

## Ombudsman's Determination

Applicant	Mr N
Scheme	Lloyds TSB Group Pension Scheme No.2 ( <b>the Scheme</b> )
Respondent	Lloyds Banking Group Plc ( <b>the Bank</b> )

## Outcome

1. I do not uphold Mr N's complaint and no further action is required by the Bank.

## Complaint summary

2. Mr N has complained that the payment of his contractual pension promise should be made by way of a tax-free lump sum and not by way of annual pension.

## Background information, including submissions from the parties

3. From 1 June 2002 to 12 January 2004, Mr N was employed by the Bank as a Chief Financial Officer. During his period of employment with the Bank, Mr N was a member of the Scheme accruing benefits.
4. On 30 May 2002, given the seniority of Mr N's role, his specific pension benefit entitlement was mutually agreed by Mr N and the Bank and documented in his service agreement (**the service agreement**).
5. The legislation in force at the time of Mr N's employment, provided that benefits payable from the Scheme were subject to the statutory earnings cap (**the Cap**) and, therefore the Bank agreed with Mr N that benefits relating to his salary in excess of the cap (which could not be provided from the Scheme) would instead be paid directly to him by the Bank in the form of a pension. This unfunded unapproved pension promise was documented in Mr N's service agreement (**the contractual pension promise**).
6. On 20 September 2005, the Bank wrote to Mr N enclosing his Preserved Pension Certificate (**PPC**) dated 16 September 2005. The PPC confirmed that the current value of Mr N's pensions was; a preserved pension from the Scheme of £2,672.00 per annum and a preserved pension from the Non-Approved Scheme of £25,468 per annum which would be paid as a tax-free cash sum. The Bank explained that pensions legislation was changing from April the following year, so that it may be

possible for it to change the manner in which his pension promise was met, and it reserved the right to do so.

7. On 9 October 2013, following an enquiry from Mr N, the Bank wrote to him explaining that as a result of the change in legislation, it was not now possible to meet the full pensions promise from the Scheme. The Bank expressed its regret that the notes issued within the PPC were not applicable and that there was not an option to have the element previously quoted as a non-approved benefit as a cash sum. It further said that at the time Mr N was a member of the Scheme, the benefits payable were restricted by the Cap. The Bank agreed that Mr N's benefits would be calculated as if the Cap did not apply. The Bank said that the reference to the Non-Approved Scheme and the accompanying notes stated in the PPC in 2005 were irrelevant to Mr N's situation as they referred to benefits payable under the Lloyds TSB Group (Non-Approved) Retirement Benefits Scheme. Mr N was not a member of that scheme and therefore there was not an option to have his benefits paid as a lump sum.
8. On 26 November 2013, the Bank sent Mr N a retirement quotation pack outlining the benefit options available to him at retirement on 5 October 2013.
9. Between December 2013 and November 2015, there was further correspondence between Mr N and the Bank regarding his pension arrangement. Mr N believed the information provided to him conflicted with his PPC.
10. On 28 October 2017, Mr N remained unhappy with the Bank's responses and raised a complaint under stage one of the Scheme's internal dispute resolution procedure (**IDRP**).
11. On 15 December 2017, the Bank issued its stage one IDRP response to Mr N. It said that Mr N could not rely on a sentence in the PPC which, in error, stated that the pension would be paid as a tax-free cash sum. It confirmed that the PPC was accompanied by a covering letter dated 20 September 2005 which referred to the pension being paid annually and stated that the Bank reserved its rights in relation to the method of payment of the pension. The bank further said the PPC was not a contractual document and did not vary the contractual entitlement set out in Mr N's agreement.
12. The Bank confirmed that Mr N would receive a pension from the Scheme which is the maximum amount permissible under the former Inland Revenue limits in place at the time he left the business and the balance would be paid to him as a pension from the Bank.
13. On 6 February 2018, Mr N appealed under stage two of the IDRP. He said that the PPC was a 'definitive document' setting out his entitlement. He referred to clause 6.3 of the service agreement which states "any pension due under this Clause 6 which cannot be paid from the Scheme will be paid by the Employer or its successor. The Executive will not be able to commute any part of any pension payable by the Employer or its successor as a consequence of this clause for a cash sum at

retirement”, and his interpretation of this is that it should not prevent the Bank paying the pension as a cash lump sum.

14. On 20 April 2018, the Bank issued its stage two response to Mr N. The Bank held that the only document which gave rise to a legal entitlement is Mr N’s service agreement which confirmed the position that the payment would not be made as a lump sum. It addressed Mr N’s interpretation of clause 6.3 of the service agreement and said that the Bank had not at any point chosen to commute the pension into a lump sum.
15. The Bank said the PPC contained an error, but that it was not possible for Mr N to have relied upon the erroneous PPC in order to establish a legal entitlement to such payment.

### **Adjudicator’s Opinion**

16. Mr N’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the Bank. The Adjudicator’s findings are summarised briefly below: -
  - Mr N has said that payment of the contractual pension promise should be made by way of tax-free lump sum and not by way of an annual pension. Mr N has also said he should be able rely on the wording in the PPC that he is entitled to have the contractual pension promise provided in the form of a tax-free lump sum. However, Mr N’s pension benefit entitlement is set out in clause 6 of his service agreement, which provides that Mr N would be admitted to membership in the Scheme and any benefits that could not be provided from Scheme would separately be funded and provided by the Bank directly (the contractual pension promise). The Adjudicator did not believe there was any entitlement to have the contractual pension promise paid by way of a lump for the reasons set out below.
  - It is clear that the service agreement provides for the non-scheme pension to be paid in instalments. Clause 6.3 of the service agreement states that “the Executive will not be able to commute any part of any pension payable by the Employer or its successor as a consequence of this clause for a cash sum at retirement.” Following the tax reforms in 2006, the Bank concluded that the payment of the contractual pension promise could be met through various ways, but the Bank did not take action at the time to transfer the unfunded element into the Scheme and it has now decided that it wishes to make payment directly in the form of an annual pension.
  - The wording in the PPC is also clear, that the non-Scheme pension will be paid as a lump sum, “your non-approved retirement pension will be paid as a tax-free cash sum, the size of which will depend on the amount of pension at retirement and then market annuity rates.”

- The key question is which of these documents takes precedence. The service agreement, agreed and signed by both parties, sets out the terms for payment of the non-Scheme pension unless it has been subsequently varied. It would not be possible for the Bank to vary these terms unilaterally. Any variation of the Service Agreement would need Mr N's consent.
- The PPC is an additional document which was sent out to Mr N and provided a summary of his pension benefits following his termination of employment and set out the value of his benefits under the Scheme and his contractual pension promise. When the PPC was issued to Mr N, it was accompanied by a covering letter which repeated the substantive detail contained in the PPC. In addition to this, the letter referred to the pension payable from the Scheme and the contractual pension promise both being paid on an annual basis which is consistent with the service agreement.
- From the evidence available to the Adjudicator, it appeared that the PPC is a document that the Bank sent to Mr N, and that it was not negotiated or agreed by Mr N or the Bank. Neither the PPC nor the covering letter assert that the PPC is a variation of the terms of the service agreement. In my view the PPC was not an offer to vary the terms of the service agreement which was capable of being accepted by Mr N, so the absence of objection by him to the content of the PPC cannot be taken as implicit agreement.
- The Adjudicator appreciated that the PPC itself contained an error and noted that the contractual pension promise would be made by way of a tax-free lump sum. This was inconsistent with both the covering letter sent with the PPC and the terms of the service agreement. It was her view, that the PPC did not vary the terms of the service agreement relating to Mr N's pension entitlement. Accordingly, clause 6 of the service agreement still applies and the pension should be paid in instalments rather than a lump sum.
- In order for Mr N to succeed in a claim for negligent misstatement by the Bank, he would have to show that he has suffered a direct financial loss caused by the error in the PPC. Although Mr N thought he would be receiving the non-Scheme pension as a lump sum, the Adjudicator did not see any evidence that he had suffered any financial loss as a result of receiving the PPC, and Mr N had said he did not suffer any financial hardship.

17. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his 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 Mr N for completeness.

### **Ombudsman's decision**

18. Mr N has said that he agrees that the service agreement may have priority over the PPC, but he does not think it was reasonable that on receipt of the PPC he should be

expected to go back and compare it with an earlier service agreement for consistency. While I sympathise with Mr N's frustration that he is unable to take his Scheme benefits in the way he would like, I am bound to uphold the legal and statutory requirements and, I do not find that there is any maladministration on the part of the Bank in refusing to agree to Mr N's request. As explained by the Adjudicator in the opinion the PPC was not a binding contractual agreement and did not vary the terms of the service agreement. I have seen no evidence of reliance on the error in the PPC. Therefore, I agree with the Adjudicator that the service agreement applies, and the non-Scheme pension should be paid in instalments rather than as a lump sum.

19. Therefore, I do not uphold Mr N's complaint.

**Karen Johnston**

Deputy Pensions Ombudsman  
30 January 2020