

Ombudsman's Determination

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

Outcome

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

Complaint summary

3. Mrs Y's complaint concerns the final value of her pension benefits in February 2016 as it differs from the retirement statement she received in September 2015. She believes that she ought to have been informed of the change in value regardless of how much the difference was.

Background information, including submissions from the parties

4. Mrs Y, a deferred member of the Scheme, contacted the Scheme's administrator on 18 September 2015, for a retirement statement based on an early retirement date of 1 November 2015. A statement was produced on 23 September 2015, which outlined that Mrs Y had two benefit options, one of which was that she could receive a pension commencement lump sum (**PCLS**) of £20,241.04 and a reduced annual pension of £3,036.36. However, the statement also cautioned that these figures could change:

"Please note that the figures quoted in the statement have been calculated using the factors currently in use. The Trustees have the right to review and amend the factors used by the Scheme at any point. If the Trustees change the factors between now and the date in your retirement quotation, the benefits payable, may also change and could be higher or lower than those quoted..."

...Your actual benefits will be worked out when they are due to be paid, based on the Trust Deed and Rules and legislation in force when you take your benefits."

5. On 6 October 2015, Mrs Y contacted the administrator again with a query about the statement. She wanted to know whether the statement included the pensionable service for the additional part-time hours worked between June 1990 and September 1995. She received a response to this on 21 January 2016, when the Trustee also addressed Mrs Y's query in relation to early retirement, and explained the following:

“If you decide to retire before your pension is normally due to come in to payment, the pension is adjusted to reflect both the increases that would have been expected to apply to your pension up to this normal payment age and then it may be reduced to reflect the fact that it will be paid for longer. The Trustee has the discretion to determine the adjustments to be made to your pension if you retire early, although they need to ensure certain statutory requirements are met. Its current policy is that your reduced pension is calculated to be at least equivalent in value to the pension you would have been entitled to had you retired at the normal payment age, although in certain sections a greater amount may be paid where required under the Rules.”
6. Following receipt of this information, Mrs Y decided to take the option of a PCLS and a reduced annual pension. The Scheme responded by letter on 4 February 2016, to confirm what Mrs Y could expect to be paid on her retirement.
7. The letter stated that Mrs Y would receive a PCLS of £19,685.88 and an annual pension of £2,956.44, a difference of £555.16 and £79.92 respectively. The letter explained that the difference, less than 3% overall, was because Mrs Y's benefits were recalculated using the September 2015 inflation rate (**the 2015 rate**), rather than the estimated amount in her earlier quotation, which was based on the September 2014 inflation rate (**the 2014 rate**). The latter had been applicable at the time the retirement statement was issued in September 2015.
8. On 11 February 2016, Mrs Y contacted the Scheme's administrator to query the difference. This prompted a prolonged exchange which resulted in the administrator stating that it must apply the Scheme Rules, which do not allow for discretion when paying a member's benefits, therefore the 2015 rate was applicable. It also confirmed that the change in Mrs Y's benefits was not because of any delay, as the inflation figure would have been updated on its system.
9. On 5 October 2016, as part of the exchange, the Trustee confirmed that it had carried out a further review after Mrs Y questioned the early retirement reduction, whether her part time service and additional hours had been included, plus details of the reduction in benefits. During this review, they found that Mrs Y was entitled to a small increase. As such, her lump sum entitlement should have been £20,125.18, with an annual pension of £3,018.78. The Trustee explained that it had updated its records, increased her pension and that it would arrange for the backdated payments to be paid.
10. Mrs Y complained to the Trustee on 23 October 2017. The complaint was considered under the Scheme's internal dispute resolution procedure (**IDRP**) and a response was

issued on 20 December 2017. It took into account the concern raised by Mrs Y on the detail of the information provided and stated that, it would now provide more comprehensive information in order to meet those concerns and to ensure that other members were, “given the most accurate information possible.” The Trustee explained that the retirement statement was an estimate based on a number of assumptions, and that, at that time, the administrator would only have informed a member of a change in value where the difference was 10% or more. Therefore, the Trustee considered that it was reasonable not to have informed Mrs Y in this instance. However, it offered her £500 for any distress and inconvenience this may have caused.

11. On 20 January 2018, Mrs Y contacted the Trustee appealing its stage one response. The Trustee issued its final response under stage two of the Scheme’s IDRP on 1 March 2018. It considered what Mrs Y had said about not being notified of the change in value of her benefits and stated that it had changed its approach on the information given to members regarding a material change in the value of their benefits. Whilst it noted that these changes would not benefit Mrs Y directly, the Trustee confirmed that its offer of £500 was still available in recognition of any distress and inconvenience it had caused, which it said was in line with what it thought this Office would award.
12. On 12 March 2018, Mrs Y contacted this Office having exhausted the formal IDRP with the Trustee. She explained how she would not have taken her pension benefits had she known the value had dropped. She clarified that she had no urgent reason for the money, and that she would have delayed taking her benefits until further retirement statements illustrated an increase in value. This is because she believes that her deferred pension would have increased with time.

Adjudicator’s Opinion

13. Mrs Y’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator’s findings are summarised below:-
 - Mrs Y is only entitled to receive the correct level of pension benefits as determined by the Trust Deed and Rules of the Scheme. As the figures provided in September 2015 were an estimate and subject to change, Mrs Y does not have an entitlement to them, there has been no financial loss.
 - Whilst the Trustee could have contacted Mrs Y to inform her that there had been a change, the fact that it did not do so does not mean that there has been an error. However, it must be frustrating knowing that, based on Mrs Y’s complaint, the Trustee is going to change its internal procedures.
 - Even if the Trustee had informed Mrs Y of the change in value, the information does not suggest that she would, on the balance of probability, have acted any

differently. This is because Mrs Y had asked to take her pension before her normal retirement age of 60, in the knowledge that there would be an actuarial reduction to her pension.

- The £500 offered to Mrs Y is in line with what the Adjudicator believed the Ombudsman would direct for significant distress and inconvenience. It was the Adjudicator's view that the Ombudsman would not make a higher award in this instance.

14. Mrs Y did not accept the Adjudicator's Opinion and provided her further comments:-

- There were discrepancies between the form and the statement she received. The form made it appear as if there would only be a recalculation had Mrs Y already taken some of her benefits.
- She did not use a large part of her benefits until November 2016, which indicates that she would have deferred claiming her benefits. This was because she did not need the money immediately.

15. The Adjudicator considered Mr Y's comments, but, she was not minded to change her decision. With regard to the discrepancies the Adjudicator did not find that there were any, but rather the form was highlighting that a recalculation would be necessary if Mrs Y had used some or all of her lifetime allowance. This was reconfirmed in the statement which went on to say that: "this Statement is for information only [...] the Statement is not binding on the Trustee. Your actual benefits will be worked out when they are due to be paid, based on the Trust Deed and Rules and legislation in force when you take your benefits." As such, Mrs Y was never entitled to the precise amount quoted in the statement.

16. With regard to whether Mrs Y would have acted differently, the Adjudicator reiterated that there was insufficient evidence to find that this would, on balance, have been the case. Given that Mrs Y chose to take her benefits early, Mrs Y's argument that she did not need the money did not outweigh her initial decision. The Adjudicator clarified that this point was commented on for completeness, as she would only be able to consider whether an award was appropriate had the Trustee done something wrong. In this instance, the Adjudicator found no error.

17. Mrs Y did not accept the Adjudicator's comments and the complaint was passed to me to consider. Mrs Y provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs Y for completeness.

18. In summary, Mrs Y's response to the Adjudicator's comments and additional submission, raised the following points -

- The Trustee has offered an award of £500 for the distress and inconvenience caused by not informing her of the difference to her pension benefits. The rest

of the difference between what she has received and what she was expecting is not a large amount, but this is a matter of principle.

- Whilst the Trustee might have said that, “The Trustees have the right to review and amend the factors used by the Scheme at any point,” she does not believe this gives them the right to do so. A similar argument is also being used by social media companies for selling people’s personal information.
- Part of the reason for taking her pension early was that she had previously had problems in ensuring the accuracy of her pension benefits. As such, when she received the Trustee’s response on 21 January 2016, she had no confidence in it. Taking this into account, Mrs Y thought it best to start taking her benefits and challenge what she was receiving rather than waiting until her normal retirement age and not being able to do so.

Ombudsman’s decision

19. The trustees of a scheme are entitled to change the underlying factors used to calculate a members’ benefits in accordance with the deed and rules of the particular scheme and legislation. Scheme trustees have to take into account the funding position of the scheme, changes in economic conditions and other matters. In this instance, the change in assumption concerning future rates of inflation negatively affected Mrs Y. However, members are only entitled to pension benefits, as determined by the Scheme’s Trust Deed and Rules and current legislation.
20. The Trustee is permitted to change the underlying pension benefit factors, and the Trustee has acted within its powers vested in it by the Trust Deed and Rules. This flexibility is partially to accommodate for any changes in legislation or inflation rate, such as in this case.
21. I note that Mrs Y believes the Trustee does not have the right to make a blanket statement about amending the factors. For the reasons explained, I disagree. Mrs Y has also mentioned how social media companies are using this argument as well. I do not find this comparable and thus relevant, as benefiting from using someone’s personal data, and amending benefit calculations due to external factors, are completely different.
22. Having reviewed the information provided to Mrs Y, I consider that it was clearly stated that the quotation received in September 2015 was merely indicative of the benefits she might receive if she chose to claim them on 1 November 2015. The document explained that the figures were not guaranteed and may be subject to a recalculation.
23. I appreciate that Mrs Y had problems with the accuracy of her entitlement in the past, and that the amounts she originally received from the Trustee in February 2016 were incorrect. However, Mrs Y has explained that this does not form part of the dispute, other than it was another reason for taking her benefits early. Therefore, I will not

comment further on what appears to be an administrative error, except to take into account that it had affected Mrs Y's confidence of the way in which the Scheme was administered. In respect of the substantive complaint, I find that the figures were subject to change and that the Trustee was entitled to alter them.

24. I note that the Trustee has said it will change its internal procedures because of what has happened, but this does not amount to an admission of a mistake on its part. Additionally, as I do not find that there has been an error in this respect, I am not making an award for financial or non-financial loss. Even if I were to consider making such an award, and I may have taken into account the mistake made by the Trustee in calculating her actual reckonable service, it would not have been more than the £500 already offered by the Trustee. So, if Mrs Y would like to accept the £500 award offered to her, she should contact the Trustee directly.
25. I note that Mrs Y has said she did not need to take the pension benefits at that time. However, I do not find this to be a persuasive argument because, despite Mrs Y having no imminent need for the benefits, she decided to take her pension early when it would be subject to an actuarial reduction. So, I am unable to conclude, on the balance of probabilities, that Mrs Y would have acted differently. There was also no guarantee of what the factors would have been, or that Mrs Y would have been entitled to greater pension benefits had she remained in the Scheme for a while longer, unless she remained in the Scheme until her normal retirement age, in which case there would have been no actuarial reduction.
26. Therefore, I do not uphold Mrs Y's complaint.

Anthony Arter

Pensions Ombudsman
8 August 2018