

## Ombudsman's Determination

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

## Outcome

1. I do not uphold Mr S' complaint and no further action is required by the Trustee

## Complaint summary

2. Mr S has complained that Willis Towers Watson (**WTW**), the Scheme Administrator, confirmed the details of a Pension Sharing Order (**PSO**) by letter rather than email. He says the resulting delay caused him to make an unnecessary mortgage payment.

## Background information, including submissions from the parties

3. On 20 November 2019, WTW sent a letter to Mr S confirming that his PSO had been received and that he needed to submit the related Decree Absolute.
4. On 30 November 2019, Mr S emailed WTW and complained that it was unreasonable to require the Decree Absolute before processing the PSO.
5. On 3 December 2019, WTW emailed Mr S and said that the Decree Absolute was required as part of its standard procedures to establish the date that the PSO should take effect from. This was because, in order to calculate the pension share values, WTW required the date of the Decree Absolute or a date 28 days after the Court Order or the Pension Sharing Annex Date.
6. On 23 December 2019, Mr S' solicitor emailed a certified copy of the PSO to WTW and said that a certified copy would also follow by post.
7. On 2 January 2020, WTW emailed Mr S and said that his ex-wife had requested a transfer of her pension credit from his benefits in the Scheme under the PSO. Total charges of £2,200 were applicable for completing the related work and Mr S would need to pay 50% of this sum. WTW also said that it was still waiting for an original or certified copy of the Decree Absolute.

8. On 3 January 2020, Mr S emailed WTW and asked whether his £1,100 share of the charges related to his wife's pension credit transfer could be collected as a lump sum or monthly deduction from his Scheme pension.
9. Mr S also asked how long it would take to implement the PSO, as he could not obtain a mortgage until the process had been completed. He confirmed that his solicitor had emailed and posted a certified copy of the Decree Absolute on 23 December 2019.
10. On 6 January 2020, WTW emailed Mr S and confirmed that a certified copy of the Decree Absolute had been received. In summary, WTW also informed Mr S that:-
  - When calculating a cash equivalent transfer value reduction for a pensioner of the Scheme, the annual pension that was paid to them was reduced, to reflect that their benefits were being shared with their ex-spouse under a PSO.
  - When calculating the sum due to Mr S' ex-wife, his pension in payment would be adjusted accordingly with a further £1,100 deduction, to reflect the charges for processing the PSO.
  - Once the PSO had been processed a letter would be sent to Mr S confirming the value of the settlement with his ex-wife.
  - Once WTW had received all required information and charges, and the valuation date had been established, it had four months to complete all payments and the implementation of the PSO. However, it aimed to settle this as soon as possible, once it had received all relevant information.
  - Mr S could contact WTW to raise any further questions he may have regarding this matter.
11. On 10 February 2020, WTW sent a letter to Mr S and confirmed the final figures in settlement of the PSO. In summary WTW said:-
  - The PSO had been implemented with effect from 18 December 2019.
  - The cash equivalent value (**CEV**) of Mr S' benefits was £2,644,833.88 as at 9 January 2020.
  - A sum totalling 41% of the CEV had been paid to Mr S' ex-wife, to comply with the PSO.
  - In addition, Mr S' ex-wife was entitled to 41% of his pension payments from 18 December 2019 to 9 January 2020, which totalled £4,624.85. So, a total sum of £1,086,279.16 had been paid to her. Consequently, Mr S' pension would reduce by 41.04%, from £74,405.40 to £43,869.72 per year.
12. On 26 February 2020, Mr S emailed the Trustee and requested an update on WTW's progress of implementing the PSO. He also asked whether WTW could advise of an

expected completion date, as he was reaching a critical time in his attempt to purchase a new property.

13. On the same date, the Trustee confirmed to Mr S that it had asked WTW to send him an update by email, setting out its progress and to manage his expectations.
14. On 17 August 2020, Mr S complained under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**) and said:-
  - Although he had previously exchanged correspondence regarding the PSO with the Trustee and WTW by email, WTW chose to post the letter of 10 February 2020 confirming the final details. As he was on vacation at that time, he did not receive the letter until his return on 2 March 2020.
  - During the period between 10 February 2020 and 2 March 2020, he made a mortgage payment of £681.05, on the home that he had formerly shared with his ex-wife. Had he received the letter of 10 February 2020 by email on or around that date, it would not have been necessary to make the mortgage payment. WTW had provided no reasonable explanation or reason for sending the letter of 10 February 2020 by post instead of emailing it to him.
  - The Scheme's website suggested that the preferred method of communication was by email. Under the heading 'Mailing Preferences' it stated, "If you do not make a selection to receive documents by post, we will continue to send you communications electronically unless you have previously opted out of electronic communications or we do not hold an email address for you."
  - He was due to pay £620.95 to WTW, to settle the final element of the PSO. While he did not dispute this amount, WTW's decision to send a letter instead of an email had cost him £681.05. So, he requested that the final amount of £620.95 be waived.
15. On 28 September 2020, HSBC Bank's Chief Operating Officer, having delegated authority from the Trustee, responded to the complaint under stage one of the Scheme's IDRP. It said:-
  - It was not unreasonable for WTW to confirm the final details of the PSO by post, in the letter of 10 February 2020. There was a legal requirement that this information be provided in writing, without specifying whether this was by email or post.
  - While WTW had previously contacted Mr S by email and post, he had not asked to be contacted only by email. In addition, he did not inform WTW that he would be absent for an extended period.
  - The terms of the PSO, including any mortgage payments, were not the responsibility of the Trustee. Mr S had not, in any case, informed WTW that he

would be making any such payments up until the PSO was implemented. So, WTW had no way of knowing this.

- If Mr S' ex-wife received more money than she was entitled to under the terms of the PSO, this was a matter for him to address with her directly.
- Mr S' complaint was not upheld.

16. On 21 October 2020, Mr S appealed under stage two of the IDRPs and said:-

- The Trustee had said that pensions legislation required the final PSO details to be confirmed in writing, without specifying whether this was by email or post. But, as all communication before the letter of 10 February 2020 had been by email, he reasonably expected this means of communication to continue, in addition to receiving a hard copy by post.
- It was not obvious that he would need to request contact by email or notify WTW that he would be away on holiday. He did not consider a three-week break to be an "extended period" as suggested by the Trustee. WTW had also indicated that implementation of the PSO could take a number of months.

17. On 17 December 2020, the Trustee responded to the complaint under stage two of the Scheme's IDRPs and said:-

- WTW had fulfilled its obligation to confirm the final details of the PSO in writing. Sending the letter of 10 February 2020 was appropriate, when considering the formal nature of this notification.
- There had been no reason for WTW to consider that Mr S required or expected the final PSO settlement figures to be sent by email. So, there was no maladministration by WTW. Consequently, the Trustee and WTW were not responsible for the additional payment Mr S made to his ex-wife.

### **Mr S' position**

18. When confirming the details of the PSO on 10 February 2020, WTW chose to do so by letter, despite the fact that all his previous correspondence had been sent via email. At the time the letter was sent he had been away on holiday. So, he was unaware of it until 2 March 2020, having returned home.

19. The 'Mailing Preferences' section of the Scheme's website suggested that email would be his preferred option for receiving correspondence unless he had requested otherwise. So, he expected to continue receiving communications in that format. However, WTW sent the letter of 10 February 2020, causing him financial detriment.

20. As a consequence of the delay in receiving the figures quoted in the letter, he made an unnecessary mortgage payment of £681.05 on the house he had previously shared with his ex-wife. He attempted to recover this sum from her but failed.

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

21. When a PSO is implemented, the information required to be provided to the Scheme member is prescribed by regulations. WTW's practice is to send a formal letter, recording all of the information that the member was required to understand. The member could then retain that information, which reflected their benefit entitlement in the Scheme.
22. While Mr S is unhappy and cited previous communication by email, prior to receiving WTW's letter he had made no request to receive correspondence only by email.
23. The email correspondence between Mr S and WTW had been a series of questions and answers. The information regarding the implementation of the PSO required a more formal document, noting the impact on his benefits.
24. Mr S did not make WTW aware that he would be away or that he required instant notification upon the implementation of the PSO.
25. The 'Mailing Preferences' information that Mr S has referred to was not provided on the member's website but may have been included on other online platforms that members have access to. No confirmation was provided by the Trustee that correspondence would be sent to members by email as their preferred option unless they requested otherwise.
26. The Trustee firmly believes that WTW acted properly in dealing with Mr S' case. In the Trustee's view, there is no justification for paying any form of compensation to him.

### **Adjudicator's Opinion**

27. Mr 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:-
  - Prior to sending the letter of 10 February 2020, WTW had also sent letters by post to Mr S regarding the PSO, on 20 November 2019 and 6 February 2020. So, in the Adjudicator's opinion, Mr S should not have relied on receiving the final details of the PSO by email only, due to the previous examples of correspondence by post.
  - There was no evidence to suggest that Mr S did not receive the letters sent on 20 November 2019 and 6 February 2020, or that he complained to WTW upon receiving them. It was not until after he received the letter of 10 February 2020 that Mr S raised his complaint that there had been a delay in receiving the final settlement figures following the finalisation of the PSO. Consequently, WTW would not have known that Mr S preferred correspondence to be emailed at the time the letter of 10 February 2020 was sent, since he had not previously raised this as an issue.

- There was no evidence that the Trustee provided a guarantee to Mr S or other members that all correspondence would be sent by email as default, unless they elected not to receive it in that format. So, in the Adjudicator's view, the Trustee could not be held responsible for any delay in Mr S receiving the information contained in the letter of 10 February 2020.
- In the Adjudicator's opinion, there was no maladministration by WTW on behalf of the Trustee, as there was no requirement for WTW to email the final settlement figures from the PSO to Mr S, rather than send a letter. So, it follows that it was not necessary to consider Mr S' claim for financial loss.

28. The Trustee accepted the Adjudicator's Opinion. Mr S did not, and the complaint was passed to me to consider. Mr S provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr S.

### **Mr S' additional comments**

29. He had expressed to WTW a preference for all correspondence to be sent by email, before WTW sent the letter of 10 February 2020. Email had also been the method of WTW's previous communication up to that point. So, it was reasonable to assume that this would continue, especially as WTW did not say that any other form of communications would be used.

### **Ombudsman's decision**

30. I note that in his application to The Pensions Ombudsman (**TPO**), Mr S stated that his complaint was against WTW and the Trustee. I also note that the Adjudicator's Opinion showed the Trustee as the only Respondent to this complaint. As WTW was appointed as Scheme Administrator by the Trustee and since the outcome of the complaint has not changed, I have retained the Trustee as the only Respondent to the complaint. However, I have considered the overall actions of WTW and the Trustee when making my decision.
31. I note that WTW posted letters to Mr S regarding the PSO on 20 November 2019 and 6 February 2020. If Mr S had a preference on the form of correspondence he preferred to receive, he should have made this clearer from the outset. Had he done so, this would have given him the opportunity to raise the matter again or complain at the time that he received either of the letters. However, it was not until after he had received the letter of 10 February 2020 that Mr R complained about a delay in receiving the final settlement figures relating to the PSO by post.
32. In addition, in its email of 6 January 2020, WTW specifically said that once the implementation of the PSO had been completed, it would send its calculations to Mr S by letter. So, at that point Mr S was made aware that he should expect the calculations by post, rather than email. When he chased the Trustee for an update on

CAS-67381-G0D7

the progress of the implementation, on 26 February 2020, Mr S did not say that he was away and that any calculations should be sent to him by email.

33. So, I am not persuaded that Mr S expressed a preference for WTW to send all correspondence to him by email, before the letter of 10 February 2020 was sent. Nor was WTW required to send such information by email unless explicitly requested to do so.
34. I am satisfied that WTW informed Mr S that the calculations would be sent by letter. On that basis, there was no maladministration by WTW on behalf of the Trustee.
35. I do not uphold Mr S' complaint.

**Anthony Arter CBE**

Deputy Pensions Ombudsman  
16 August 2023