

## Ombudsman's Determination

Applicant	Mr N
Scheme	HSBC Bank (UK) Pension Scheme ( <b>the Scheme</b> )
Respondents	HSBC Bank Pension Trust (UK) Limited ( <b>the Trustees</b> )

## Outcome

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

## Complaint summary

2. Mr N complained that due to misleading information from the Trustees he was unaware of the way the Inland Revenue Maximum Limits (**I R Max**) calculation would apply to his pension benefits.

## Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. In September 1977, Mr N commenced employment with Midland Bank Ltd (later acquired by HSBC Bank plc) and joined the Defined Benefits section (the **DBS**) of the Scheme. His Normal Retirement Age (**NRA**) was 60.
5. Mr N's 2013 Annual Benefit Statement (**ABS**) stated:

“When you retire at your NRA (assuming benefits continue to build up in the DBS) you will be entitled to an annual pension of £26,101.33.

If you leave the DBS on 30 June 2015 based on pensionable service to 30 June 2015 but on your pensionable salary as at 30 June 2013, you will be entitled to a pension paid from your NRA of £24,633.18 per year.”
6. On 30 June 2015, the DBS was closed, and Mr N joined the Defined Contributions section of the Scheme (**the DCS**).
7. On 2 March 2018, Mr N left HSBC Bank plc and became a deferred member of the Scheme.

8. In October 2018, at his NRA, Mr N began to draw his pension. His final remuneration was £39,152. He opted to take the maximum tax-free Pension Commencement Lump Sum (**PCLS**) of £140,306.48 (which included £22,726.93 resulting from his DCS membership) and an annual DBS pension of £21,046.32.

9. In June 2019, Mr N made a complaint to the Trustees regarding the way the I R Max calculation had been performed when calculating his pension benefits.

10. The I R Max calculation is:

$$N/NS \times 2/3 \times \text{Final Remuneration (FR)}$$

Where N = Actual service in the DBS, NS = Potential Service in the DBS to NRA (to a maximum of 40 years), FR = average salary in the last 12 months.

11. Mr N contended that as the DBS had closed 37.75 years after he joined the Scheme it was therefore impossible for him to attain the maximum 40 years membership. Therefore, the N/NS part of the calculation should either be 37.75/37.75 or 40/40. This would mean he was entitled to the maximum two thirds of his FR as his DBS pension benefit at NRA.

12. Mr N highlighted examples in the 2008 Scheme brochure, 'Defined Benefits plus Flexible Benefits – Our Proposal' (**the 2008 brochure**) and in the 2015 HSBC 'Futurefocus' Scheme booklet (**the 2015 brochure**) with members 'Sarah' and 'Alison' in a similar position to himself. In the calculation of Sarah's and Alison's pension there is no mention of I R Max.

13. On 18 June 2019, the Trustees responded to Mr N. It said:

- I R Max was an HMRC limit on benefits that applied before 6 April 2006 to prevent members retiring early with a full pension based on 40/60<sup>ths</sup> of final pensionable salary and the Scheme still operated these limits.
- I R Max had been properly applied and the pension he was in receipt of was calculated correctly under the Scheme Rules. It said that the 'Potential Service to [NRA]' figure was 40 years despite the DBS' closure before Mr N had the chance to accrue the maximum service.
- Generally, member guides provide members with an accessible summary of their benefits and do not attempt to cover every eventuality. The 2015 brochure was intended to give a high-level overview of the effect that closing the DBS might have on members and was not intended to go into every possible nuance. The 2015 brochure stated:

"For an explanation as to how your DBS pension benefits were calculated up to 30 June 2015 you need to refer to your relevant DB section member guide (and, if applicable, the 2009 Change leaflet)."

- The 2009 Midland member guide (**the 2009 Change leaflet**) stated that members' benefits "paid from the Scheme are normally subject to certain limits which apply in accordance with the Trust Deed and Rules" and that the I R Max is one such limit.
14. Mr N made a complaint under stage one of the Internal Dispute Resolution Procedure (**IDRP**).
  15. On 28 July 2020, the Trustees responded and did not uphold the complaint for the reasons previously given.
  16. Mr N requested that his complaint be reconsidered under stage two of the IDRP.
  17. On 17 December 2020, the Trustees responded and did not uphold the complaint for the reasons previously given. The Trustees also considered that the level of pension quoted in the 2013 ABS had correctly applied I R Max.

### **Mr N's position**

18. Due to the closure of the DBS before it was possible for him to complete 40 years membership, and because I R Max was applied, he was not able to claim the maximum two thirds final renumeration pension at NRA. The interpretation of I R Max is inconsistent and not in the spirit of the Scheme.
19. His 2013 ABS was misleading and did not show the impact of I R Max if he continued to be employed by HSBC past 30 June 2015.
20. The Trustees' literature was misleading because I R Max is not mentioned. Specifically, the examples of 'Sarah' from the 2008 brochure and 'Alison' in the 2015 brochure, which were very similar to his scenario, did not show any I R Max limit deduction.
21. His annual pension benefits from his DBS membership would have been £26,335.30, not £25,700.27 at NRA if he had attained 40 years membership, or if I R Max had not been applied.
22. He may have made different retirement decisions if he had been aware he would not receive two thirds of his final renumeration as his annual pension benefit at NRA.

### **The Trustees' position**

23. Mr N's DBS pension was subject to the Scheme Rules as set out in the Trust Deed and Rules, which included the application of I R Max. Benefits must be paid by the Trustees in accordance with these Rules and the pension benefits Mr N is in receipt of are correct.
24. There were no errors or omissions in its 2013 ABS.
25. The 2008 and 2015 brochures do not refer to I R Max, as this is an Inland Revenue limit which applied to all members whose benefits exceed this limit.

26. Both brochures contained disclaimers that the examples are only intended to help explain changes in the DBS. They are intended to give members a high-level overview of the effect that closing the DBS to future final salary accrual might have on their benefits.
27. The 2015 brochure advised members to refer to the 2009 Change leaflet, which states, "benefits paid from the Scheme are normally subject to certain limits which apply in accordance with the Trust Deed and Rules". I R Max is one of these limits.
28. Mr N has not suffered an actual loss, but a loss of expectation.

## **Adjudicator's Opinion**

29. Mr N's complaint was considered by one of our Adjudicators who concluded that it should not be upheld, and no further action was required by the Trustees. The Adjudicator's findings are summarised below:
  - The Scheme Rules in force at 6 April 2006 stated that the Inland Revenue rules of the time applied, including I R Max. HSBC and the Trustees chose to continue to apply the I R Max limit to member benefits including Mr N. In the Adjudicator's opinion, HSBC and the Trustees were entitled to make this decision and the I R Max calculation has been performed correctly. The Trustees are required to provide retirement benefits based on correct information and accurately reflecting the Scheme Rules which is what it has done.
  - The 2013 ABS stated that the projected annual benefit figure of £26,101.33 at NRA assumed that benefits would continue to accrue in the DBS until NRA. The 2013 ABS also stated that the projected annual benefit figure of £24,633.18 at NRA assumed Mr N left the DBS on 30 June 2015. There is nothing to suggest that the amounts quoted were incorrect, I R Max was applied to both figures and there was no obligation on the Trustees to specifically highlight where I R Max had been applied.
  - The 2008 brochure contains a full-page warning which informs members:

"Please note these examples are just designed to give you an idea of how the proposed pension changes could affect you. The tables will give you an estimate of how much pension you would get under the proposals compared to the pension you would get under the current DB Scheme. They will not give you a precise figure."
  - The 2015 brochure refers members to the 2009 Change leaflet:

"For an explanation as to how your DBS pension benefits were calculated up to 30 June 2015 you need to refer to your relevant DB section member guide (and, if applicable, the 2009 Change leaflet) on futurefocus."

- Within the 2015 brochure there are 16 reminders to, “refer to your relevant DB section member guide (and, if applicable, the 2009 Change leaflet) on futurefocus”.
- The 2009 Change leaflet has a ‘Scheme limits’ section which states:  
“Benefits paid from the Scheme are normally subject to certain limits which apply in accordance with the Trust Deed and Rules.”
- In the Adjudicator’s view there was sufficient information in the brochures provided to Mr N to highlight that limits might be applied to his benefits such that it is reasonable to have expected him to have made further enquiries rather than relying solely on the information in the examples.
- Based on his final remuneration of £39,152, Mr N calculated the difference between the actual pension he would have received had he not chosen to take a PCLS and the annual pension benefits without I R Max applied and based on 40 years membership of the DBS, to be £635.03 a year. While acknowledging that this is not an insignificant amount, the Adjudicator did not agree with Mr N’s contention that this difference was enough to reasonably affect his decision to retire.
- Mr N became a member of the DCS from July 2015 until March 2018. He accrued pension benefits during this period which he opted to use to increase his PCLS by £22,726.93. This figure is greater than the £635.03 annual reduction that he has calculated as a result of having to leave the DBS in June 2015. The Adjudicator noted that it would not have been possible to achieve a £22,726.93 increase in his PCLS by commuting £635.03 of his annual pension toward the PCLS. It could therefore be argued that Mr N is in a better financial position than would have been possible had he stayed in the DBS until September 2017.
- The difference between the figures do not represent a financial loss to Mr N because he was never entitled to the higher amount. The difference is a loss of expectation and not an actual loss.

30. 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 are summarised below:

- The 2008 and 2015 brochures not including the impact of I R Max in the examples is negligently misleading and goes against any financial institutions’ legal or moral compass. The brochures include reference to lifetime allowance and state deduction which would likely not affect as many members as I R Max.
- He does not agree with the Trustees that the 2008 and 2015 brochures are “intended to give members a high-level overview” of their benefits since the examples included in them are quite specific. He believes the brochures should include information about I R Max because the calculation would impact all those

members who did not have the opportunity to complete 40 years' service before the Scheme closed.

- It is implausible to expect members to consult Trust Deed and Rules which comprise hundreds of pages of legal wording and were not readily available to Scheme members at the time. Members are more likely to consult the brochures.
- It was not made clear on his 2013 ABS exactly where I R Max had been applied.

31. I have considered Mr N's comments, but they do not change the outcome, I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

32. Mr N's complaint was that the DBS closed 37.75 years after he joined the Scheme, and it was therefore impossible for him to attain the maximum 40 years membership.
33. It is not practicable for all members of the DBS to be awarded the maximum FR of 40 years for their membership of the DBS upon its closure, regardless of how many years membership had been accrued. This would unjustly enrich members and significantly increase the Scheme's liabilities, potentially to the detriment of other members.
34. However, I agree with the Adjudicator that the DC benefit which Mr N accrued from July 2015 after the DBS closed has put him in a better financial position in terms of his pension benefits than if he had instead been able to remain in the DBS until he had accrued 40 years service.
35. Mr N contended that the failure to include an explanation of the I R Max calculation in the 2008 and 2015 brochures was negligently misleading. There was no legal obligation upon the Trustees to include details of the I R Max calculation within the brochures, so, I am unable to find that the Trustees not including it amounts to maladministration.
36. Mr N said that the Scheme Rules were not easily available to him at the time he was considering his retirement options. If Mr N was unable to find the relevant Trust Deed and Rules online, he had the option to obtain them from the Trustees who were obliged to provide them to him upon request. I have seen no evidence that Mr N made such a request.
37. I accept Mr N's point that Trust Deed and Rules are lengthy and can run to many hundreds of pages of legal wording. But it would have been possible for Mr N to have asked for an explanation of any section he was unsure of. Alternatively, he could have asked specific questions about how any limits, referenced in the brochures which referred him to the Trust Deed and Rules, would apply to his benefits.

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38. Further, details of the I R Max calculation and other guidance about drawing pensions and how they are taxed is available free of charge from various organisations including Money Helper, Pension Wise, on [www.gov.uk](http://www.gov.uk), or various other helplines.
39. Mr N accepts that the I R Max calculation was applied to his 2013 ABS but contends that this should have been made clearer to him. There was no legal obligation for the Trustees to specifically highlight where I R Max had been applied and I have seen no evidence of maladministration by the Trustees.
40. I do not uphold Mr N's complaint.

**Anthony Arter CBE**

Deputy Pensions Ombudsman  
16 November 2023