

Ombudsman's Determination

Applicant	Mr Y
Scheme	The Johnson & Johnson UK Group Retirement Plan (the Plan)
Respondent	Johnson & Johnson Consumer UK Limited (Johnson & Johnson)

Outcome

1. Mr Y's complaint is partly upheld and to put matters right Johnson & Johnson shall amend Mr Y's final pensionable pay to £114,190.33. It shall also pay Mr Y £1,000 in recognition of the distress and inconvenience caused to him by Johnson & Johnson's maladministration.

Complaint summary

2. Mr Y has complained that his final pensionable pay has been incorrectly calculated as the values of his bonus figures have been understated.
3. Mr Y has also complained that Johnson & Johnson has not been able to provide evidence to show that it was taking a consistent approach to his bonus calculations. Mr Y says this lack of consistency means he cannot be sure of the accuracy of the pensionable pay that will be used to calculate his benefits.

Background information, including submissions from the parties

4. Mr Y was employed by Johnson & Johnson and worked in its Swiss office. Although Mr Y had been working overseas, he remained a member of the Plan. In order to continue to accrue benefits within the Plan, Mr Y's pensionable pay was converted from Swiss francs (**CHF**) to British pound sterling (**GBP**).
5. Mr Y originally complained to The Pensions Ombudsman (**TPO**) regarding the understatement of his pensionable pay, which was made up of his base salary and any bonuses. The complaint about his base salary was found to fall outside of TPO's jurisdiction. However, the complaint in relation to the conversion of his bonus was something TPO could investigate. This Determination relates solely to whether Mr Y's pensionable pay has been understated due to the conversion of his bonus.
6. In July 2017, TPO contacted Johnson & Johnson to establish what information was available regarding the conversion of Mr Y's bonus.

7. On 11 August 2017, Hogan Lovells, representing Johnson & Johnson, wrote to TPO and said in summary:-

- Where a member was based overseas (**overseas member**) and so had an overseas employer, the calculation of their pensionable salary was based on a notional UK salary that Johnson & Johnson called the “UK reference salary”.
- The UK reference salary was one element of an overseas member’s pensionable pay as any annual performance bonus was also pensionable.
- Where a bonus was paid to an overseas member, there was a direct conversion of the bonus amount from local currency to GBP at the date of payment, which was in February or March each year.

This information was based on the operation of the Global Compensation Framework (**GCF**) which was introduced in 2011 and so only relevant to Mr Y’s 2011 and 2012 bonuses.

8. On 15 September 2017, Hogan Lovells sent a further email to TPO, which again said that Mr Y’s pensionable salary was based on his UK reference salary and any annual bonus he received. As previously explained, the bonus was converted from the local currency value to GBP each year.

9. On 19 December 2017, Johnson & Johnson sent an email to Mr Y and provided the calculations for his last three years of pensionable pay. It also confirmed that the new GCF was introduced while he was based overseas. However:

“for the majority of your time spent overseas[,] whilst treated as a member of the UK pension plan[,] the UK consumer company set a **notional UK base salary and bonus value.**” [emphasis added]

10. Later that day, Mr Y responded. He provided a table that showed his bonus in CHF, the exchange rate he had used and his calculation showing what his bonus was in GBP. He said that the calculation of his GBP bonus in 2006 and 2007 was very close to the figures confirmed by Johnson & Johnson. However, he could not understand how there were differences between the bonuses calculated between 2008 and 2012. He was particularly concerned with the discrepancies in the figures relating to 2009, 2010 and 2012 which were lower than he expected.

11. On 2 January 2018, Johnson & Johnson sent an email to Mr Y. It explained that prior to the introduction of the GCF, both notional UK base salaries and notional bonus values were used to create the UK pension figures. It said that for the majority of the time Mr Y was based overseas, Johnson & Johnson used the notional bonus values for his pension calculation. It concluded by saying that bonuses used for Mr Y’s pensionable salary could not be calculated by simply converting the bonus value to GBP.

12. On 3 January 2018, Mr Y complained to Johnson & Johnson. He said in summary:-

- It had been explained to him a number of times that where a bonus was paid to an overseas member there was a direct conversion of the bonus amount from the local currency to GBP at the date of payment.
 - This was supported by the calculations he had carried out on his 2006 and 2007 bonus values where the GBP bonus value was within 1% to the CHF bonus value when converted at the prevailing exchange rate.
 - This did not apply to the bonus amounts between 2008 to 2012 and so these were inaccurate and understated.
13. On 30 January 2018, Johnson & Johnson sent an email to Mr Y and said it did not uphold the complaint as the correct figures had been used. It said in summary:-
- It could confirm that the process used for an overseas member of the Plan did change while he was based overseas. The major change was the introduction of the GCF when an aligned cross sector process was developed.
 - With the introduction of the GCF the UK reference salary was set using the range for the relevant GCF band, the bonus awarded was calculated by taking the local currency value and converting it to a GBP figure.
 - Prior to this it was typical to take a notional UK base salary and create a notional bonus from this. However, going back even further it was typical to adopt the current process of calculating a UK bonus based on an exchange of the local bonus award.
 - Mr Y earned the highest amount in his final three years of pensionable employment and these years were used to create his final pensionable pay which was used to calculate his final benefits.
 - Following the introduction of the GCF in 2011, his bonus calculations for the purposes of the Plan in 2011 and 2012 were based on a straightforward exchange rate conversion of the Swiss bonus amount. But his 2010 bonus was calculated on a typical notional UK base salary and a notional bonus created to go alongside it.
14. Following the complaint being referred to TPO the following submissions were made.

Johnson & Johnson's submissions

15. Mr Y was an employee within the Consumer Sector business and this section of the business followed its own process for determining bonuses for overseas employees. Originally, a straightforward conversion of the local currency to GBP was used, using the exchange rate advised by Johnson & Johnson's finance function for the month the bonus was awarded.
16. The process then changed to a calculation of Mr Y's bonus in relation to what would have been appropriate for the member's level, job scope and performance in the UK.

17. The final change was to the use of the GCF where the bonus element was a straightforward conversion of the local currency to GBP.

Mr Y's submissions

18. Johnson & Johnson had been unable to provide a formal or documented policy to show how bonuses were converted for overseas members. The inconsistent explanations show that Johnson & Johnson has, "failed in their duty to manage (and calculate) [his] pension benefits accurately."

Further investigation by the Adjudicator

19. The Adjudicator contacted Johnson & Johnson to request further clarification on how Mr Y's bonus was calculated. He said that without further explanation of when each method was used, Johnson & Johnson should calculate Mr Y's bonus using a straight conversion from the local currency to GBP.
20. On 26 February 2019, Johnson & Johnson responded. It said that in Mr Y's final full Plan year, which was April 2011 to March 2012, he was subject to the full effect of the GCF. This meant that his bonus was a simple conversion from CHF to GBP. It said that the only reason for the different value in Mr Y's calculations compared to theirs was due to the exchange rate used. Mr Y used an exchange rate from 31 March each year, but Johnson & Johnson set the bonus earlier in the year so used an earlier conversion rate.
21. The letter went on to say that prior to the GCF being in place, Johnson & Johnson and the Plan Trustee both agreed the bonus would have been calculated using notional figures. Both said that the actual calculations lying behind the bonus information were not available. However, a review of roles at a similar level had been undertaken and the bonus percentages for Mr Y were in the scope for a UK equivalent.
22. On 8 March 2019, Mr Y provided further comments to TPO. He said in summary:-
- Johnson & Johnson and the Trustee had still failed to provide any reliable evidence to show that there had been a consistent approach to providing bonus figures. As a result, he still believed that there were inaccuracies in the calculation of his bonus.
 - Mr Y did not dispute that the years 2010, 2011 and 2012 were his highest paid years of employment.
 - However, he disputed the bonus calculations and provided the values that he believed to be correct:

Year	Johnson & Johnson Records – Bonus (£)	Mr Y's Calculation – Bonus (£)	Difference (£)
2010	19,492	33,413	-13,921
2011	31,135	32,812	-1,677

2012	32,069	36,379	-4,310
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- Mr Y asked that his pensionable bonus be reinstated at the level he had calculated. He also requested that Johnson & Johnson drop any demand for payment of a shortfall in employee contributions which amounted to £774.26.
23. On 25 April 2019, Johnson & Johnson responded to TPO. It said that it believed that Mr Y's benefit had been calculated correctly. It confirmed that Mr Y's bonus for the final two years had been based on a direct conversion rate. It also said that it could not confirm the precise date that the bonus was converted in those years, reiterating that "the exchange rates used were prior to the 31 March date mentioned and did vary over the period in question but in principle were at the payroll cut-off point which is end of prior month". It said that, typically, February rates were used.
24. On 3 May 2019, Mr Y wrote to TPO and said that an exchange rate fluctuation could not credibly be used to explain the differences in the bonus figures. He said that he could not rely on Johnson & Johnson's bonus figures as there was no evidence of any documented process, methodology or record keeping.

Adjudicator's Opinion

25. Mr Y's complaint was considered by one of our Adjudicators who concluded that further action was required by Johnson & Johnson. The Adjudicator's findings are summarised below:-
- The Adjudicator said that Mr Y had been given incorrect information regarding the method Johnson & Johnson used to convert his bonus. The Adjudicator thought it was clear that Mr Y was provided with the incorrect method on multiple occasions, which has left him unwilling to accept Johnson & Johnson's figures. However, the quotation of the incorrect method did not entitle Mr Y to have his bonuses calculated using a method that was incorrect for a different reason.
 - Although Johnson & Johnson had been unable to provide a codified policy to show how it converted each year's bonus, it had been able to provide information regarding the history of how it calculated bonuses. Part of Mr Y's complaint was that there was no written policy to confirm how bonuses were converted. It followed that he could not point to any policy that showed his bonus should have been calculated using a direct conversion as he stated it should be. As such, neither party could definitively prove how bonuses should have been converted. The Adjudicator explained that where there is an absence of a proven policy, the Ombudsman will look to make a decision on the basis of what was most likely to have been correct, on the balance of probabilities.
 - Johnson & Johnson said that it changed its process to convert Mr Y's bonus in relation to "what would have been appropriate for the member's level, job scope and performance in the UK". Although, due to the length of time, it has not been able to say when this policy was in place. It appears that this was the case

between 2008 and 2010, and the Adjudicator believed it was more than likely that Johnson & Johnson was referencing a notional UK bonus during this period.

- Johnson & Johnson only said that, during the period of 2008 to 2010, the bonus had always been calculated using a straight conversion when it was represented by Hogan Lovells. At every other opportunity, it said that it used to set its bonus with reference to a UK member. While the Adjudicator accepted that Johnson & Johnson should be responsible for the information Hogan Lovells provided on its behalf, he thought it was likely that Hogan Lovells misunderstood how the bonus was historically calculated. The Adjudicator was of the view that it was more than likely that the 2010 bonus conversion was calculated on the basis of referencing a notional UK bonus and that was the reason for the significant difference between the figures produced by Mr Y and Johnson & Johnson.
- The Adjudicator noted that Johnson & Johnson confirmed that the final two years of Mr Y's employment were calculated using a straight conversion. Given that Mr Y had argued that his bonus should be calculated using a straight conversion, the Adjudicator's view was that there was no dispute about how these years should have been calculated. Mr Y believed that Johnson & Johnson should be made to use his calculations. However, Johnson & Johnson maintained that its calculations were correct.
- Johnson & Johnson has said that the discrepancies could stem from using the exchange rate from a different date, however it could not confirm which date it used. Johnson & Johnson has also said that it used Mr Y's preferred method, of direct exchange rate, to calculate his bonus for the last two years of his service. It has also explained the discrepancy; so, in the Adjudicator's view as this explanation appeared likely and plausible, this part of the complaint could not be upheld.
- The Adjudicator was of the view that the differences in bonus calculations could be attributed to the various methods used to calculate Mr Y's bonus. He was of the view that it was more than likely that the conversions were completed correctly and in accordance with the policy in place at the time. As a result, the Adjudicator did not believe that there had been financial loss.
- Mr Y was only made aware that Johnson & Johnson used notional bonus values on 2 January 2018. Even after he had been made aware of the notional bonus, there was inconsistent information as to which years the notional bonus was applied. This would likely have caused serious distress and inconvenience to Mr Y, as he would have been in receipt of several pieces of inconsistent information over a number of years. The Adjudicator's opinion was that a payment of £1,000 was warranted.

26. Mr Y did not accept the Adjudicator's Opinion and provided further submissions. Mr Y accepted that the 2010 figure was likely based on the notional salary/bonus.

However, he said that his role was totally unique to Switzerland and nothing like it existed in the UK. So, it was impossible to do a notional comparison.

27. He also argued that the direct conversion, used in 2011 and 2012, undervalued his salary. He said that Johnson & Johnson used exchange rates that were beneficial to it. The below table shows the conversion figures produced by both parties.

Year	Calculated by	Exchange Rate (and date)	Accepted bonus (CHF)	GBP converted amount (£)
2011	Johnson & Johnson	1.55 (Unknown)	48,233	31,135
2011	Mr Y	1.47 (31/3/2011)	48,233	32,812
2012	Johnson & Johnson	1.63 (Unknown)	52,386	32,069
2012	Mr Y	1.44 (31/3/2012)	52,386	36,379

28. The Adjudicator remained of the view that the 2010 bonus had been calculated correctly. He reviewed the figures provided by both parties and the prevailing exchange rates at the time and saw that the 2011 conversion factor was within the range of prevailing exchange rates in place at the time. So, he was satisfied that the 2011 figure was correct. The Adjudicator's calculations are set out in Appendix one.
29. However, the Adjudicator was of the view that the conversion factor that Johnson & Johnson used for 2012 was not evidenced by the exchange rates at that time. The Adjudicator said that, unless Johnson & Johnson was able to evidence the conversion rate it used, the Pensions Ombudsman would likely expect the bonus to be calculated with the available exchange rates. The exchange rate at the time meant that the bonus should have been £36,128 instead of £32,069. In turn, this took Mr Y's earnings above the Scheme Earnings Cap, which was £117,600. So, his pensionable earnings for 2012 should have been £117,600. Mr Y's final pensionable pay should be:

$$[98,800.56] + [£112,864.43] + [£117,600] = £329,264.99 / 3 = \mathbf{£109,755}$$

30. The Adjudicator's calculations are in Appendix two.
31. Johnson & Johnson agreed that the 2012 figure was undervalued and said it would increase Mr Y's final pensionable salary accordingly, in line with the Adjudicator's suggestion. It also said that, as a gesture of goodwill, it would write off the shortfall in employee contributions that were now owed and that it would make a payment of £1,000 in recognition of the distress and inconvenience Mr Y had suffered.

32. Despite the amendment to his final pensionable salary, Mr Y still felt that his bonuses and, by extension, his final pensionable salary were calculated incorrectly. He disagreed with Johnson & Johnson using a notional conversion in 2010, as his role was unique. He also maintained that the conversion figure used for 2011 was detrimental for him. He said that Johnson & Johnson should be required to evidence the date it calculated the conversion.
33. As Mr Y did not accept Johnson & Johnson's offer to put things right, the complaint had been passed to me to consider.

Ombudsman's decision

34. Mr Y has queried the methodology used by Johnson & Johnson to calculate his bonus in the years 2010, 2011 and 2012 for the calculation of his benefits under the Plan. These were his highest earning years and so the calculation affects the amount of his final pensionable pay used for the calculation of his pension under the Plan. Mr Y was based overseas during this time and was paid in CHF. Johnson & Johnson has set out that there were different methods used for the conversion of a bonus in a local currency to GBP during Mr Y's employment.
35. Johnson & Johnson has said that the GCF was introduced in 2011 and so following that, the bonus that Mr Y received in CHF was converted to GBP using an exchange rate provided by the Johnson & Johnson's UK finance function. This was then applicable to 2011 and 2012. Prior to 2011 there is less clarity as to how the bonus was calculated as it was based on local processes in place at the time. Johnson & Johnson has consistently said that the process it used was to create a notional UK base salary and create a notional bonus from this. Mr Y has argued that, as his role was unique, a notional UK base salary and bonus could not have been used.

Calculation of the 2010 bonus

36. I have considered the information that has been provided regarding Mr Y's 2010 bonus and it is clear that there has not been a straight conversion of CHF to GBP as the prevailing exchange rates do not support this approach. A different methodology has been used, and I do not find any reason to doubt Johnson & Johnson's assertions that Mr Y's bonus, for the purposes of the Plan, was based on a notional UK base salary.
37. My starting point is of course to review the Plan rules which provide for the calculation of Mr Y's benefits. Johnson & Johnson have provided a copy of the Replacement Definitive Trust Deed and Rules dated 4 February 2004 (**the 2004 Rules**) and a copy of Replacement Definitive Trust Deed and Rules dated 1 April 2012 (**the 2012 Rules**). The 2012 Rules were adopted with effect from 1 April 2012 and apply to any members still in service on that date. They were adopted pursuant to the power of amendment in clause 4 of the 2004 Rules which provided that the Trustee may by deed amend the 2004 Rules with the consent of the Principal Employer and with retrospective effect subject to certain provisos including that no amendment shall be

made which “diminishes the amount of any pension or other periodical payment presently payable or affects in any way prejudicially the accrued rights of any Member”.

38. It is understood that the relevant provisions applicable to Mr Y after 1 April 2012 are the provisions of the 2012 Rules, provided these did not affect his accrued rights prejudicially in any way.
39. Under Rule 7 of Schedule 2 to the 2012 Rules, a member’s benefits, in respect of his service completed between 1 July 1993 and 1 April 2012, are calculated on the basis of his “Final Pensionable Salary 2”.
40. Final Pensionable Salary 2 is defined in Schedule 1 to the 2012 Rules as relevant as:
- “the greater of:
- the average of the three highest annual Pensionable Salary 2 figures during the 10 years ending on 31 March 2012, and
 - the average of his annual Pensionable Salary 2 figures during the 36 consecutive months ending on 31 March 2012 (...)

The annual Pensionable Salary 2 figures shall each relate to separate period of 12 consecutive months.”

41. Pensionable Salary 2 is defined “for any period” as “the Member’s Gross Earnings 2 LESS the proportion of the Lower Earnings Limit applicable to the same period”.
42. As relevant, Gross Earnings 2 is defined as:

“the Member’s total earnings from the Participating Employers excluding benefits in kind and share bonuses but including 100% of any discretionary annual performance cash bonus.

Provided that:

- only 85% of any discretionary annual performance cash bonus paid after 1 January 2006 to employees in Band 30 and above of the global banding structure operated by the Johnson & Johnson group of companies shall be taken into account when calculating Gross Earnings 2, and
- Gross Earnings 2 shall not exceed the Earnings Cap except when calculating Pensionable Salary 2.

The Participating Employer shall advise the Trustee of the amount of Member’s Gross Earnings 2 for the purposes of the Plan (...).”

43. The 2004 Rules contained similar provisions and in particular used a definition of Final Pensionable Earnings 2 and Pensionable Earnings 2 based on Gross Earnings which in turn were defined as “the Member’s total earnings from the Participating

Employers including discretionary cash bonuses but excluding benefits in kind and share bonuses. The Participating Employer shall advise the Trustees of the amount of a Member's Gross Earnings 2 for the purposes of the Plan."

44. Assuming Mr Y was not in Band 30 or above, there is no material difference in the definitions, and I see no adverse change that might be invalid.
45. The only issue which I need to determine in this case is how Mr Y's "total earnings... including 100% of any discretionary annual performance cash bonus" is to be determined for the purposes of the Plan, having regard to the fact that his bonus was paid in CHF and the relevance of the GBP adopted by Johnson & Johnson in 2011.
46. There appears to be no dispute that Mr Y's annual bonus was pensionable and is a discretionary annual performance cash bonus for the purposes of the Plan (and would have been a discretionary cash bonus under the 2004 Rules).
47. There is nothing in the definition of Gross Earnings 2 (or the definitions of Pensionable Earnings 2 and Final Pensionable Earnings 2) or any other provision of the 2012 Rules that indicate that the amount of a member's "total earnings" and "discretionary annual performance cash bonus" is not simply a matter of fact. Whether a member is awarded a discretionary bonus may depend on the exercise of his employer's discretion but once it is awarded, that it has been awarded and its amount are matters of fact and the 2012 Rules do not provide for any further discretion to be exercised by Johnson & Johnson in deciding whether it forms part of his Gross Earnings 2 and how it should be valued.
48. I should add that I do not interpret the provision "the Participating Employer shall advise the Trustee of the amount of Member's Gross Earnings 2 for the purposes of the Plan" as importing any discretionary power for the Participating Employer to decide that a different amount will be the member's Gross Earnings 2. It simply imposes on the Participating Employer an obligation to provide the essential factual information to the Trustee. As this information should be within the possession of the Participating Employer it should not be onerous. The only issue is as to the amount in GBP of amounts not paid or awarded in GBP.
49. I also note that while for determining whether the member is "a Band 30 or above employee" for whom only 85% of any discretionary bonus will be pensionable, the 2012 Rules refer to the "global banding structure", no reference to the GCF is made for determining the amount of any discretionary bonus. Policies such as the GCF may well be relevant in setting salaries or in determining what discretionary bonus each employee should be awarded, but once a bonus has been awarded, the GCF is not relevant for determining the amount for the purpose of calculating Gross Earnings 2 under the 2012 Rules.
50. Nothing in the 2012 Rules permits the Trustee to use (or Johnson & Johnson to provide) a notional bonus amount that was not the actual amount of the bonus paid to Mr Y. The GCF could not override the provisions of the 2012 Rules. An amendment to the 2012 Rules would have been required to provide for the use of notional rather

than actual bonuses in the calculation of Gross Earnings 2. The GCF did not have the effect of amending the 2012 Rules (or the 2004 Rules) which required amendment by deed (and subject to the proviso of not adversely affecting accrued rights).

51. I have not identified any provisions in the 2012 Rules addressing currency conversion for amounts not paid in GBP. The 2004 Rules included provision that benefits be paid “in sterling or such other currency as the Trustee shall decide” (Rule 23) but this was not repeated in the equivalent rule in the 2012 Rules (Rule 39). This is not material. The Plan is a UK based occupational pension scheme, and it is reasonable that all amounts be determined in GBP. The only point is how amounts paid in CHF should be converted to GBP for the purposes of calculating Gross Earnings 2, Pensionable Earnings 2 and Final Pensionable Earnings 2.
52. The question is, if an employee is paid an amount in CHF, what is the value on the same day of that amount in GBP? There is some room for administrative flexibility and for internal policy and practice to apply, particularly in relation to the payment of a discretionary annual bonus. If Johnson & Johnson use a particular conversion rate reasonably determined by their finance department for such purposes that would be an acceptable rate to use, provided it is reasonably consistent with published rates at the relevant time. I would also consider it reasonable to apply either the exchange rate on the date the amount becomes payable or on the date of actual payment or an average rate for the relevant month. According to the evidence of Hogan Lovells, where a bonus was paid to an overseas member, there was a direct conversion of the bonus amount from local currency to GBP at the date of payment. Other evidence provided by Johnson & Johnson is that, originally, the conversion was made using the exchange rate advised by Johnson & Johnson’s finance function for the month the bonus was awarded. Either would be acceptable in my view.
53. In 2010, Mr Y received his bonus in CHF but the amount that was treated as pensionable was lower because an alternative notional amount was used when calculating his benefits rather than using an exchange rate. This was a breach of the 2012 Rules. The amount should be recalculated using the actual CHF amount and, in the absence of other rates and having regard to the evidence of Johnson & Johnson that conversions were made “in principle at the payroll cut-off point which is end of prior month”, using the conversion rate for the end of February 2010 which I determine to be 1.63.

Calculation of the 2011 bonus

54. Johnson & Johnson has said that, due to the time that has elapsed, it is unable to show exactly what date it used to convert Mr Y’s 2011 bonus from CHF to GBP. However, it has said that this would have been at some point in February 2011. It has said that it used an exchange rate of 1.55, which meant that the bonus of 48,233 (CHF) equated to £31,135. Mr Y has said that Johnson & Johnson should use the exchange rate as it was on 31 March 2011, which was 1.47. This would have meant that his bonus would have been £32,812.

55. I have reviewed the Adjudicator's calculations in Appendix one which use exchange rates from February 2011. The conversion rate of 1.55 is consistent with the exchange rate of this time (at least for dates between 10 and 16 February 2011). There is no evidence whether Johnson & Johnson used a set date and although Mr Y would naturally prefer a higher rate, this does not mean that Johnson & Johnson was obliged to act in this way. I determine that the conversion rate of 1.55 was acceptable.

Calculation of the 2012 bonus

56. With regard to 2012, since the start of TPO's investigation, Johnson & Johnson has agreed to increase Mr Y's pensionable earnings to the maximum allowed under the Scheme Earnings Cap. Consequently, Mr Y's recorded pensionable earnings are as high as they can be. I do not find it necessary to make a finding in relation to this year.

57. The calculations to show the final bonus amounts are in Appendix three.

58. My decision is that this complaint is upheld in part regarding the calculation of the 2010 bonus.

Directions

59. Within 28 days of the date of my Determination, Johnson & Johnson shall:-

- Pay Mr Y £1,000 in recognition of the distress and inconvenience caused.
- Increase Mr Y's final pensionable pay to £114,190.33

Camilla Barry

Deputy Pensions Ombudsman
24 June 2025

Appendix one: Bonus calculations for 2011

Johnson & Johnson's calculations for 2011 were:

Gross pensionable pay + Bonus – LEL = £86,772.00 + £31,135.00 - £5,042.57 =
£112,864.43

Given that Johnson & Johnson said that the bonus would have been converted some time in February 2011, the worst exchange rate from that month, from Mr Y's point of view, has been used.

Calculated by	Exchange Rate (and date)	Accepted bonus (CHF)	GBP converted amount
Johnson & Johnson	1.55 (Unknown)	48,233	31,135
Mr Y	1.47 (31/3/2011)	48,233	32,812
TPO	1.56 (13/2/2011)	48,233	30,919

The worst exchange rate would have converted Mr Y's bonus to £30,919, which was less than the amount used to calculate his pensionable pay. So, the Adjudicator was satisfied that Johnson & Johnson's calculations were within the possible range.

Appendix two: Bonus calculations for 2012

Johnson & Johnson's calculations for 2012 were:

Gross Pensionable Pay + Bonus – LEL = £89,375.00 + £32,069.00 - £5,300.44 =
£116,143.56

Mr Y has said that the bonus was underestimated.

Given that Johnson & Johnson said that the bonus would have been converted some time in February 2012, the worst exchange rate from Mr Y's point of view has been used.

Calculated by	Exchange Rate (and date)	Accepted bonus (CHF)	GBP converted amount
Johson & Johnson	1.63 (Unknown)	52,386	32,069
Mr Y	1.44 (31/3/2012)	52,386	36,379
TPO	1.45 (13/2/2012)	52,386	36,128

As you can see, the worst exchange rate would have converted Mr Y's bonus to £36,128 which was significantly more (£4,059) than the amount used to calculate his pensionable pay.

Gross Pensionable Pay + Bonus – LEL = £89,375.00 + £36,128.00 - £5,300.44 =
£120,202.56

This would be capped by the Scheme Earnings Cap. So, his 2012 pensionable earnings would be **£117,600**.

Appendix three: Final amended bonus calculations

Year	Exchange rate	Accepted bonus (CHF)	GBP converted amount
2010	1.63	53,460	32,798
2011	1.55	48,233	31,135
2012	1.45	52,386	36,128

Amended amounts

$$2010 \quad 84,245.00 + 32,798.00 - 4,936.44 = 112,106.56$$

$$2011 \quad 86,772.00 + 31,135.00 - 5,042.57 = 112,864.43$$

$$2012 \quad 89,375.00 + 36,128.00 - 5,300.44 = 120,202.56^*$$

*This would be capped by the Scheme Earnings Cap. So, his 2012 pensionable earnings would be **£117,600**.

The total figures are then divided by 3 to give a final pensionable salary on leaving the Plan:

$$112,106.56 + 112,864.43 + 117,600 = 342,570.99$$

$$342,570.99/3 = £114,190.33$$