

## Ombudsman's Determination

Applicant	Mr D
Scheme	HSBC (UK) Pension Scheme ( <b>the Scheme</b> )
Respondent	Willis Towers Watson ( <b>WTW</b> )

### Outcome

Mr D's complaint is partly upheld and as WTW and the Trustee of the Scheme (**the Trustee**) have already adequately tried to put matters right for Mr D, during the Adjudicator's investigation, no further action is required on WTW's part.

### Complaint summary

1. Mr D complains that WTW, the administrator of the Scheme, failed to provide complete, clear and consistent information, about the benefits available to him from the defined contribution (**DC**) section of the Scheme in a timely fashion.
2. In particular, Mr D alleges that WTW failed to act upon Jersey pensions legislative changes, which came into force in January 2018, that materially changed the options available to him in the DC section of the Scheme. These changes included the removal of the condition that members must have not resided in Jersey for three years before approval of a transfer of pension rights outside of Jersey could be sought.
3. Mr D contends that despite having made WTW aware of these changes, it refused to acknowledge them or provide details of the new benefit options available to him of its own accord.
4. Mr D contends that he would now be financially worse had he not transferred his DC fund outside of Jersey in 2018, and chosen instead one of the options which WTW said was available to him.

### Background information, including submissions from the parties

5. Mr D received a retirement pack from WTW in May 2017, showing the options available to him from the DC section of the Scheme, based on an assumed early

retirement date of 31 December 2017. The options were either purchasing an annuity with his DC fund or transferring it to another registered pension plan. Enclosed in the retirement pack were generic forms and leaflets including, a “Flexible benefits options – risk warnings” document, and a member declaration (**the Declaration**).

6. On 1 October 2017, Mr D informed WTW that he was intending to return to the UK on 1 January 2018 and instructed WTW to encash his “deferred and active DC schemes”, reference numbers 0304600 and 0524233. He also said that he wished to defer taking his benefits in the defined benefits (**DB**) section until a later date. Mr D subsequently completed and returned the Declaration to WTW on 17 October 2017.
7. According to WTW’s records, some of Mr D’s contributions to the DC section of the Scheme were attributable to UK instead of Jersey employment and this would affect how tax and charges applied to his DC fund. Mr D disagreed with WTW’s records so WTW sought clarification of his employment history from HSBC.
8. WTW informed Mr D, on 16 November 2017, that HSBC had notified it all his service was accrued whilst he was a Jersey resident. WTW confirmed that the benefit options outlined in the retirement pack were correct and explained to him that:
  - taking the whole DC fund as a lump sum was not permitted in the Scheme;
  - if he chose to receive the tax-free cash sum available, he had to use the residual fund to purchase an annuity; and
  - it was open to him to transfer the whole DC fund to another pension provider.
9. Mr D disagreed with what WTW had told him and replied on 27 November 2017, as follows:
  - all his DC contributions were “sourced” from Jersey income and he was currently a Jersey resident; and
  - as he received tax relief from Jersey tax authorities on these contributions, “the scheme must be written under Jersey Scheme 131 rules” and “under this scheme...reference no 0304600 would fall under triviality rules and 0524333 should be available with 30% tax free and balance taxable at Jersey income rates”.
10. In its e-mail, dated 13 December 2017, WTW apologised for the delay to its response which was caused by a technical review of his enquiry. WTW also said that:

“In relation to the details you have provided relating to the payment of pension benefits as a lump sum, this confirms that you must not be entitled to further payments from the Scheme and that the total value in the Scheme does not exceed £18,000.

Therefore, although you have paid contributions under two different periods of service in this scheme, the total value of all the benefits payable from the

Scheme is in excess of £18,000. As a result, a lump sum could not be paid from the Scheme under these conditions.

Please also note that should you leave the Scheme, under the rules of the Scheme you would be entitled to a preserved benefit and would not be entitled to a refund of contributions. I note that these were the options confirmed previously when you left your original period of service. Please note that all options available to Scheme members must also be in line with the Scheme rules...”

11. Mr D was dissatisfied with this response and WTW sent him another e-mail on 15 December 2017 which said that:

“We do not dispute what you advised in your e-mail dated 27 November 2017 regarding the Jersey tax rules...the Scheme provides benefits to all members that are in accordance with UK legislation unless the Jersey legislation is more restricted.

...under record 0304600 you are not able to take the entire value of your Scheme fund as a cash lump sum as you do not meet the Scheme’s triviality requirements. You are also not able to take it as a taxed cash sum, i.e. Uncrystallised Fund Pension Lump Sum (**UFPLS**) as your benefits were accrued in Jersey and unfortunately the local laws prohibit Jersey resident members from accessing all the DC funds as an UFPLS. With regards to record 0524233, you are permitted to take up to 25% as a cash lump sum (even though Jersey legislation allows up to 30%). The balance would have to be taken as an annuity.

Your options are:

1. Buying a lifetime annuity with an insurance company.
2. Taking some of your DC funds as a tax-free cash sum (up to 25%) with the balance being used to buy an annuity.
3. Transferring the value of your funds to another scheme.

As Jersey only facilitates local transfers, the recipient scheme (whether based in the UK or Jersey) would have to hold permissions under Article 131CA or 131B. We would strongly recommend you seek legal and financial advice when considering your options.

We are unable to comment on the taxation that would be applied by the receiving annuity provider.”

12. Following a telephone call from Mr D, WTW sent him an e-mail on 20 December 2017, reiterating what it had told him in previous correspondence. This e-mail also mentioned that: (a) transfers of pension benefits outside of Jersey were subject to residency status; (b) a member considering such a transfer must have resided

outside of Jersey for at least three years at the time of the request; and (c) approval from the Jersey Comptroller of taxes was also necessary. In response to Mr D's enquiry about how the residency rules applied to him if he retired in Jersey and returned to the UK, WTW said that:

"If a Jersey member leaves employment while Jersey resident they remain subject to Jersey taxation even if they subsequently become tax resident out of Jersey.

If a Jersey member becomes employed in another jurisdiction while employed by the same group, they are automatically treated as having transferred their fund to the UK registered part of the scheme."

13. On 20 December 2017, Mr D informed WTW that he worked in Hong Kong between 2013 and 2016 and asked if the residency rules outlined above therefore meant the benefits he accrued before moving to Hong Kong should have been transferred to the UK registered part of the Scheme.
14. On 22 December 2017, WTW informed Mr D that it was investigating how the residency rules applied to his circumstances.
15. On 16 January 2018, Mr D informed WTW that he was no longer a resident of Jersey and asked how this would impact on his retirement options.
16. WTW sent Mr D a further e-mail on 24 January 2018, which said that:

"I would...like to express my sincere apologies for the delay in our response. We took note of your concerns and wished to investigate thoroughly to ensure that there was absolute clarity and consistency in our understanding of your circumstances...I acknowledge that this has not been communicated...

\*If a member moves out of Jersey to another jurisdiction covered by the Scheme, while remained employed by the sponsoring employer and retaining active membership of the Scheme, the member's benefits are automatically treated as transferred to the UK part of the Scheme. The Scheme does not manage the pensions of permanent employees outside of the UK and the Channel Islands, and therefore your benefits were not due to be localised for this reason. It is therefore the case that your service is to be treated as Jersey accrued.

...I can confirm that the entire benefit entitlement under the Scheme is treated as Jersey based employment and therefore subject to Jersey legislation. Owing to the stipulations of Jersey law, you are not entitled to a lump sum of your accrued benefits. I can confirm, therefore that your benefits must be drawn as an annuity, or else consolidated with another pension held elsewhere to facilitate this."

17. Mr D telephoned WTW on 24 January 2018, to complain about the time it had taken to provide confirmation about the residency rules and mentioned that he might have

difficulties finding a Jersey approved scheme to transfer into since he had moved back to the UK.

18. WTW sought guidance from its technical team and informed Mr D, in an e-mail dated 2 February 2018, that:

“We have been advised that...the benefits combined are not small enough to be considered a trivial lump sum...we are not able to facilitate the payment of your benefits as a lump sum.

You may therefore use the value of your pension to purchase an annuity in the Scheme with permissions under Article 131 of the Income Tax (Jersey) Law 1961, which includes the possibility of a retirement annuity contract established for overseas residents. Alternatively, you may transfer to an approved drawdown contract or to an equivalent scheme established outside of Jersey (subject to the approval of the Jersey Comptroller. The legislation is set out in the Income Tax (Jersey) Law 1961 – Articles 131+.”

19. Mr D replied on 5 February 2018, as follows:

“...Your suggestion that we transfer to an approved drawdown contract or to an equivalent scheme established outside of Jersey does not seem to consider the information you provided in your e-mail dated 20 December when you advised that, “Transfer of benefits outside of Jersey are also subject to residency status; members who wish to transfer out of Jersey cannot have been resident in Jersey for at least 3 years...” My interpretation here is that this option cannot be considered until 2021 which if confirmed would make this very restrictive...

...whilst in Jersey I was made aware of a proposal to update pension legislation and rules with a view to provide greater flexibility with small pension funds which maybe your “technical team” may be able to clarify with their Jersey counterparts...

We are not seeking to circumvent any rules, regulations or legislation but merely to seek definitive clarity as to our options in order to make informed decisions. We would however express some concern for HSBC employees we know in Jersey...who may be accruing benefits whilst in Jersey but with a view of retiring outside of Jersey ignorant of the potential restrictive nature of the Scheme in such circumstances. Having further reviewed Future Focus “Your Scheme Guide” I cannot see any reference to any variants to the scheme for offshore employees indeed it is entirely UK centric which I might suggest is not fair, clear and at worse, misleading.”

20. In its e-mail, dated 9 February 2018, to Mr D, WTW said that:

“Please be aware that WTW are not regulated by the Financial Conduct Authority...As third-party administrators we are not allowed to provide any financial advice relating to member pension benefits.

The current options available to you from the Scheme are as we confirmed in our e-mail sent on 2 February 2018.”

21. On 14 February 2018, Mr D sent WTW a summary of recent changes to the Jersey tax laws which were effective from 1 January 2018. Mr D considered that the changes removed the requirement for him to have been outside of Jersey for three years to transfer his benefits outside of Jersey and enabled him to take his benefits as a lump sum, as previously requested. He complained about the service which he had received from WTW and its failure to allow for the updated tax laws in its replies.
22. Mr D completed a transfer of his DC funds to a pension arrangement administered by AVIVA in the UK during May 2018.
23. Mr D subsequently made a complaint against WTW under the Scheme’s Internal Dispute Resolution Procedure (**IDRP**) which was not upheld at Stages One and Two, in May 2018 and September 2018 respectively.
24. In its Stage Two decision letter of 12 September 2018, the Scheme Trustee said that:
  - it accepted that not all the information provided by WTW was Jersey-specific;
  - WTW had, however, answered his questions appropriately and did what reasonably could be expected of it to help him understand the benefit options available from his DC fund;
  - the benefit statement and covering letter sent with the retirement pack correctly set out his options;
  - WTW correctly informed him of the restrictions applying to the transfer of his DC fund;
  - The Trustee and WTW are not obliged to proactively inform him of changes to Jersey pension legislation; and
  - given the unusual nature of some of the questions which he asked, it did not consider that WTW had unduly delayed providing its responses.
25. During the investigation carried out by one of our Adjudicators, the Trustee said that:

“The Trustee understands that Mr D was frustrated that the administrators could not always answer his queries immediately over the phone. However, Mr D raised various technical queries about his specific circumstances (e.g. that he would be returning to the UK or that he had spent some years working overseas in Hong Kong). It was appropriate for the administrators to

investigate his queries with the relevant technical team and at no point was Mr D provided with incorrect information...

Notwithstanding this, the Trustee has taken on board comments made by Mr D regarding the information available for Jersey based members. Whilst a guide will only ever be a summary of key features, the Trustee has decided to produce a separate specific guide for Jersey members, which will hopefully avoid the need for such members to ask as many questions of the Scheme administrator in the future.”

26. WTW sent Mr D a letter of apology, dated 19 September 2019, to acknowledge that it could have dealt with some of his queries quicker than it did. WTW also said that:

“With regard to the change in legislation from 1 January 2018 much of the dialogue between us took place prior to these changes becoming effective. WTW would only be able to answer member queries and provide options based on legislation in force at the time, however, we acknowledge that we could have been clearer in this regard.

WTW continues to provide training to its staff, including members of the Scheme’s administration team regarding UK legislation and legislation governing the Crown Dependencies and will circulate changes in legislation that affect UK members and Crown Dependencies as and when these occur. Internal procedures are regularly reviewed, updated and circulated. Continual improvements are made to member circumstances to ensure that they are clear, concise and correctly reflect the entitlement of the particular individual, including Crown Dependency members.”

### **Summary of Mr D’s Position**

27. The Scheme is a UK pension scheme with variations applicable to offshore members. These variations are not transparent in the Scheme literature, which is very UK centric and does not highlight restrictive variations applicable to offshore members. It has also become apparent that the staff of WTW are not sufficiently aware of such variations to guide members as required.
28. He has not suffered any financial loss but experienced “delays in accessing pension owing to misinformation, lack of knowledge and awareness and failure in communications.”
29. He accepts that WTW could only provide benefit options based on Jersey legislation applying at the time. Should legislation change, WTW “should review and if applicable reissue such option information based on the changes especially as benefits had not been taken nor instructions issued”, if requested.
30. To put matters right, he would like:
- WTW to acknowledge its shortcomings and handling of his case;

- the Scheme rules be changed to reflect offshore variations in a more transparent manner easily understood by members;
- knowledge and awareness of WTW staff “to be consistent with offshore legislation as applicable”; and
- compensation for the distress and inconvenience which he has suffered dealing with this matter\*.

\*this request was only made during the Adjudicator’s investigation.

31. Mr D welcomes the Trustee’s decision to produce a Jersey specific guide for Jersey members. This should be supplemented with “upskilling frontline WTW staff, as first points of contact with offshore members, to familiarise themselves of variances to UK rules, when applicable, as opposed to putting onus on members and away from administrators”.

## **Adjudicator’s Opinion**

32. Mr D’s complaint was considered by one of our Adjudicators whose findings are summarised below.

33. The Trustee had taken on board the comments made by Mr D concerning the Scheme information available for Jersey based members being “UK centric” and will be preparing a separate specific Scheme guide for such members, providing a summary of the key Scheme features. By doing so, the Trustee hoped that information did not have to be “drip fed”, as in Mr D’s case, and, in future, would be available from the outset to other Jersey members.

34. In the Adjudicator’s view, this sufficiently dealt with Mr D’s request that the information about offshore variations to the Scheme rules should, in future, be made available “in a more transparent manner easily understood by members”.

35. By sending its letter of apology to Mr D, WTW had conceded that it should have provided him with a better administrative service dealing with his Scheme pension rights and sincerely apologised for its shortcomings.

36. There was no reason to doubt WTW’s sincerity that it would also be taking on board the comments, which Mr D had made, to improve its administration service by amending its procedures so that other members in similar circumstances will not have to suffer the distress and inconvenience which he had experienced.

37. What the Trustee and WTW had done during the Adjudicator’s investigation was to try and put matters right in the way which he had said was, in his view, adequate and reasonable.

38. Whilst Mr D had experienced distress and inconvenience in dealing with this matter, in the Adjudicator’s opinion, the degree of non-financial injustice which he had



suffered was not significant enough to warrant the minimum payment of £500, which I could award in recognition of this.

39. Mr D did not fully accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr D 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 points made by Mr D for completeness
40. Essentially, Mr D could not accept what the Trustee and WTW had done during the Adjudicator's investigation was adequate to fully resolve his complaint on an amicable basis. In his view, WTW had not satisfactorily responded to his allegation that it had refused to acknowledge the Jersey legislation changes, which came into force on 1 January 2018, and to provide details of the new Scheme benefit options available to him after he had brought the changes to its attention.

### **Ombudsman's decision**

41. Having carefully considered all the available evidence, I concur with the Adjudicator that there is some merit to the allegations, which Mr D has made against WTW.
42. The Scheme documentation available to Jersey members, prior to Mr D's complaint, was clearly not sufficiently detailed in order for Mr D to make an informed decision about his benefit options without having to seek further clarification from WTW.
43. I note that the Trustee has acknowledged the issue and has decided to prepare a Jersey specific guide for the reference of Jersey members. Hopefully, this will mean that other Jersey members do not have to ask WTW so many questions to obtain the necessary information in the future.
44. With the numerous requests for technical information relating to his Scheme benefit options, it was reasonable, for WTW to have referred them to its technical team before responding. This ensured that WTW provided Mr D with the correct information. I agree with Mr D, however, that WTW could have provided some of its responses more quickly regardless of having to seek technical support. I note that WTW has already apologised directly to Mr D for any inconvenience caused by these delays.
45. In my opinion, some of the responses which WTW provided to Mr D's questions could also have been more detailed; this would have avoided Mr D having to seek clarity by asking further questions.
46. Following the Jersey legislative changes, which came into force on 1 January 2018, the responses which WTW gave to Mr D's questions were, in my view, somewhat vague and incomplete on occasion.
47. For example, in its e-mail dated 2 February 2018, WTW mentioned that Mr D may transfer his pension rights in the Scheme "to an approved drawdown contract or to an equivalent scheme established outside of Jersey (subject to the approval of the

Jersey Comptroller". WTW, however, failed to explain that a condition had been removed. The condition had required members wishing to transfer to be living outside of Jersey for at least 3 years. The transfer of benefits outside of Jersey were now no longer subject to residency status. When Mr D asked whether this condition still applied to him, WTW did not take the opportunity to explicitly say that it did not but merely confirmed that he had a right to transfer his benefits.

48. In my view, WTW should have responded by sending Mr D a summary of recent changes to the Jersey tax laws which were effective from 1 January 2018. This would have avoided Mr D having to provide WTW with this information and to explain that the changes had removed the requirement for him to have been outside of Jersey for three years in order to transfer his benefits and to take his benefits as a lump sum.
49. The deficiencies identified by Mr D concerning the administration service provided by WTW has clearly caused Mr D frustration. However, Mr D acknowledges that WTW's shortcomings have not caused him any actual financial loss because he was eventually able to transfer his DC pension rights in the Scheme to a UK pension arrangement and thus take advantage of "options available offering greater flexibility".
50. Mr D has undoubtedly suffered some non-financial injustice, so I partly uphold his complaint, but, I agree with the Adjudicator that it was not at a level deemed significant enough to warrant directing WTW to make a financial award. I am also in agreement with the Adjudicator that the steps already voluntarily undertaken by WTW and the Trustee, during the Adjudicator's investigation, is sufficient in the circumstances.

**Anthony Arter**

Pensions Ombudsman  
15 December 2019