

Ombudsman's Determination

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

Outcome

1. I do not uphold Mr L'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. Mr L has complained that following changes to the Scheme, he decided to pay additional contributions to allow him to take an unreduced pension at age 60. Prior to his Normal Retirement Age (**NRA**), Mr L was made redundant, so decided to utilise HSBC's redundancy policy in order to receive an enhanced early retirement pension. Mr L complains that he did not benefit from protecting his option to take an unreduced pension at 60; so, his contributions, amounting to £10,735.27, should be refunded.

Background information, including submissions from the parties

4. In January 1993, Mr L joined HSBC and became a member of the Scheme, which was a defined benefit (**DB**) arrangement.
5. In 2009, following consultation with members, changes were made to the Scheme. In particular, the NRA was increased from age 60 to age 65. To lessen the impact of these changes, members were given the option to pay additional contributions to protect the option of drawing an unreduced pension from age 60. Mr L took up this option, making payments totalling £10,735.27.
6. In December 2017, Mr L was told that he would be made redundant. Mr L was provided with three redundancy/pension options:
 1. An immediate unreduced DB pension and a reduced redundancy amount;
 2. An immediate reduced DB pension and a full redundancy amount; or
 3. A deferred DB pension and a full redundancy amount.

7. On 16 January 2018, the Trustee wrote to Mr L to provide information on the Scheme benefits that would be available to him upon redundancy.
8. Before Mr L decided which redundancy option to take, he asked if he would receive a full refund of his additional contributions if he elected option 1. The Trustee confirmed that it would not refund the contributions, but Mr L still elected to receive an unreduced pension under option 1.
9. The Trustee has said that options 2 and 3 would have been calculated with reference to Mr L drawing an unreduced pension from the age of 60.
10. On 7 February 2018, Mr L complained to the Trustee. He complained that he has received no benefit from making additional contributions to the Scheme, so the contributions should be refunded. He also considers that the Trustee should have made it clear in 2009 that, in the event of redundancy, his additional contributions would be forfeited.
11. On 27 March 2018, the Trustee declined the complaint. It explained that there was no provision to refund the contributions. The Trustee said that it would only consider compensation where Mr L had received incorrect information. It said that HSBC uploaded a Questions and Answers (**Q&A**) document to its intranet on 22 August 2008 and this included the following information:

“Question: Currently, if an employee is over 50 and made redundant they can request to take their pension early without any clawback for years taken early. Is this still the case under the new proposal?”

Answer: The terms of the Security of Employment Policy (**SEP**) have applied since November 2006; the proposals do not change this policy.”
12. The Trustee concluded that it did not consider that misleading information was provided as to the terms on which its redundancy policy would operate.
13. On 29 March 2018, Mr L appealed the Trustee’s decision. He reiterated his complaint that he was not provided with clear information. Mr L conceded that he was aware of the redundancy policy but felt that the Trustee should have made it clear that, in the event of taking benefits early due to redundancy, the additional contributions would be forfeited. Mr L contends that it was reasonable to assume that the contributions would be refunded as the contributions were covering the prospect of him voluntarily retiring at 60, an option he says was no longer available.
14. On 24 May 2018, the Trustee said that it could not uphold the complaint. It said that the consultation process made it clear that the changes to the Scheme, introduced in 2009, did not alter the policy that enabled employees over 50, who were made redundant, to request an immediate unreduced DB pension. It also commented that there was no evidence to suggest that Mr L was told that a refund of his contributions would be made in the event of redundancy.

15. On 24 September 2018, the Trustee provided further comments on the complaint. It said that the Trust Deed and Rules (**the Rules**) do not allow for a refund of contributions and there is no legal basis for determining that Mr L should be paid any compensation. The Trustee cited the case of *Tito v Waddell* (**Tito**) saying that this judgment shows that a Trustee does not owe a duty to advise scheme members. It also argued that there had not been a negligent misstatement, so there is no basis in law where it is required to pay Mr L compensation to reflect the additional contributions paid.
16. On 30 October 2018, Mr L responded to the Trustee's comments. He reasserted that had he known that his contributions would have been forfeited, he would not have made them.

Adjudicator's Opinion

17. Mr L'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 Trustee did not have an obligation to inform Mr L that he would forfeit his additional contributions. This follows various precedents, including the case of *Tito*, where Trustees were not found to have a duty to "proffer information and advice to their beneficiaries".
 - The Adjudicator also evaluated HSBC's Q&A document. The Q&A document said that HSBC would continue to allow employees who were made redundant after 50 to be able to take their pension early without any clawback. Mr L felt that this document did not go far enough, and the Trustee should have made Members aware that contributions would be forfeited when Members take their pensions early. The Adjudicator did not believe the information provided, although partial, was incorrect. It follows that the Adjudicator did not agree that there had been a negligent misstatement.
 - Even if there had been a negligent misstatement, the Adjudicator did not believe there had been a financial loss. In order for Mr L to prove financial loss, he would have to show that he relied on the information when deciding to make additional contributions.
 - Mr L was 44 when he decided to make additional contributions, so the redundancy policy would not have been available for another six years. As the redundancy policy was an employer's policy there would have been no guarantee that it would have remained available to him once he reached the age of 50.
 - Furthermore, in Mr L's letter of 30 October 2018, he told this office that he "assumed he would have remain[ed] within HSBC's employment contributing until age 60." With the assumption of job security in mind, the Adjudicator did not accept

Mr L's argument that he would have given significant consideration to the prospect of redundancy when deciding whether to make additional contributions.

- The Adjudicator did not believe the lack of detail in the Q&A amounted to negligent misstatement. Even if he had, he did not think that Mr L would be able to successfully argue that, had he been provided with the full information, he would not have made the contributions.
18. Mr L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
19. Mr L provided his further comments which do not change the outcome. Mr L has argued that:-
- the Trustee should have made it clear that the additional contributions would not be refunded. He says that this would not have constituted advice, merely a risk warning. Mr L feels that such a risk warning should be prominently highlighted, as it is when you apply for other, non-advised, financial products.
 - it is unreasonable for the Trustee to suggest that all Members who made additional contributions should have pro-actively written to the Trustee for confirmation of how the contributions would be treated in the event of redundancy.
 - he would have given weight to the prospect of redundancy when he was considering making additional contributions. Mr L said that he would not have paid additional contributions for any benefit that he did not consider he would benefit from. He said that the failure to outline the risk to his additional contributions, had a significant impact on the decision he made.
20. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr L for completeness.

Ombudsman's decision

21. Mr L has complained that he has not received any benefits from his additional contributions. Mr L paid £10,735.27 to ensure that he was able to draw an unreduced pension from the age of 60. He contends that he would not have made this contribution had he known that it would not be refunded in the event of redundancy.
22. The Trustee has a duty to administer the Scheme in accordance with the Rules. There is no provision within the Rules that says that Members should be refunded their contributions in the event of redundancy. Mr L has accepted this but argued that it was the Trustee's responsibility to make him aware that, in the event of redundancy, he would not receive a refund of contributions. The Trustee responded citing the case of Tito, where one of the judges held:-

“Trustees, and doubtless other persons in a fiduciary position, are under a duty to answer inquiries by the beneficiaries about the trust property. But this is a far remove from saying that trustees have a duty to proffer information and advice to their beneficiaries.”

23. Mr L has said that he was not expecting advice as to what would happen in the event of redundancy; he felt that the minimum that should be offered was a risk warning to inform him that his contributions would be forfeited. I agree that it would have been useful for the Trustee to let Members know that, following a redundancy, additional contributions would not be refunded. However, I do not expect the Trustee to outline every eventuality and, as such, do not believe it has failed to meet its duty to Mr L.
24. On 22 August 2008, HSBC provided a Q&A document. I have reviewed the relevant question regarding whether HSBC would continue to allow employees, who were made redundant after 50, to be able to take their pension early without any clawback. It is clear that the document explained that the redundancy policy would remain in place. Mr L has argued that the Trustee should have taken this opportunity to explain that any additional contributions would be forfeited when the Member takes an early pension as a result of redundancy. Mr L has argued that he was not in receipt of all relevant facts, so he should not be viewed as a “market counterparty”. Mr L says that the omission of further details amounts to a negligent misstatement and this has left him to suffer financial loss.
25. I cannot agree that this omission amounts to negligent misstatement. The information provided was correct. As I have already stated, the Trustee cannot be expected to outline all eventualities. Mr L was provided with a Q&A document but it is unlikely to be an exhaustive list of questions and answers. I believe it was Mr L’s responsibility to request further information regarding how redundancy would affect the additional contributions.
26. Even if I were to find that the Trustee had issued a negligent misstatement, Mr L would have to show that he suffered financial loss as a result of the misstatement. In order to do so, Mr L would have to show that, had he been provided with further information, he would not have made the additional contributions, which, I do not find, on the balance of probability, to be likely.
27. Mr L was 44 at the time he made additional contributions. It follows that he would not have been able to benefit from the redundancy policy for another 6 years. Had he been made redundant prior to the age of 50, he would still have benefitted from his additional contributions, as he would have been able to take his benefits, without reduction, at age 60. What is more, the redundancy policy was HSBC’s policy, so could have been withdrawn, without Trustee consent, at any point.
28. Mr L has also told this office that he “assumed he would have remain[ed] within HSBC’s employment contributing [to the Scheme] until age 60.” Mr L held the view that his employment was secure, so I cannot find that he would have given significant

weight to the prospect of redundancy when he was deciding whether to make the additional contributions.

29. Whilst I believe that Mr L was not aware that he would forfeit his contributions, I do not agree that they should be refunded although I do understand why he feels that this outcome is unfair. The Rules of the Scheme do not allow for a refund of contributions. The Trustee has correctly followed the Rules and I do not find that the Trustee has failed in its duty of care to Mr L.
30. Therefore, I do not uphold Mr L's complaint.

Anthony Arter

Pensions Ombudsman
24 January 2019