

Ombudsman's Determination

Applicant	Mr N
Scheme	HSBC Bank (UK) Pension Scheme (the Scheme)
Respondent	HSBC Bank Pension Trust (UK) Limited (the Trustee)

Outcome

1. Mr N'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 shall pay Mr N £500 for significant distress and inconvenience caused.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N is unhappy because the Trustee has applied a reduction to his Scheme benefits.

Background information, including submissions from the parties

4. Mr N accrued benefits under the Charterhouse Group Security Benefits Scheme from 14 March 1985 until 31 January 1994. From 1 April 1989, Mr N was a senior executive and as such he accrued benefits under the senior executive membership category. From 1994 onwards, Mr N was a deferred member.
5. The Charterhouse Group Security Benefits Scheme was later merged with the Scheme, and the Trustee is therefore responsible for Mr N's benefits.
6. In 2016, Mr N enquired about his benefits under the Scheme.
7. The Trustee provided benefit calculations to Mr N which he states are incorrect. In particular, he says the Trustee has reduced his pension (**P**) by a fraction. This fraction is his pensionable service (**N**), divided by the pensionable service he would have accrued had he remained an active member of the Scheme until normal retirement age (**NS**). In other words, the Trustee has calculated his benefits from the Scheme as: $(N/NS) \times P$.
8. Mr N raised a complaint, saying that the N/NS reduction should not be applied.

9. The Trustee initially said that the 1983 Trust Deed and Rules (**the 1983 TDR**), was in force when Mr N became a deferred member, and the N/NS reduction is referred to under Rule 22.
10. Mr N says that the 1983 TDR was amended in 1989 (**the 1989 Amendment**), before he became a deferred member, and that the N/NS reduction was not included.
11. Whilst neither party has a copy of the 1989 Amendment, Mr N has a Scheme guide dated June 1989, and he highlights that this does not mention the N/NS reduction. Instead, under Part 4 of the Scheme guide, the section entitled "Normal Retirement Benefits" states:

"Your pension is based on your pay near retirement. This is a valuable safeguard against inflation.

On retirement at Normal Retirement Date, age 62 (men) or 60 (women), you will receive a pension of 60% of Final Pensionable Salary provided that you have completed at least 20 years of Pensionable Service.

Maximum Pension 60% Final Salary is achieved after 20 years' service.
Accrual rate is 3% p.a."
12. Mr N's final salary immediately before he became a deferred member was £130,000, and he had accrued eight years ten months of pensionable service. As such, he expected his pension from the Scheme to be over £30,000 per annum.
13. The Trustee says that the calculations referred to in the Scheme guide do not apply to Mr N, as he is a deferred member. It says applying the correct formula to his circumstances, Mr N's pension from the Scheme will be £22,607.64. This figure incorporates the N/NS reduction, which is applied to deferred members' benefits.
14. Mr N acknowledges that the Scheme guide does not override the governing Trust Deed and Rules of the Scheme, but argues that in the absence of the 1989 Amendment itself the guide is the closest evidence of what it said. He highlights that the Scheme guide ought to be a document he can rely on, and it does not mention the N/NS reduction.
15. Mr N raised a complaint and the Trustee responded. It said that his pension income was £22,607.64 as per the 1983 TDR. As part of its response, it provided a copy of Rule 22 from the 1983 TDR and confirmed that this was the governing document in force when he left service and became a deferred member of the Scheme.
16. Mr N contested the Trustee's position and requested a copy of the 1989 Amendment. The Trustee provided a full copy of the 1983 TDR in response but otherwise maintained its position. Mr N brought his complaint to our Office, and a formal response to the complaint was requested from the Trustee.
17. As part of its formal response, the Trustee repeated that the 1983 TDR was in force when Mr N left service. However, it also confirmed that the figure of £22,607.64 had

been based on a formula from the 1998 Trust Deed and Rules (**the 1998 TDR**). Mr N subsequently highlighted that the Trustee's responses and calculations were completely inconsistent and he therefore felt his complaint was not being taken seriously at all.

18. Lastly, Mr N has said that he never received annual statements regarding his benefits under the Scheme. Therefore, the information provided in 2016 was the first time he became aware of his forecasted pension. He says he had relied on the Scheme guide for years and made financial decisions based on the pension it indicated he would receive from the Scheme. He complains that, if the Trustee's figures are correct, then he has been provided with misleading documentation and he has relied on this to his detriment.
19. The Trustee has now confirmed that the 1998 TDR is the governing document and Mr N's pension has been calculated correctly in line with Schedule 4 of the Deed.

Adjudicator's Opinion

20. Mr N'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:-
 - The Adjudicator did not believe it was reasonable for Mr N to base his financial planning on a Scheme guide..
 - The Adjudicator was satisfied that the Trustee had calculated Mr N's pension benefits correctly. She noted that the 1998 TDR replaced all preceding TDRs, and Mr N's Scheme benefits had been calculated in accordance with its provisions.
 - The Adjudicator did, however, note that the Trustee had initially told Mr N his benefits had been calculated using the 1983 TDR. This was incorrect and the Adjudicator believed that the inconsistent information provided to Mr N had caused him significant distress and inconvenience. She recommended the Trustee offer Mr N £500 as a result.
21. The Trustee accepted the Adjudicator's Opinion and offered Mr N £500. However, Mr N did not accept the Opinion or the offer, and his complaint was passed to me to consider.
22. In contesting the Opinion, Mr N has raised, among other comments, the following points:-
 - His benefits from the Scheme are lower under the 1998 TDR than the 1989 Amendment. As such, the 1989 Amendment should be followed.
 - He should not suffer a detriment simply because the Trustee cannot produce the 1989 Amendment. The Trustee should have a copy of all Scheme documentation.

- The Trustee has now provided copies of the 1985 and 1995 Scheme guides. Notably, the 1995 Scheme guide refers to the N/NS reduction. As such, it should be inferred that the 1989 Amendment temporarily retracted the N/NS reduction. If it did not, then the 1989 guide would also have referred to it.
23. In responding to Mr N's latest point above, the Trustee has highlighted that the 1985 Scheme guide also did not refer to the N/NS reduction. However, there is no dispute that the N/NS reduction was in force at the time. As such, whether a Scheme guide refers to the N/NS reduction or not, is not conclusive in relation to whether it was in force at the time. Notably, the N/NS reduction was included in all the TDRs and the Trustee knows of no reason why the 1989 Amendment would have temporarily retracted it.
24. The further comments do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

25. The Trustee must calculate Mr N's Scheme benefits in accordance with the relevant rules of the Scheme. The 1998 TDR replaced all previous Scheme rules.
26. The Trustee has sent a detailed and extensive breakdown of the calculation of Mr N's Scheme benefits (as provided to Mr N with the Adjudicator's Opinion). I can see that the calculations are also in accordance with the current Scheme rules, which include the N/NS reduction for deferred members.
27. Mr N has argued that the inclusion of the N/NS reduction in the 1995 and 1998 TDRs is a detrimental modification to the Scheme rules. This is based on the fact that the 1989 Amendment did not include the N/NS reduction. However, I do not find that this provides sufficient evidence that a modification has taken place.
28. Mr N argues that the Trustee ought to be able to provide a copy of the 1989 Amendment, and in the absence of it doing so the 1989 guide should be considered the most accurate reflection of what it said. In considering his proposition, I must weigh up all the evidence provided and reach a decision based on the balance of probabilities.
29. I have considered whether it is likely that the 1989 Amendment retracted the N/NS reduction from the Scheme rules temporarily, and although it is unfortunate that the Trustee does not have a copy of the 1989 Amendment, I do not agree that the absence of any mention of the N/NS reduction in the 1989 guide, means that the 1989 Amendment retracted it. Instead, I agree with the Trustee that it is simply inconclusive. For example, I note that the 1985 guide also did not mention the N/NS reduction, but there is no dispute that it was in force at that time.

30. Furthermore, I note that the 1995 guide, where the N/NS reduction is mentioned, is a longer and more comprehensive guide on the whole. The N/NS reduction is referred to under a section specifically explaining how deferred members' benefits are calculated. The 1985 and 1989 guides are shorter and simpler, and they do not expressly state how deferred members' benefits are calculated.
31. As a result, I believe it more likely than not that the N/NS reduction has always been a part of the Scheme rules. I do not believe there is sufficient evidence to demonstrate that it was temporarily removed by the 1989 Amendment.
32. I have therefore not considered whether the 1995 and 1998 TDRs re-introduced a detrimental modification. As such, I do not believe there is any reason why the Trustee should not calculate Mr N's Scheme benefits in accordance with the 1998 TDR.
33. Notwithstanding the above, I do consider that the Trustee has caused Mr N significant distress and inconvenience, for the same reasons as noted by the Adjudicator.

Directions

34. Within 21 days of the date of this Determination, the Trustee shall pay Mr E £500 for the significant distress and inconvenience he has suffered.

Anthony Arter

Pensions Ombudsman
18 July 2018