

## Ombudsman's Determination

Applicant	Mr E
Scheme	HSBC Bank (UK) Pension Scheme ( <b>the Scheme</b> )
Respondent	HSBC Bank Pension Trust (UK) Limited ( <b>the Trust</b> )

## Outcome

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

## Complaint summary

3. Mr E complains that the Trust wrongly decided not to change its pension payment date from 1 April to 6 April 2014 for the Gibbs Section of the Scheme following the introduction of Real Time Information (**RTI**) by H M Revenue and Customs (**HMRC**) and, as a result, he has had to pay an additional £582.30 income tax during the tax year ended 5 April 2014.

## Background information, including submissions from the parties

4. Mr E is a pensioner in the Gibbs Section of the Scheme. The Rules of the Gibbs Section stipulates that pensions are paid on the first day of each month.
5. In August 2013, the Chief Operating Officer of the Trust notified Mr E that HMRC had introduced RTI at the beginning of the 2013/14 tax year and the pension payment due to him on 1 April 2014 would now be taxed as income received in the 2013/14 tax year (whereas previously it would have been taxed in the 2014/15 tax year). As a result of this change, there would consequently be 13 monthly tax payments for Mr E during the 2013/14 tax year.
6. The Trust says that its Scheme Executive (which is responsible for the day-to-day running of the Scheme on its behalf) had subsequently:
  - identified 337 pensioners (out of 601) belonging to sections of the Scheme which paid pensions on the first day of the month who could be adversely affected by the change;

- been unable to determine the extent to which these pensioners would be affected financially because this was dependent on individual circumstances and factors outside the Scheme; and
- after careful consideration, decided not to propose to the Trust that the Scheme Rules be changed to move the pension date for the affected sections

The Trust says that there is no requirement for it to consider the impact of HMRC changes on Scheme members and delegated consideration of the introduction of RTI for the membership as a whole to the Scheme Executive. In its view, the decision made by the Scheme Executive not to refer the matter to the Trust to consider a change in payment date was appropriate in the circumstances.

7. Mr E complained to the Scheme administrators, Towers Watson, on 3 April 2014 that he had been unfairly taxed £582.30 on his monthly pension received on 1 April from the Scheme. He contended that if the Trust had changed the payment date to 6 April by amending the Scheme Rules, the additional tax payment could have been avoided.
8. He was dissatisfied with Towers Watson's responses to his complaint and in its letter dated 13 June 2014, the Scheme Executive informed him that:
  - a) it had discussed the impact of the introduction of RTI with tax experts;
  - b) it recognised the potential for differing views amongst members to this change by HMRC and any potential rule amendment that the Trust could make in response to this; and
  - c) in the interests of treating all members fairly, and having considered the time and expense involved in making such a change, it decided not to recommend to the Trust that the Scheme Rules be changed
9. Mr E complained under the Scheme's Internal Dispute Resolution in October 2014.
10. The Trust considered the complaint raised by Mr E at its meeting held on 16 December 2014. It reviewed the key issues including (i) background; (ii) reasons for the decision taken by the Scheme Executive to retain the existing payment date (iii) pensioners impacted and (iv) the legal view. It did not uphold Mr E's complaint because it agreed with the decision made by the Scheme Executive. The Trust said that it took into account the following factors before making its own decision:
  - a. the Scheme Rules govern when pensions are paid;
  - b. it has the discretion to change the date on when pensions are paid but discretion should be exercised appropriately;
  - c. it does not have an obligation to assist members manage their individual tax affairs;

- d. it could be argued that changing the pension payment date as a result of the introduction of RTI was not a proper exercise of its powers,
  - e. 358 pensioners have paid additional tax as a result of HMRC's introduction of RTI;
  - f. if the Scheme Rules were changed, all 601 pensioners would then have to wait a few more days for payment of their pensions (including the 243 who did not incur any additional tax); and
  - g. many pensioners had standing orders/direct debits set up just after payment of their pension and a change of the pension payment date would impact on such arrangements
11. Mr E's complaint was rejected at both stages of the Scheme's IDRP. At Stage Two, the Appeals & Discretions Committee of the Trustee (**the Committee**) concluded that the Trust had acted properly in reaching a decision (to endorse the conclusion of the Scheme Executive) which was entirely reasonable given the circumstances.
12. Mr E says that:
- the Trust ignored the advice given by its appointed advisers to change the pension payment date to 6 April 2014;
  - the Trust have admitted that a majority of pensioners belonging to sections of the Scheme which paid pensions on the first day of the month have been adversely affected;
  - there is no evidence that a change to the pension payment date would have impacted on pensioners' standing orders which in any case "could have been easily overcome"; and
  - the Trust ignored his legitimate expectations that his financial losses would be considered

## Adjudicator's Opinion

13. Mr E's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trust. The Adjudicator's findings are summarised briefly below:
- The Trust had properly considered all the relevant information available at the time and the decision made was therefore within the bounds of reasonableness and cannot be said to be perverse;
  - the available evidence demonstrates that the Trust had asked the right questions before considering all the relevant factors in reaching its decision; and

- the tax deducted from Mr E's pension has been properly calculated and paid in accordance with HMRC's requirements under RTI

14. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr E for completeness.

### **Ombudsman's decision**

15. The impact of the introduction of RTI by HMRC on the Scheme members affected a single month's pension payment to those being paid on the first day of each month.
16. After careful consideration, the Scheme Executive decided not to propose to the Trust that the Scheme Rules should be changed to move the pension date for the affected sections.
17. When considering how discretion has been exercised by the Trust, I will generally look at whether:
- the correct questions have been asked;
  - the applicable scheme rules or regulations have been correctly interpreted;
  - all relevant but no irrelevant factors have been taken into account; and
  - the decision arrived at must not be perverse, i.e. a decision that no reasonable body would make
18. I will not generally interfere in the exercise of a discretion unless I consider the decision process was in some way flawed or the decision reached was perverse, that is, one that no reasonable body faced with the same evidence would have taken. Providing the Trust has acted in accordance with the above principles and within the powers given to them by the Scheme Rules, I cannot overturn the exercise of a discretion merely because I might have acted differently.
19. It is my opinion that the Trust did reach its decision not to change its pension payment date from 1 April to 6 April 2014 following the introduction of RTI by HMRC in accordance with the above principles and within the powers given to them by the Scheme Rules.
20. Mr E says that the Trust rejected the advice which their appointed advisers gave to change the pension payment date. That was their prerogative though. The Trust and not their advisers were the decision makers and it was reasonable for them to prefer their own opinion.
21. Although I fully sympathise with Mr E's unfortunate position, I do not consider that it was the result of any maladministration on the part of the Trust. The tax deducted from Mr E's pension has been properly calculated and paid in accordance with HMRC's requirements under RTI.

**PO-6567**

22. Therefore, I do not uphold Mr E's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
27 September 2016