tax liability shortly after she received the monies.
 - Furthermore, whilst Mrs T may no longer have the money in question as liquid cash, she says she used it to purchase an asset. The Adjudicator was therefore not persuaded that she has irreversibly changed her financial position based on HSBC's actions, or that it would therefore be inequitable for her to have to pay the tax owed herself.
19. Mrs T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs T provided her further comments and, in particular, said that:-
- She knew nothing about the tax on her benefits being incorrectly calculated until she received a letter from HMRC. By this time, she had already used the money in question to purchase a property.
 - She has also said that HMRC does not appear to have received a payment from HSBC. However, she has accepted that this is a new complaint point. HSBC has provided details of the transaction to our Office and these have been forwarded to Mrs T to discuss with HMRC.
20. Mrs T's further comments do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points for completeness.

Ombudsman's decision

21. Mrs T has iterated that she was not aware the tax on her benefits had been incorrectly calculated until she was contacted by HMRC in August 2016. However, the evidence indicates that HSBC informed her of this in January 2016 by email and letter, using the correct addresses for both.
22. In addition, HSBC has provided evidence of the telephone call with Mrs T where it informed her of the error. The call note records that the HSBC advisor was able to speak with Mrs T, and that she responded to say she was not happy with what she was being told. The advisor then said he would write to her outlining her options for repaying the overpaid benefits.
23. With this in mind, it is difficult for me to conclude that Mrs T was not aware that there had been an error in the calculation of her benefits until August 2016. On balance, I believe HSBC took reasonable steps to ensure that Mrs T was made aware promptly, and the evidence indicates she received its communications.
24. I do not uphold Mrs T's complaint.

Anthony Arter

Pensions Ombudsman
8 March 2018