PO-23025

Ombudsman's Determination

Applicant	Mrs K
Scheme	HSBC Bank (UK) Pension Scheme (**the Scheme**)
Respondents	HSBC (**HSBC**) HSBC Actuaries and Consultants Ltd (**HSBC A & C Ltd)** HSBC Pension Trust (UK) Ltd (**the Trustee**)

Outcome

1. Mrs K's complaint 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) within 21 days of the date of this Determination, the Trustee shall pay £1,000 to Mrs K, in recognition of the serious distress and inconvenience caused by HSBC A & C Ltd.

Complaint summary

2. Mrs K's complaint is that HSBC A & C Ltd, acting on behalf of the Trustee, provided her with incorrect information about the increases that would apply to her deferred pension between the date she left the Scheme and her retirement. She claims she relied on this incorrect information in planning her retirement and has suffered a financial loss as a result.

Background information, including submissions from the parties

3. On 8 September 1975, Mrs K joined the Midland (post 31/12/74 joiner) section of the Scheme as an employee of HSBC. She left the Scheme on 17 April 1987, with an annual deferred pension of £1,446.09. The Scheme provided defined benefits and was administered by HSBC A & C Ltd, on behalf of the Trustee.

4. In June 1991, Mrs K transferred her deferred pension into a personal pension plan but due to mis-selling issues, it was reinstated in the Scheme in October 2001. Following reinstatement, HSBC A & C Ltd wrote to Mrs K and confirmed that she left the Scheme with an annual deferred pension of £1,383.82, payable at age 60 and that the current value of the reinstated deferred pension was £2,216.18 pa, subject to the Scheme Rules and current pensions legislation (**the October 2001 letter**). It

added that under the Scheme Rules (**the Rules**), the deferred pension would be increased each year, before and after she began to receive it. An extract of the relevant Scheme Rule is set out in the Appendix.

5. On 22 December 2004, Mrs K asked HSBC A & C Ltd for a valuation of her pension because she had not received an annual statement since October 2001. On 24 January 2005, HSBC A & C Ltd provided Mrs K with a statement showing that she had left the Scheme with an annual deferred pension of £1,446.09, payable at age 60, that was increased each year between leaving and retirement and that its current value was £2,516.18 per annum. HSBC A & C Ltd added that deferred benefits statements were only provided on request and further information was available in the members' guide.

6. On 16 November 2006, Mrs K requested a further valuation from HSBC A & C Ltd. Later, in the same month, HSBC A & C Ltd confirmed that she had left the Scheme with a deferred pension of £1,446.09 pa, that would be increased each year between leaving and retirement and its current value was £2,516.18 pa. Mrs K asked HSBC A & C Ltd for an explanation because the value of her benefits had not increased since 24 January 2005, which was over 22 months ago. There is no record of a reply from HSBC A & C Ltd in the correspondence.

7. On 19 November 2007, Mrs K again asked HSBC A & C Ltd for a valuation of her deferred pension, and an explanation of how her benefits would be revalued up to retirement. There is again no record of a reply from HSBC A & C Ltd in the correspondence and on 21 January 2008, Mrs K repeated her request for a valuation and asked HSBC A & C Ltd to send her a statement each year.

8. In February 2008, HSBC A & C Ltd informed Mrs K that the current value of her deferred pension was £2,516.18 pa, payable at age 60 (**the February 2008 Letter**). The 2008 Letter also said:

> "To go part of the way towards protecting the pension against inflation, the pension will be revalued in accordance with the Trust Deed and Rules relevant to your section of the Scheme for the period before it starts to be paid. As this period and the exact amount of the revaluation is not known at the date of leaving, the amount of the revaluation was not included in the leaver's statement. At normal retirement date the amount will also be checked to ensure you receive the minimum increase required by legislation."

9. HSBC A & C Ltd explained that:

> "Under the Trust Deed and Rules of the Scheme, the employer has discretion to revalue the deferred pension by a greater amount than is required by legislation or by the Trust Deed and Rules every year…you should note however that a review [by the employer] does not necessarily mean that a discretionary increase will be granted."

10. On 18 March 2008, (**the March 2008 Letter**), Mrs K told HSBC A & C Ltd that she was attempting to budget and needed to understand what benefits she would receive

when she retired in order to adequately provide for her retirement. She asked for guidelines or actual figures, so that she could have a reasonably accurate forecast of her benefits. She said she understood that her deferred pension was £2,516.18 pa when she left the Scheme and that it would be increased on a yearly basis once in payment. She asked if past figures could be provided, to at least help forecast the present value.

11. On 3 April 2008, HSBC A & C Ltd confirmed that the value of her pension, when she left the Scheme on 17 April 1987, was £1,446.09 per annum, not £2,516.18 per annum and that its current value was £2,516.18 per annum (**the April 2008 Letter**). It added, “Please note that from 2005 HSBC decided not to award the discretionary increase. Your benefits are therefore subject to the statutory increase.” HSBC A & C Ltd also explained in the letter that the Trustee was unable to forecast her benefits at age 60 but, for illustrative proposes, she could apply a 3.1% rate of revaluation to her benefits. Based on this assumption, her annual pension at 60 could be £3,805.95, though HSBC A & C Ltd said, “Please note that this figure is not guaranteed.”

12. On 19 November 2008, Mrs K reminded HSBC A & C Ltd that, in November 2006, she had queried why her deferred pension had not increased since the previous year but had not received a reply. She again asked for an up to date valuation and an explanation of how her pension would be revalued up to retirement. However, there is no record in the correspondence that she received a statement or an explanation.

13. Mrs K requested a further valuation as she approached retirement. On 29 November 2017, a new administrator (**Willis Towers Watson**) provided a statement, with a retirement date of 1 May 2017, that showed her deferred pension was slightly lower than £2,516.18 per annum.

14. Following receipt of the statement from Willis Towers Watson, Mrs K raised a complaint with the Scheme. On 11 January 2018, Willis Towers Watson explained that £2,516.18 per annum was her correct entitlement under the Scheme Rules at age 60 and that HSBC A & C Ltd had made an error in the April 2008 Letter, when it stated that her pension could be £3,805.95 pa. Willis Towers Watson also explained that the statements showing a retirement date of 1 May 2017 contained lower estimates than 2016, because an early retirement reduction applied in the case of retirements before age 60. Willis Towers Watson explained that the value of her deferred pension at age 60 had been the same since 2005 and apologised for any confusion or inconvenience caused.

15. In May 2018, Mrs K received, a retirement statement from Willis Towers Watson, quoting her an annual pension on retirement at age 60 of £2,516.28.

16. Mrs K was not satisfied with the value of her deferred pension and made a complaint under the Scheme’s internal dispute resolution procedure (**IDRP**). She claimed that she was expecting to receive an annual pension of approximately £3,800 when she retired, as set out in the April 2008 Letter. She asserted that she would have made alternative retirement provision, such as transferring to another scheme, if she had

known that the valuation in the April 2008 Letter was incorrect and she would only receive £2,516.18 per annum.

17. On 28 November 2018, the stage one IDRP decision maker rejected Mrs K's complaint, and issued a response that stated as follows:-

- Under the relevant Scheme Rule, a member's deferred pension is calculated as the higher of:

  (a) The value of the pension at date of leaving the Scheme, with statutory revaluation up to age 60; and

  (b) The value of the pension at date of leaving the Scheme, increased by discretionary increases awarded by HSBC up to age 60.

- Until 1 January 2004, HSBC granted discretionary increases on all pensions but decided not to award such bonuses from 1 January 2005, and had made the same decision every year since.

- In Mrs K's case, the value of her annual deferred pension was £2,471.31 when calculated with statutory revaluation from her leaving date to age 60 but increased to £2,516.18 per annum when calculated with discretionary increases that were awarded from her leaving date up to 1 January 2004; so the higher pension of £2,516.18 per annum was payable at age 60. This was calculated in 2005 and had not increased since that date and so appeared frozen. This situation arose because statutory revaluation (on the excess over the guaranteed minimum pension (**GMP**) was not awarded on pensionable service before 1985. So, the overall value of the pension that was calculated with statutory revaluation from 1985 to her retirement date, and not from 1976, was lower than that calculated from 1976 to 2004, with discretionary increases.

- In the April 2008 Letter, HSBC A & C Ltd had led Mrs K to believe that she would receive a higher pension at age 60 and it had apologised to her. HSBC A & C Ltd had accepted that it did imply that her pension would increase up to age 60 though it had warned her that this was not guaranteed. It accepted that she had been expecting a higher pension at age 60 than she was entitled to and offered her £500 for the significant distress and inconvenience it had caused.

18. Mrs K appealed under the second stage of the IDRP. On 24 March 2019, the second stage decision maker rejected her appeal and, in a report, stated that:-

- She could only receive the amount of benefits she was entitled to under the Scheme Rules and that was £2,516.18 pa.

- Although the information in the 2008 Letter was unclear, it was not incorrect. It was not as detailed as it could have been but the figures were illustrative and not guaranteed.

- Mrs K had not shown that she had made irrevocable decisions relying on the information and had not suffered a financial loss, as a result. She had said she would have made additional pension provision if she had known the correct figures, but she did not explain how she would have financed this.

19. As part of her submissions, Mrs K said that her pension should be calculated in line with the April 2008 Letter, because she had relied on it and she considered that the Trustee had changed the Rules retrospectively.

20. In response to Mrs K's complaint, the Trustee made the following comments:-

    - The information provided in the April 2008 Letter was not incorrect and the February 2008 Letter had properly explained the valuation of her deferred pension.

    - The April 2008 Letter stated that the figures were not guaranteed and this should have put her on notice that her pension would be calculated on the statutory basis if HSBC decided not to award any more discretionary increases.

    - Mrs K should have queried the lack of increase in her pension from 2005 to 2008 and it was not reasonable for her to have relied on the April 2008 Letter without making any additional pension provision.

    - It questioned why she had an expectation that her pension would increase in future years, as she should have been aware that her pension had not received increases in previous years from the 2005 to 2008 statements.

    - It accepted that the information provided in the April 2008 Letter was not as clear as it might have been. So, it confirmed that the offer of £500 for the distress and inconvenience caused was still open to Mrs K.

21. The Trustee also provided the following documentation about the Scheme:-

    - The Scheme Rules (Part 6) that provide that any increases to deferred pensions shall be applied to satisfy the statutory requirements "unless and to the extent that HSBC otherwise determines".

    - Scheme booklets dated 1988, 1990, 1994 and 2000 that stated: "Your deferred pension is increased every year until it starts to be paid". A Scheme booklet dated September 2009 stated: "To go part of the way towards protecting your pension against the impact of inflation, it will then be re-valued for the period before it starts to be paid."

    - A member newsletter from 2014 and a booklet entitled "Increases to your deferred pension" that explained how deferred pensions were calculated and that HSBC had not awarded discretionary increases since 2004 though it considered each year if it would do so.

22. Following receipt of the Trustee’s response, Mrs K made some additional comments. In summary, she asserted:-

- The February 2008 Letter was unclear and incorrectly stated that her pension would be protected against inflation and would increase each year, before and after retirement. It was issued four years after HSBC ended discretionary increases and she should have been informed of HSBC’s decision earlier, in 2004 or 2005 and warned of the effect of this decision.

- On several occasions, HSBC A & C Ltd had told that her pension would increase before and after retirement, without disclaimer, so she had a reasonable expectation that her benefits would increase. She should have been clearly informed that her pension benefits would be frozen from 2004.

- HSBC A & C Ltd had failed in its duty of care to her as an employee of HSBC, who was not a pension professional. Important information affecting the largest investment of her life should have been given unequivocally by HSBC A & C Ltd.

- She had not asked HSBC A & C Ltd for a valuation of her deferred pension between 2008 and 2018 because the April 2008 Letter stated, "We are unable to forecast your benefits at 60 as future years’ factors are not known". The information given by HSBC A & C Ltd was unclear and due to the wording used, led her to believe that any future increases would be added at retirement. The illustration of her pension revalued at 3.1% per annum also reinforced this.

- She had relied on the information provided by HSBC A & C Ltd when she had decided not to transfer her deferred pension from the Scheme to her local authority pension scheme (**the LGPS**). The LGPS’ administrator had provided assumptions of future growth that were similar to those given by HSBC A & C Ltd. Based on this, she had decided against the transfer but her pension had not increased as promised and had been effectively frozen in the Scheme at a value of £2,516.18 since 2004.

- Her pension was now worth 50% less than she had been led to expect. Provision for retirement was one of the most important financial decisions of her life and HSBC A & C Ltd had frustrated this with mistakes and unclear information. She decided not to take a lump sum from her pension because it was considerably less than expected and her long-term plans to travel in retirement had also been restricted.

- She rejected the offer of £500 from the Trustee as “an insult” because she had planned her retirement for over 30 years, meticulously keeping records and had suffered extreme distress because her pension was so much less than she had expected at age 60. She stressed that the whole matter was proving to be extremely frustrating and upsetting.

Adjudicator’s Opinion

23. Mrs K’s complaint was considered by one of our Adjudicators who upheld her complaint in part. The Adjudicator’s findings are summarised below:-

- HSBC A & C Ltd had supplied information to Mrs K that was misleading and had provided inaccurate figures, in the April 2008 Letter. It was not sufficient to say that the figures were not guaranteed, as Mrs K had specifically requested a forecast of her benefits, so that she could plan her retirement.

- The information was also unclear in the booklets dated 1988,1990,1994 and 2000, which stated that “Your deferred pension is increased every year until it starts to be paid.” A full explanation of this and the effect of HSBC ceasing to pay a discretionary bonus was only provided in the 2014 booklet.

- In the Adjudicator’s view, Mrs K had relied on this misleading information and it was reasonable for her to do so because, on 4 December 2006, she had asked for advice on the pension valuation set out in the letter of 28 November 2006, as the figures were the same as in the previous statement of 24 January 2005. She had also previously been provided with an incorrect value of her pension in the October 2001 Letter.

- In the Adjudicator’s opinion, in the March 2008 Letter, Mrs K had asked HSBC A & C Ltd about her pension because she was attempting to budget and understand what benefits she could receive when she retired, in order to adequately provide for her financial needs. She also asked for guidelines or actual figures for a reasonably accurate forecast of her benefit.

- In the Adjudicator’s view, Mrs K had been informed that her pension would be protected against inflation and that its current value was £2,516.18 per annum. She was also told that the amount would be increased each year between leaving and retirement. It was only in 2018 that she was specifically informed that her pension had been increased by discretionary bonuses until 1 January 2004 but was effectively frozen from that date.

- The Adjudicator noted Mrs K’s assertion that the April 2008 Letter informed her that future revaluations would not be known or applied until age 60 and, for that reason, she had not asked HSBC A & C Ltd for valuations from 2008 to 2017. In the Adjudicator’s opinion, it was reasonable for her to have acted in this way.

- However, it was also the Adjudicator’s view, that Mrs K had not shown that she had suffered a financial loss as a result of an irreversible decision she made, in reliance on the information she had received from HSBC A & C Ltd in April 2008. Mrs K claimed that she had decided not to transfer her benefits to the LGPS, relying on the information provided by HSBC A & C Ltd, that did not clearly explain about increases to her pension in deferment. However, in the Adjudicator’s view, the fact that the April 2008 Letter gave an assumed illustration of 3.1% p.a. for future increases to her pension and the LGPS indicated similar growth was not sufficient to justify this claim.

- In the Adjudicator's view, Mrs K had suffered serious distress and inconvenience as a result of HSBC A & C Ltd's actions and an award of £1,000 was appropriate to recognise this.

24. Mrs K did not accept the Adjudicator's Opinion and, in response, provided evidence of the financial loss that she had suffered. She provided a letter from the administrator of the LGPS dated 9 May 2005, (**the May 2005 Letter**) evidencing that she could have purchased " added years", as an active member of the LGPS.

25. She also supplied a letter dated 11 October 2019 (**the October 2019 Letter**), from the administrator of the LGPS confirming that if she had transferred her pension to the LGPS in 2004, she was an active member at the time, she could have purchased an additional defined benefit pension based on "added years". It noted that this pension would have increased in line with her annual salary increases and then each April, once in payment.

26. Mrs K explained that the option to purchase additional years ended in April 2008, and on 9 March 2012, she left the LGPS. Mrs K claimed that this showed she suffered a considerable financial penalty by relying on the incorrect statements provided by HSBC A & C Ltd and not buying additional years in the LGPS in 2005 or transferring her pension to the LGPS before she left in 2012.

27. Mrs K also said:

> "I was continually advised by HSBC A & C Ltd that my benefits would rise each and every year and even when considering the static years, I was reassured and advised of a yearly increase of 3.1% pa. It is not only the April 2008 Letter that was incorrect and misleading but also those issued on 8 October 2001, 24 January 2005, 28 November 2006, and 8 February 2008. I have provided the May 2005 Letter to show that I could have purchased 3 years 252 days additional service in 2008 (this post-dates the supply of incorrect information provided by HSBC A & C Ltd on several occasions). I had been incorrectly informed on several occasions that "the amount of pension is increased each year, both before and after you begin to receive it". If correct information had been provided, I would have, without doubt, transferred my pension from a "Frozen fund" to one that continued to increase annually."

28. In response, the Trustee confirmed its view that HSBC A & C Ltd had not provided Mrs K with incorrect or misleading information but even if it had, it would not have been reasonable for her to make any decisions, based on this, that resulted in financial loss. It gave the following reasons:-

- Throughout 2006, 2007 and 2008, Mrs K received correspondence from Willis Towers Watson which showed the value of her pension had stayed the same.

Therefore, Mrs K ought to have been aware that her pension had not been increasing every year. The February 2008 Letter correctly explained that the pension was not guaranteed and that, at normal retirement age, her benefit would be checked to ensure she received the minimum increase required by legislation and whether a discretionary increase would be granted.

- It was not reasonable for Mrs K to have relied on the figures provided in the April 2008 Letter as a forecast of her benefits at age 60. The April 2008 Letter correctly confirmed that no discretionary increases had been awarded since January 2004 and that her benefits were subject to statutory increases from January 2005. It also clearly stated, "we are unable to forecast your benefits at 60 as future years factors are unknown" and gave an example, "for illustrative purposes" based on an "assumption" of the level of increases.

- The April 2008 Letter was received three years after the May 2005 Letter so she could not have relied on it in deciding not to transfer her benefits out of the Scheme in 2008.

- There was an error in the October 2001 Letter which it had not previously been aware of. It explained that the pension at her date of leaving had received a discretionary increase twice and the correct figure at the date of leaving was £1,383.82, not £1,446.09. The Trustee said it would nevertheless calculate her pension on the basis that it was £1,446.09, at date of leaving as part of the settlement of her complaint.

- Mrs K had not provided any evidence of financial loss. She claimed that she had relied on the error in the 2008 Letter, but in 2008 she still had the option to purchase additional service in the LGPS. She had also not shown how much additional service, she could have purchased in 2008 or her estimated loss, based on capital values of the pension in both schemes, or that she is now unable to purchase additional service.

29. As neither party accepted the Adjudicator's Opinion, the complaint was passed to me to consider. I agree with the Adjudicator's Opinion and will therefore only respond to the key points in the submissions made by Mrs K and the Trustee.

Ombudsman's decision

30. Mrs K's complaint is that HSBC A & C Ltd incorrectly informed her, in the 2008 Letter, that her deferred pension would increase each year, by about 3% per annum and amount to approximately £3,800 per annum, at age 60. She claims that other statements provided from 2004 onwards incorrectly stated that her deferred pension would increase up to retirement, when in reality, it was frozen at £2,516.18 pa. Mrs K claims that she organised her finances for retirement, relying on this incorrect information and has suffered financial loss, as a result.

31. The Trustee contends that HSBC A & C Ltd, acting on its behalf, provided Mrs K with information that was unclear but correct and not misleading and HSBC A & C Ltd had informed her, in the 2008 Letter, that a pension of £3,800 pa was not guaranteed.

32. I find that the Trustee has correctly calculated Mrs K's pension entitlement under the Scheme Rules. The relevant Rule provides for a deferred pension to be revalued until retirement by the higher of discretionary increases awarded by HSBC and statutory revaluation. I accept that HSBC ceased to award discretionary increases from 1 January 2004 onwards, and as statutory revaluation did not apply to her pre 1985 service, her pension was effectively frozen at £2,516.18 pa until she reached age 60. Mrs K has also gained from an error in awarding an additional discretionary increase in 2001, which the Trustee has accepted. I find that the Trustee has correctly increased Mrs K's pension in accordance with statutory requirements and she is not entitled to a higher pension under the Scheme Rules.

33. However, I consider that the information supplied by HSBC A & C Ltd in the 2001 Letter, the 2008 Letter and benefit statements, provided from 2004 to 2017, were unclear and misleading. The 2008 Letter states "Please note that from 2005 HSBC decided not to award the discretionary increase" but, despite her requests, HSBC A & C Ltd did not explain how this affected the calculation of her deferred pension until 2014 when it provided clear examples. I consider that this amounted to maladministration by HSBC A & C Ltd, acting on behalf of the Trustee.

34. In addition, Mrs K told HSBC A & C Ltd in the March 2008 Letter that she needed to understand what benefits she would receive when she retired in order to adequately provide for her retirement. Therefore, I consider that HSBC A & C Ltd ought to have known that Mrs K would rely on the information it sent her, in planning her retirement. However, I do not find that Mrs K has provided clear evidence that she acted to her detriment and incurred a financial loss, as a result of her reliance on the misleading information she received from HSBC A & C Ltd.

35. Mrs K claims that the May 2005 Letter from the administrator of the LGPS, is evidence that she considered transferring her pension to the LGPS in 2005 in order to purchase "additional years" of pensionable service. She also claims that the administrator of the LGPS confirmed this in the October 2019 Letter. However, the 2005 Letter does not make any reference to transferring benefits into the LGPS, rather it provided Mrs K with information concerning the purchase of additional service in the LGPS and the costs of doing so.

36. Without transferring her benefits from the Scheme to the LGPS, Mrs K could still have bought "additional years" service in the LGPS. However, she did not do so. In my view, on the balance of probabilities, costs may have been a factor in her decision not to purchase additional service in the LGPS. Therefore, I am unable to conclude definitively that she decided not to purchase "additional years" service in the LGPS, because of the information she had received from HSBC A & C Ltd, in April 2008.

37. Mrs K also claims that the incorrect information and valuation provided by HSBC A & C Ltd, in the April 2008 Letter, influenced her decision not to pursue a transfer to the LGPS at that time and she has lost the benefit of a higher pension. However, I find that the estimated figure of £3,805 per annum in the April 2008 Letter was never guaranteed and was stated to be for illustrative purposes only. I find that it was not reasonable for Mrs K to have relied on the figure, in deciding not to transfer her benefits in the Scheme to the LGPS in 2008.

38. Mrs K provided evidence that she contacted HSBC A & C Ltd in 2004, and, on the balance of probabilities, I find that she would have had the information she received in 2004 in mind in 2008 and beyond. However, there is no evidence that she investigated a transfer or requested actual quotations from the LGPS' administrator, and that she decided not to transfer or buy "additional years" because of the information she had previously received from HSBC A & C Ltd.

39. I am not persuaded, on the evidence provided, that if Mrs K had been clearly informed that her deferred pension would not increase beyond 2004, she would have transferred her deferred benefits to the LGPS, or requested a further quotation to purchase "added years". I also do not find that she has shown what her potential loss would have been. I do not uphold this part of her complaint.

40. In respect of HSBC A & C Ltd's maladministration, I find that it has caused Mrs K serious distress and inconvenience as the misleading information has resulted in restricting her long-term plans to travel in retirement and has resulted in a situation that has become extremely frustrating and upsetting for her.

41. I uphold Mrs K's complaint in part.

Directions

42. Within 21 days of the date of this Determination, the Trustee shall pay £1,000 to Mrs K, in recognition of the serious distress and inconvenience she has suffered.

Anthony Arter

Pensions Ombudsman
10 December 2019

Appendix

“Part 6 General Rules

Increases of pensions…in payment

1(4) Once in every calendar year at a date chosen by HSBC the said pensons…shall.be increased by 4% or if less by the percentage rise in the index over the stated period.

1(5) Any larger increase in benefits from the said date partly in exercise of the discretionary power set out in the trust deed shall be deemed to satisfy the foregoing provisions and as to the first 4% to be the increase under this rule and as to the balance the exercise of the said discretionary power.

Revaluation of deferred pensions

2(2) Unless and to the extent that HSBC otherwise determines any balance of the aggregate pension increases under the scheme not so applied shall if a deferred pension is also to be revalued under schedule 1A of the Pensions Act be treated as satisfying pro tanto any requirement of that section to provide an increased pension.”