

## Ombudsman's Determination

Applicant	Dr H
Scheme	HSBC Bank (UK) Pension Scheme ( <b>the Scheme</b> )
Respondents	HSBC Bank Pension Trust (UK) Limited ( <b>the Trustee</b> ) Willis Towers Watson ( <b>WTW</b> )

## Outcome

1. I do not uphold Dr H's complaint and no further action is required by the Trustee or WTW.

## Complaint summary

2. Dr H's complaint concerns the calculation of his benefits from the Scheme when he was made redundant in November 2019. He is unhappy that, when calculating an underpin that related to his benefits, WTW:
  - applied an early retirement reduction; and
  - used a revaluation rate that he considers to be incorrect.
3. Dr H said that the application of an early retirement reduction was not consistent with the information contained in the Employer's Security of Employment policy (**SEP**) published on 29 August 2019.

## Background information, including submissions from the parties and timeline of events

4. 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.
5. Dr H was employed by HSBC (**the Employer**) and he was a member of the Scheme.
6. In June 2015, the Scheme closed its Defined Benefits Section (**DBS**). As a result, from 1 July 2015, any members in pensionable service in the DBS (**the Hybrid Members**) were enrolled in the Defined Contribution Section (**DCS**) of the Scheme. Dr H was one of those members.

7. In 2019, Dr H was offered redundancy from his employment. According to the SEP, extracts from which can be found in Appendix 3, the Employer offered three types of redundancy:-
- Voluntary. The Bank (HSBC), at its discretion, might consider inviting written applications from employees for voluntary redundancy. With the exception of any voluntary redundancy facilitated by the arrangement of a 'knock-on' or 'bumped' redundancy, employees who applied for voluntary redundancy retained their eligibility for redundancy terms once an agreed termination date had been received by them.
  - Involuntary. If redundancies became inevitable, employees would be selected against selection criteria. Each affected employee would receive written notification by the Bank of their date of termination of employment.
  - Alternative ('bumped' or 'knock-on'). In certain circumstances, the Bank would place a redundant employee in a post already occupied by another employee. The displaced person would be entitled to redundancy terms and rights of appeal.
8. Dr H has said that he took involuntary redundancy.
9. On 17 June 2019, the Scheme's Administrator, WTW, sent Dr H a retirement pack that provided information about his Scheme benefits, in advance of his redundancy, which had been agreed to be on 30 November 2019. It offered Dr H the following options:-
- An unreduced pension of £23,142.96 per year from the DBS and pension savings of £94,804.16 from the DCS, with a reduced severance payment.
  - An unreduced pension of £23,142.96 per year from the DBS, with a reduced severance payment. The DCS would be used to pay a tax-free lump sum (**TFC**) of £94,804.16.
  - A maximum TFC of £141,900.72, using the DBS and DCS parts, together with a reduced pension of £21,285.12 per year and a reduced severance payment.
  - A reduced pension of £19,120.92 per year from the DBS and pension savings of £94,804.16 from the DCS, with a full severance payment.
  - A reduced pension of £19,120.92 per year from the DBS and a full severance payment. The DCS would be used to pay a TFC of £94,804.16.
  - A maximum TFC of £120,668.17, using the DBS and DCS parts, together with a reduced pension of £18,100.92 per year and a full severance payment.
  - A deferred pension at Dr H's normal retirement date (**NRD**) of £23,142.96 per year from the DBS and pension savings of £94,804.16 from the DCS, with a full severance payment.

10. On 29 July 2019, WTW sent Dr H a new retirement pack which included retirement illustrations based on an augmentation of £33,000. It offered Dr H the following options:-
- An unreduced pension of £23,142.96 per year from the DBS and pension savings of £133,298.93 from the DCS, with a reduced severance payment.
  - An unreduced pension of £23,142.96 per year from the DBS, with a reduced severance payment. The DCS would be used to pay TFC totalling £133,298.93.
  - A maximum TFC of £150,151.35, using the DBS and DCS parts, together with a reduced pension of £22,522.80 per year and a reduced severance payment.
  - A reduced pension of £19,314.36 per year from the DBS and pension savings of £133,298.93 from the DCS, with a full severance payment.
  - A reduced pension of £19,314.36 per year from the DBS and a full severance payment. Part of the DCS would be used to pay a TFC of £129,896.53, leaving additional pension savings of £3,402.20.
  - A deferred pension of £23,142.96 per year at Dr H's NRD from the DBS and pension savings of £133,298.93 from the DCS, with a full severance payment.
11. On the same date, WTW sent an email to Dr H and explained how his pension from the DBS had been calculated. It said:-
- As an active Scheme member, his benefits were calculated as the better of either:
    - the value of pension as at 30 June 2015, uplifted to account for any increases in salary that had taken place between 30 June 2015 and his date of retirement (**the Salary Linkage Method**); or
    - the value of his pension as at 30 June 2015, increased in line with revaluation up to his date of retirement (**the Underpin Method**).
  - The value of Dr H's pension on 30 June 2015 was £22,578.25, which had been calculated using a salary of £68,018, total service of 19.9167 years and an accrual rate of 1/60th.
  - The Salary Linkage Method resulted in a yearly pension of £23,142.89. Dr H's pension at his date of redundancy was calculated using this method.
12. On the same date, Dr H asked WTW for an estimate of the revalued pension using the Underpin Method and with a leaving date of 30 November 2019. He said that the Consumer Price Index (**CPI**) had risen by a cumulative rate of 9.94% from June 2015 to June 2019 and this would affect both the pension and the calculation of the TFC.
13. On 1 August 2019, Dr H sent an email to WTW and expressed his concerns about its ability to calculate his pension using the Underpin Method. In his view, the Salary Linkage Method could not have produced a higher pension, as he only received one

salary increase of 2.2% since June 2015. Dr H requested a copy of the Scheme Rules referring to which measure of CPI was used, its increases each year, the cumulative effect on his pension and the effect this would have on the theoretical TFC available without any reduction to the pension. He also said that he had already registered a formal complaint about this issue.

14. On the same date, WTW responded to Dr H and said that the Salary Linkage Method reflected any special early retirement terms that he was entitled to under redundancy. However, the Underpin Method would not reflect this. So, while the Underpin Method resulted in a yearly pension of £24,008.84, WTW was required to apply an early retirement reduction to account for the fact that benefits were paid prior to his NRD. This reduction produced a yearly pension which was lower than the one produced using the Salary Linkage Method.
15. Dr H responded to WTW on the same date. He said that he had the option to take a full, unreduced pension in exchange for a reduced severance payment, as he was over the age of 50. So, his yearly pension was the pension resulting from the Underpin Method (**the Underpin Pension**) and should not be reduced.
16. On 6 August 2019, WTW explained to Dr H that, as the Scheme's Administrator, it was only able to calculate a member's entitlement in line with the instructions provided by his Employer. WTW said that the redundancy terms under which it had been instructed to calculate Dr H's redundancy figures were those shown in its email of 1 August 2019. They were based on a redundancy date in November 2019 and had been calculated correctly. WTW suggested that Dr H should contact his Employer if he disagreed with the methodology used in calculating his pension.
17. On the same date, Dr H sent an email to WTW disagreeing with its calculations. He said that he was a member of the "old Midland Scheme" and was over the age of 50. So, he was entitled to a full, unreduced pension if he took a reduced severance sum. In his view, such a pension should be calculated as the greater of his years of service or his frozen Underpin Pension indexed to the date of his redundancy, in November 2019.
18. On 9 August 2019, WTW responded to Dr H's complaint and said:-
  - Under Clause 14 of the Scheme's 53rd Deed of Variation, dated 12 June 2015, the initial amount of pension payable to a Hybrid Member was not less than the initial amount of the Underpin Pension, assuming it came into payment at the same time as the member's pension. 'Underpin pension' was defined as "the pension that a hybrid member would have been entitled or prospectively entitled to receive under the DBS if he had opted to terminate pensionable service on 30 June 2015 including any revaluation required by legislation and the DBS rules".
  - Dr H's Underpin Pension had been calculated as if he had opted to terminate pensionable service on 30 June 2015. As he had not been made redundant as of that date, any redundancy enhancements to his pension when leaving service would not apply to the Underpin Pension.

- The figures provided on 29 July 2019 were correct and representative of Dr H's true entitlement under the Scheme, based on him drawing his pension with effect from November 2019 on grounds of redundancy.
19. On the same date, Dr H requested that his complaint be considered under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**).
20. On 16 August 2019, Dr H sent an email to the Employer's Pension Technical Manager (**PTM**). He said:-
- As a member of the "old Midland scheme" his basic pension entitlement was governed by the Midland Section under the Scheme's Trust Deed and Rules.
  - Being over the age of 50 he could receive: an immediate DBS accrued pension without a reduction being applied for its early payment, as well as a reduced severance payment; or an immediate DBS accrued pension, but reduced to allow for its earlier payment, together with a full severance payment.
  - The Frequently Asked Questions for employees involved in a redundancy program, dated April 2019, which was part of the Employer's SEP, said that a member could choose to receive a reduced redundancy payment together with an immediate pension that had not been subject to an actuarial reduction. In Dr H's view, if the Underpin Pension was calculated and an early retirement reduction was applied to it, then an actuarial reduction had been made.
  - The Scheme's website stated, "Your DB pension built up to 30 June 2015 will be increased (revalued) in line with the Scheme Rules up to your date of retirement (or death, if earlier). Your revalued DB pension is the 'underpin' and will be the minimum pension amount you'll receive - this will not be known until you take your DB benefits". In his view, if WTW's calculations were wrong, this would affect the TFC available, as well as his indexed pension for life.
  - He could not be offered a full pension if the underpin was not included or incurred an early retirement reduction, as this could not be considered a full, unreduced pension.
21. His retirement benefits had been calculated using only the Salary Linkage Method. When he asked for an indication of the calculations based on the Underpin Method, he was told that for this method to be applied, he would have had to be made redundant on 30 June 2015. In his view, this was incorrect and not in accordance with the Scheme Rules.
- In his case, the Underpin Method would produce a higher pension amount because in the last four years pay rises had been limited, with only one increase of approximately 2.2% being made. Since the underpin was introduced in 2015, had this increase not been applied, effectively he would have been sent a calculation based on his salary in 2015, with no revaluation.

22. On 21 August 2019, the PTM sent an email to Dr H and confirmed that his understanding of the issue was the same as Dr H's. The PTM said that the underpin did apply to Dr H, so the pension he was entitled to was the higher of the pension based on DB pensionable salary and the revalued pension. The PTM also said that a Scheme booklet dated July 2019 was clear in explaining this and did not say that the underpin only applied if pensionable service terminated on 30 June 2015. He added that, in his opinion, WTW was misinterpreting the definition of 'Underpin Pension' in Schedule 2 of the Scheme's 53rd Deed of Variation by suggesting it meant that a member had to have terminated pensionable service on 30 June 2015. In the PTM's view, it meant that the method of calculation was the same as for someone who had terminated pensionable service on 30 June 2015. The PTM concluded that WTW's interpretation did not make sense, as a Hybrid Member did not exist until after 30 June 2015.
23. On 16 September 2019, the Trustee responded to the complaint under stage one of the IDR. It said:-
- In calculating Dr H's pension, the underpin applied was calculated on the basis that he had terminated pensionable service on 30 June 2015, not on the basis that he had been made redundant on 30 June 2015.
  - The fact that Dr H was leaving due to redundancy did not mean that the Underpin Pension should be calculated as though he was made redundant on 30 June 2015.
  - His pension entitlement could only be calculated in accordance with the Scheme Rules. It had been calculated by comparing the salary linked pension to his date of leaving, with the Underpin Pension as at 30 June 2015. The result was that the salary linked pension to his date of leaving was the higher of the two benefits.
  - It was satisfied that WTW had applied the Scheme Rules properly. Because of this, it did not uphold the complaint.
24. On 20 September 2019, Dr H appealed the Trustee's decision regarding his complaint, under stage two of the IDR. He said:-
- He had never said that the underpin would only apply if he had been made redundant on 30 June 2015. It was WTW that said this.
  - He agreed that the initial amount of any pension payable to a Hybrid Member should not be less than the initial amount of the Underpin Pension, assuming it came into payment at the same time as the member's pension. However, in his case the Underpin Method resulted in a greater pension from which an early retirement penalty was then applied. This made the Salary Linkage Method result in a higher pension. Consequently, he was not receiving a full unreduced pension for a reduced severance payment, because the pension in the Underpin Method had been reduced.

- He was concerned that WTW had applied a simple yearly CPI increase to the underpin rather than a compound calculation. In his case, the underpin rate was actually a compounded rate until the date of retirement in November 2019.

25. On 5 December 2019, the Trustee responded under stage two of the IDRPs. It did not uphold the complaint and reiterated its response under stage one of the IDRPs. It concluded that Dr H's pension had been calculated correctly and in accordance with the Scheme Rules.
26. Dr H was not satisfied with the Trustee's and WTW's responses and referred his complaint to The Pensions Ombudsman (**TPO**).

### **Dr H's position**

27. In his view, the Underpin Method produces a higher pension than the Salary Linkage Method. However, WTW had applied an early retirement reduction to the Underpin Pension figure, which resulted in the Salary Linkage Method producing a higher pension.
28. If he was selecting a reduced severance payment for a full, unreduced pension, it cannot be logical to apply a reduction to the Underpin Pension calculation. The Respondents had ignored this specific issue in their responses to his complaint.
29. He is concerned that WTW has applied a simple yearly CPI increase to the Underpin Pension, instead of a compound increase. In his view, the underpin rate is actually a compounded rate until the date of retirement, which was in November 2019 in his case. He had repeatedly asked WTW to provide him with information on how it applied CPI increases to its calculations, but has received no response.
30. WTW's method of calculating his Scheme benefits implies that anyone above the age of 50, who was a member of the old Midland Scheme, can only have a pension using the Salary Linkage Method if they are offered early retirement before their NRD and selected to receive a reduced severance amount. This is not the information which is given in the Scheme Rules or in various focus communications.
31. The relevant Scheme Rules do not state that he would receive the higher pension between:
- the salary linked pension to the date of his redundancy, without an early retirement reduction applied; and
  - the Underpin Pension as at 30 June 2015, revalued at NRD, with an early retirement reduction applied.
32. For a reduced severance payment, he should receive a full unreduced pension with no early retirement reduction. In financial terms, his starting pension would be approximately £1,200 per year lower if the Salary Linkage Method applied only. As his pension is indexed for life, this is a considerable financial loss to him. The TFC

calculation would also result in a total sum which would be approximately £6,000 lower.

33. In addition, he has suffered a considerable amount of stress and inconvenience.

### **The Trustee's position**

34. It does not consider that there are any grounds for Dr H's claim that his TFC and pension entitlement have been incorrectly calculated.

35. It is required to pay members the benefits to which they are entitled under the Scheme Rules. In accordance with the Rules, Dr H is entitled to the pension arising from the Salary Linkage Method, as it is a higher pension than the one arising from the Underpin Method.

36. The Scheme Rules require the Underpin Method calculation to be carried out on the basis that a member left pensionable service on 30 June 2015. In all cases and unless the Scheme Rules provide otherwise, where a member's pension is to be paid prior to normal retirement age, the Underpin Method calculation includes a reduction for early payment. This reduction is not applied to the Underpin Pension, but rather is an element of the calculation carried out in order to produce the Underpin Pension figure, which is then compared to the pension arising from the Salary Linkage Method. In Dr H's case, no reduction was applied to the salary linked pension.

37. If a member is made redundant, this does not alter the terms on which the Underpin Pension is calculated. The Scheme Rules do not provide that the calculation will take into account the basis on which the member actually leaves service. This is an underpin that originates from changes that were made to the Scheme's benefit design in 2015. The underpin, as the name suggests, ensures that the member receives a minimum level of benefit under the previous terms on which benefits were paid. It is not unusual or surprising that its calculation is carried out on different terms to the calculation of the Salary Linked Pension.

38. Dr H has questioned the way in which his Underpin Pension has been revalued. However, this complaint stems from a misunderstanding of the way in which statutory revaluation operates. Members do not 'bank' increases at a set rate on an annual basis but, rather, a pension is revalued in line with statutory revaluation requirements at the time that the pension is payable.

39. Dr H's benefits have been revalued in accordance with the relevant provisions and in line with the way in which revaluation is applied to all Scheme benefits. The Trustee is satisfied that Dr H's benefits have been properly and accurately calculated.

### **WTW's position**

40. Up to 30 June 2015, Dr H was a member of the Midland Section of the Scheme. This was a DBS, but at this date members stopped accruing additional benefits in the DBS. They joined the DCS but retained a salary link.



41. Page 3 of the 'Refresher Guide for Hybrid Members' shows how benefits in the DBS are calculated on leaving service. On redundancy, members have the opportunity to forgo some redundancy payment in order to receive an unreduced early retirement pension from the DBS. However, as the guide shows, the Underpin Method calculates the leaving service benefit revalued in line with the Scheme Rules, and an early retirement factor is applied for early payment.
42. WTW has correctly calculated Dr H's benefits using both methods. Dr H has not accepted the results of the Underpin Method, stating that it should have the early retirement reduction waived at redundancy.
43. Dr H's deferred benefit, as at 30 June 2015, was £22,578.25. This included a Guaranteed Minimum Pension (**GMP**) of £225.16. His date of retirement was in November 2019. The statutory revaluation factor for this period was 6.4% (four years). So, the accrued pension to the date of retirement was the pension in excess of the GMP, increased by 1.064 and then the GMP added back on to provide a pension revalued to date of retirement of £24,008.84 a year. An early retirement adjustment factor is then applied to this pension and is lower than the pension calculated under the Salary Linkage Method, which does not have the early retirement factor applied.
44. In summary, WTW is comfortable that it has applied the correct benefit calculations to Dr H's retirement benefits.

### **Adjudicator's Opinion**

45. Dr H's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or WTW. The Adjudicator's findings are summarised in paragraphs 46 to 58 below.
46. The Adjudicator said that the role of TPO is to investigate complaints and to provide a means of redress where it can be shown that a respondent has acted contrary to the rules of a pension scheme or relevant legislation, or where there has been an act of maladministration.
47. In this instance, Dr H complained that the Respondents had calculated his Scheme benefits incorrectly and had applied increases to those benefits in a way which was contrary to the Scheme Rules.
48. The Adjudicator examined how Dr H's DBS benefits should have been calculated under the Scheme Rules.
49. Prior to 12 June 2015, the relevant rules applicable to Dr H's circumstances were set out in Section 1 Part 2 of the 37th Deed of Variation, as amended by the 42nd, 48th and 52nd Deeds of Variation (see Appendix 1).

50. These rules were amended by the 53rd Deed of Variation, on 12 June 2015, following the Scheme's closure of the DBS. Extracts from the 53rd Deed of Variation that are relevant to this complaint are set out in Appendix 2.
51. Applying the relevant rules in the 37th and 53rd Deeds of Variation to Dr H's case, the Adjudicator made the following observations:-
- His pensionable service in the DBS ceased to accrue on 30 June 2015. From 1 July 2015, any pensionable service accrued was in the DCS.
  - His Underpin Pension was defined as the pension he would have been entitled to from the DBS, had he opted to terminate his service on 30 June 2015. That date was prior to Dr H's 50th birthday.
  - Consequently, subrules (1) to (3) of rule 1 of Section 1 of Part 2 of the amended 37th Deed of Variation (Retirement Pension) did not apply to Dr H for calculating his Underpin Pension. For these subrules to have applied, Dr H would have to have attained age 50 or have reached his normal pension age by 30 June 2015.
  - Instead, rule 3 of Section 1 of Part 2 of the amended 37th Deed of Variation (Leaving Service) applied to Dr H for calculating his Underpin Pension.
  - Under subrule 3(1)(i), the Underpin Pension was the pension Dr H (a Hybrid Member) would have been entitled to receive under the DBS, for ceasing to be in service on 30 June 2015 (as per the definition of the term 'Underpin Pension') before attaining normal pension age. Under this subrule, Dr H's pension entitlement would begin on the day after reaching normal retirement age and his pension would be calculated as per subrule 1(2).
  - Under subrule 3(2), as Dr H was entitled to a pension under subrule 3(1), but payable upon reaching NRD, he could have elected to receive this pension at an earlier date. But this earlier date could not be sooner than the earlier of reaching age 50 and retirement from normal employment on ill health grounds (subject to the Trustee's consent). The pension payable under this subrule would have been reduced by reason of its early commencement as per subrule 3(2)(ii).
52. So, in the Adjudicator's opinion, Dr H's benefits had been correctly calculated and paid in accordance with rule 1 of Section 1 of the 37th Deed of Variation, as modified and applied by the 53rd Deed of Variation. This was because the calculation produced a higher figure than the Underpin Pension, which was calculated as defined by the 53rd Deed of Variation.
53. Rule 3 of the 37th Deed of Variation had, in the Adjudicator's view, been correctly applied by the Respondents to calculate the Underpin Pension. Rule 3 involved the application of an actuarial reduction to the DB benefits accrued by Dr H to 30 June 2015. An actuarial reduction had not been applied to the benefits calculated and paid under rule 1 because that rule makes special provision for members leaving employment on redundancy.

54. It should be borne in mind that the Underpin Pension was intended as a defined benefit underpin to a normal age-related defined benefit/defined contribution hybrid pension. If the hybrid pension was subject to enhancement, it did not follow that the enhancement applied to the Underpin Pension. Had the intention been otherwise, the Adjudicator said he would have expected to see express provision made in the Scheme Rules; there was no such provision in this case.
55. The Adjudicator noted that on 9 August 2019, WTW told Dr H that, as he had not been made redundant on 30 June 2015, any redundancy enhancements to his pension when leaving service would not apply to the Underpin Pension. The Adjudicator's view was that this explanation by WTW was incorrect. The Underpin Pension was not enhanced because there were no provisions in the Deeds of Variation for such an enhancement. It was not because Dr H did not actually leave service on 30 June 2015 by reason of redundancy.
56. Dr H had also complained that WTW had not applied the correct revaluation rate to his Underpin Pension between 30 June 2015 and when he retired in November 2019. The methodology used by WTW to apply the revaluation is set out in paragraph 43 above.
57. In applying the revaluation, WTW was required to reflect the legislative requirements set out in section 83 of, and Schedule 3, paragraph 1 to, the Pension Schemes Act 1993<sup>1</sup> and Part 6 of the Scheme's General Rules.
58. The Adjudicator's opinion was that the higher revaluation percentage of 6.4% had been correctly taken and applied by WTW following the enactment of the Occupational Pensions (Revaluation) Order 2018 (SI 2018/1218)<sup>2</sup>.
59. Dr H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Dr H provided his further comments in response to the Opinion. These are summarised below:-
  - An actuarial reduction had been applied when calculating his Underpin Pension. This was contrary to the SEP which states that an individual is entitled to the greater of the pension calculated using the Salary Linkage Method and the Underpin Method without actuarial deduction if a reduced redundancy payment was taken on leaving service.
  - So, the Trustee had not paid his benefits in line with the SEP, on which he had made his redundancy decision.
60. I have considered the additional points raised by Dr H; however, they do not change the outcome, I agree with the Adjudicator's Opinion.

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/1993/48/contents>

<sup>2</sup> <https://www.legislation.gov.uk/uksi/2018/1218/made>

## **Ombudsman's decision**

61. Dr H is unhappy that an actuarial reduction was applied when calculating his Underpin Pension. He has brought my attention to the information contained in the SEP, which he said he used to inform the decisions he made when retiring.
62. Firstly, I have considered the Adjudicator's analysis of the Scheme Rules and I agree with his conclusions. In particular, I find that there is no provision in the Scheme Rules to waive the application of the actuarial reduction when calculating Dr H's Underpin Pension. However, there is provision to waive the actuarial reduction when calculating Dr H's pension using the Salary Linkage Method, and this had been done in Dr H's case.
63. The SEP details the options available to Dr H on his redundancy, referring to one option as being a reduced severance payment together with "an immediate non-reduced DBS pension". It also refers to: "an immediate Defined Benefit Section (DBS) accrued pension without a reduction being applied for its early payment ...".
64. While I note that the SEP might usefully have described how the Underpin Pension worked in the circumstances of a redundancy, it did not do so. However, the SEP states that: "any reference to pension payments within this appendix refer to pensions calculated within and subject to the terms of the HSBC Bank (UK) Pension Scheme Rules as they may apply from time to time".
65. Benefits have to be paid in accordance with the Scheme Rules and, in the event of any discrepancy between these and the SEP, the Scheme Rules would prevail. I find that the Trustee and WTW have calculated Dr H's benefits using the correct method, as defined in the Scheme Rules.
66. I do not uphold Dr H's complaint.

**Anthony Arter CBE**

Deputy Pensions Ombudsman

2nd August 2024

## Appendix 1

The relevant rules applicable to Dr H's circumstances are set out in Section 1 Part 2 of the 37th Deed of Variation, as amended by the 42nd, 48th and 52nd Deeds of Variation:

### **"Section 1 – Applicable to new members whose current periods of membership began on or after the 1st day of January 1975**

#### **Part 2: Members' Pensions**

##### **1. Retirement Pension**

1. A member who ceases to be in service and –

a) has completed 2 years' pensionable service and has attained normal pension age;

or

b) has completed 5 years' pensionable service and has attained the age of 50 years and either –

(i) such cessation is attributable to a requirement of the employer (otherwise than by reason of his incapacity or unsatisfactory conduct) that he shall cease to be in service;

or

(ii) the bank determines that this rule shall apply to him;

shall be entitled to a pension beginning on the day following such cessation and continuing during the remainder of his life.

2. The yearly amount of the member's pension under rule 1(1) and rule 1(3) shall (subject to rule 1(3) and 4) be –

one-sixtieth (1/60) of the member's salary multiplied by the number (limited as stated below) of years of pensionable service

LESS, after attainment of state pensionable age the relevant deduction.

The number of years shall be limited (where necessary) so that they do not exceed 40.

3. A member who has completed 2 years' pensionable service and has attained the age of 50 years and has ceased to be in service in accordance with the bank's Security of Employment Policy ("SEP") (as from time to time in force) –

- a) shall be entitled to a pension beginning on the day following such cessation and continuing during the remainder of his life, calculated in accordance with rule 1(2);
- b) may (as an alternative to a)) elect in writing to be entitled to a pension beginning on the day after attainment of normal retirement age (unless a request is made and acceded to under rule 3(2) below) and continuing for the remainder of his life, calculated in accordance with rule 1(2);
- c) may (as an alternative to a)) elect in writing to be entitled to a pension beginning on the day following such cessation and continuing for the remainder of his life, calculated in accordance with rule 1(2) but reduced (by reason of its early commencement) in accordance with such table or tables as the trustee may adopt from time to time.

[...]

### **3. Leaving Service**

- (1)
  - (i) A member who ceases to be in service before attaining normal retirement age without becoming entitled to a pension under rule 1 or 2 above who has completed two years' pensionable (or qualifying) service shall be entitled to a pension beginning on the day after attainment of normal retirement age (unless a request is made and acceded to under (2) below) and continuing for life.
  - (ii) The yearly amount of the member's pension under this rule beginning at normal retirement age shall be calculated as under rule 1(2).
- (2)
  - (i) A member who is entitled to a pension under rule 1(3)(b) or rule 3(1) may by notice to the trustee request that the pension should begin on an earlier date (not being sooner than the first to occur of the member's attainment of age 50 and retirement from normal employment on account of ill-health or disablement which in the opinion of the trustee seriously impairs the member's earning capacity) and if the trustee (which may refuse such request without giving any reason) accedes to it then the pension shall begin on that earlier date.
  - (ii) The yearly amount of the member's pension under this rule shall then be calculated as under rule 1(2) but reduced (by reason of its early commencement) in accordance with such table or tables as the trustee may adopt from time to time.
  - (iii) The trustee shall have regard to the obligation under rule 5 to provide a guaranteed minimum pension from state pensionable age.

#### **4. Calculation of Pensions**

- (1) No pension shall (save by reason of (2) below) exceed the relevant maximum and where it would otherwise do so it shall be limited thereto.
- (2) No pension for a member who attains state pensionable age shall be less than the guaranteed minimum referred to in rule 5.
- (3) Pensionable service shall include completed months (expressed as a fraction of a year).
- (4) In the calculation of pensionable service purchased credits and bonus credits shall be treated as follows –
  - (a) such credits shall be taken into account at least to the extent necessary to give effect to the preservation requirements;
  - (b) for members in service before 1 January 1986 pensionable service will be credited to the extent applicable (if at all) to the member as announced to those affected thereby.
- (5) Where a member ceases to be in pensionable service before state pensionable age the provisions of Chapter III of Part IV of the Pension Schemes Act (addition attributable to guaranteed minimum pension) shall apply in the circumstances and to the extent that such sections and any regulations made pursuant thereto so require.”

## Appendix 2

### Extract from the 53rd Deed of Variation dated 12 June 2015

“Schedule 2 [...]”

“hybrid member” means a member who is enrolled as a full member of the DCS in accordance with paragraph 9 of this schedule. [...]

“pensionable service” has the meaning given by the provisions of the section of the DBS of which the person is a member, or where not defined in those provisions means any period of service which qualified a member for pension benefits under the applicable section of the DBS. [...]

“underpin pension” means the pension that a hybrid member would have been entitled or prospectively entitled to receive under the DBS if he had opted to terminate pensionable service on 30 June 2015 including any revaluation required by legislation and the DBS rules. [...]

4. Pensionable service shall cease to accrue in the DBS at the end of 30 June 2015. The DBS rules shall have effect (notwithstanding anything in them to the contrary) as if a member’s service or employment on and from 1 July 2015 which (apart from this paragraph) would otherwise count as pensionable service were disregarded.
5. Notwithstanding the cessation of pensionable service accrual referred to in paragraph 4 above, the benefits payable to and in respect of a hybrid member on and from 1 July 2015 will be calculated, before applying any early or late payment adjustment to those benefits in accordance with the existing provisions, by reference to the member’s db salary (as amended by this schedule 2) on the earliest of the hybrid member’s (1) leaving the scheme or the DBS while, in each case, remaining in service (whether by opting out or drawing their DBS benefits, (2) leaving service or (3) death.

[...]

9. Each member shall, provided he is in service on 1 July 2015 and has not notified the bank that he does not want to be a full member of the DCS, be enrolled into the DCS as a full member on and from 1 July 2015.

[...]

#### Hybrid members’ DBS pension benefits

14. The initial amount of any pension payable to a hybrid member shall not be less than the initial amount of the underpin pension, assuming it came into payment at the same time as the member’s pension.
15. Where the existing provisions provide for the payment of an immediate unreduced pension on leaving service to a member who leaves service on or



after age 55 (or if earlier on or after a member's protected pension age as defined in paragraphs 22 and 23 of schedule 36 to the Finance Act 2004) on account of a requirement of the employer then unless the bank decides otherwise generally or in any individual case, the member may elect in writing to receive the benefits that are available to members who cease to be in service in accordance with the bank's Security of Employment Policy at the time."

## Appendix 3

### Extracts from the Employer's Security of Employment Policy dated 29 August 2019

#### **"6.2 Pension**

It should be noted that any reference to pension payments within this appendix refer to pensions calculated within and subject to the terms of the HSBC Bank (UK) Pension Scheme Rules as they may apply from time to time, and subject to any Pension Trustee approval that may be required.

[...]

#### **Employees aged 50 and over in the DBS (hybrid active members), and 55 and over in the DCS.**

Employees who are active hybrid members of the DBS will receive a 'Full' Severance Payment (See Appendix 2) and (subject to Pension Scheme rules and Pension Trustee approval), an immediate actuarially reduced DBS pension.

However, alternatively, employees can elect to receive payments in accordance with Appendix 2, as follows:

- A 'Reduced' Severance Payment and an immediate non-reduced DBS pension - (calculated within the terms of the Pension Scheme) including their DCS savings or
- A 'Full' Severance Payment and a deferred benefit - (calculated within the terms of the Pension Scheme, and paid at normal retirement age, you will be known as a deferred hybrid member)."

#### **"UK: Redeployment and Redundancy Q&As**

##### **5. What options do I have with regard to my pension?**

This depends on your age:

(i) If you are 50 and over:

Your basic pension entitlement is governed by the Midland section under the Trust Deed and Rules of the HSBC Bank (UK) Pension Scheme (the Scheme). As you have completed two years' pensionable service and are aged 50 or over, you can opt for:

- a) an immediate Defined Benefit Section (DBS) accrued pension without a reduction being applied for its early payment together with a reduced severance payment; or

- b) an immediate accrued DBS pension but reduced to allow for its early period of payment together with a full severance payment; or
- c) a deferred DBS pension (which is payable from your normal retirement age under the Scheme, although in some circumstances it can be paid earlier or later than that age) together with a full redundancy payment.”