The Pensions Ombudsman

Ombudsman's Determination

Applicant	Mr Y
Scheme	United Utilities Pension Scheme (**the Scheme**)
Respondents	United Utilities (**the Employer**) United Utilities Pensions Trustee Limited (**the Trustee**) Willis Towers Watson (**WTW**) Aegon

Outcome

1. I do not uphold Mr Y's complaint and no further action is required by the Employer, the Trustee, WTW and Aegon.

Complaint summary

2. Mr Y was employed by the Employer until March 2017, when he took voluntary redundancy (**VR**). He was also a member of the Scheme. He has complained that:

   - The Employer told him to pay part of his redundancy money into the Scheme, in the form of Additional Voluntary Contributions (**AVC**) but did not make him aware of the impact this would have on his Money Purchase Annual Allowance (**MPAA**).

   - WTW did not provide him with sufficient documentation that would have made him aware about the MPAA.

   - None of the Respondents made him aware that he would need to take his main Scheme benefits at the same time as the AVC benefits.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.

4. The Scheme has a defined benefits (**DB**) section and a defined contributions (**DC**) section. WTW is the Administrator of the DB section and BlackRock Life Limited (**BlackRock**) was the Administrator of the DC section.

5. In February 2017, Mr Y applied for VR.

6. On 6 February 2017, the Employer confirmed to Mr Y that his VR application had been accepted and he would leave service at the end of March 2017. His termination payment would be £73,876.48 and he would also be eligible for a pro-rated bonus in respect of the financial year 2016/17.

7. On 27 February 2017, Mr Y sent an email to the Employer regarding his Scheme benefits. The email exchange shows that the Employer informed Mr Y that:-

   - Since he was over age 50 and was leaving the Scheme under the terms of VR, he could take his Scheme benefits on the date of his redundancy.
   - These benefits would be reduced for early payment, as they would be paid over a longer period.
   - There was a 6% “top-up” applied to benefits built up to 31 March 2010, however what would actually happen was the early reduction would be 6% less than it should be.
   - The lump sum available from Mr Y’s Scheme benefits was tax free.

8. On 7 March 2017, Mr Y instructed the Employer to arrange for the taxable element of his VR payment to be paid into the Scheme as an AVC. Mr Y said that his understanding was that he would be able to leave the Scheme and draw down the AVC after March 2017.

9. On 16 March 2017, the Employer wrote to Mr Y and confirmed his VR. The letter said that the payment of £73,876.48 would be made within one month of his leaving date. It also said:

   > “In accordance with current tax legislation, we understand that the first £30,000 of any redundancy payment is not subject to tax. Where your payment exceeds £30,000 the balance of the Sum will be subject to the deduction of income tax.”

10. On 4 April 2017, Mr Y had a telephone conversation with WTW. The notes of that conversation recorded the following:

    > “[Mr Y] called to discuss his retirement statement. He said he would be speaking to his IFA and wanted to know when the cut-off would be for returning his forms before his record would be made deferred. I explained that we usually give around 3 months but as long as we are kept informed we could extend this. [Mr Y] said he would let us know before this.
    >
    > He also wanted to know about his AVC’s [sic] as he is paying a portion of his redundancy pay into a new AVC. I explained that once this has been set up and paid to Blackrock [sic] we will provide him with his AVC quote. I looked on file and could not locate an e-mail from [the Employer] with the details – please contact them for confirmation of the amount to be paid to Blackrock [sic].”

11. On 20 April 2017, WTW sent Mr Y an AVC illustration, which offered him the following options:-

    - Take the entire value of the AVC, which was £43,851.20, as a lump sum. 25% of this value would be paid tax free, with the balance being taxed at Mr Y's marginal rate of income tax (**Option 1**).

    - Take a tax free cash (**TFC**) sum of £10,962.80 and a yearly pension of £538.54 (**Option 2**).

    - Take a yearly pension of £718.05 (**Option 3**).

12. On 15 May 2017, Mr Y told WTW that he would like to take his AVC as a lump sum. WTW sent him the relevant forms to complete, in order to receive the money.

13. On 5 June 2017, Mr Y elected to receive his AVC benefits as per Option 1.

14. On 6 June 2017, Mr Y sent the relevant AVC documents to WTW. He requested additional time to consider his main Scheme benefits and added that he had seen a financial adviser (**the Adviser**).

15. On 21 June 2017, WTW informed Mr Y that, in accordance with the Scheme Rules, if he wished to take his AVC benefits then he had to also take his Scheme benefits at the same time.

16. On 27 June 2017, Mr Y telephoned WTW and requested an update on the progress of his AVC payment. WTW's notes from this conversation show that Mr Y was told that he had the following options, as he was taking his pension "on redundancy" and was below age 55:-

    - Take his main Scheme benefits. By doing so, he also had to take his AVC benefits. He could not transfer out and could not take his AVC benefits unless he also took his Scheme benefits.

    - Transfer his Scheme benefits and his AVC benefits at the same time. Once he transferred them to another pension scheme, he could not take benefits until age 55.

    - Leave his benefits in the Scheme. Under this option he would not be able to take his benefits until age 55.

17. On 18 July 2017, WTW sent a Statement of Entitlement to Mr Y which showed that the non-guaranteed Cash Equivalent Transfer Value (**CETV**) of his Scheme benefits was £460,680.55. The letter accompanying the Statement said that, under the terms of the VR, he could take his benefits immediately. However, if he deferred taking benefits then the earliest he could receive them would be at age 55.

18. On 29 July 2017, Mr Y elected to take a lump sum of £53,720.12 and a reduced pension of £8,057.97 per year, in respect of his Scheme benefits.

19. On 10 August 2017, WTW wrote to Mr Y and confirmed that the lump sum from his Scheme benefits would be paid soon, followed by the first pension payment on 31 August 2017.

20. On 2 October 2017, Mr Y sent an email to WTW. He said that in the past few months he had received different information regarding his AVC and Scheme benefits. Initially, he understood that he would be able to take the taxable element of his VR payment as an AVC lump sum and separate from his decision on how to take his Scheme benefits. He was then told that he could either take both at the same time or transfer them at the same time. WTW's recent letter confirmed payment of the main Scheme benefits but asked him to seek financial advice regarding the AVC. He asked whether he could transfer his AVC or, if not, what his options were.

21. Between 10 October and 21 December 2017, Mr Y entered into further correspondence with WTW. During this communication WTW told Mr Y that:-

    - As he had left the Scheme through "severance", he retained a protected minimum pension age of 50. Normally, the earliest he could take his benefits was age 55.

    - The Trustee had taken legal advice and had established that for those members that elected to take their benefits prior to age 55, any AVCs would have to be taken at the same time as their Scheme benefits.

    - If Mr Y deferred his AVC past March 2018, he would be unable to receive it as a lump sum and would have no option but to take it as pension income.

    - If Mr Y transferred his AVC to another pension arrangement, his benefits from the AVC and the Scheme would be classed as an unauthorised payment and he would be liable to a tax charge.

    - He could not return his Scheme benefits or his VR payment in order to cancel the AVC and transfer his Scheme benefits. If he felt strongly about this issue, he should submit a formal request in writing, so WTW could liaise with the Employer and the Trustee.

    - His only options regarding the AVC were: take the entire amount as a lump sum; take it as a lump sum and a pension; or take it as a pension only.

22. On 9 November 2017, WTW sent an email to the Adviser and said:

    "[Mr Y] retired via redundancy on [March 2017]. The AVCs [Mr Y] is in receipt of arise from an excess redundancy payment. As he was younger than age 55, and retired under redundancy he has a protected retirement age from age 50. If he does not take his benefits from the Scheme by [March 2018] and wishes to take a lump sum payment, the lump sum will become unauthorised and will be liable to a tax charge."

23. On 29 December 2017, Mr Y confirmed that he would like to take his AVC benefits as a one-off lump sum. He also signed a Declaration confirming that he had received advice from a regulated financial adviser.

24. On 10 January 2018, BlackRock wrote to Mr Y and said:

> "Further to your request for a cash lump sum, known as an Uncrystallised Funds Pension Lump Sum (UFPLS), I am pleased to confirm that we have completed the disinvestment for the value of £47,869.95.
>
> I can confirm that 25% of it will be paid to you tax free totalling £11,967.48 and the balance of £35,902.47 is subject to tax as if it were being paid to you as salary. We are required to deduct tax at emergency tax before we make payment to you.
>
> …
>
> Please note, payment of the UFPLS means that the Money Purchase Annual Allowance (MPAA) applies to you as at 07/02/2018.
>
> The MPAA is a limit on money purchase pension savings that will be triggered when a member receives certain payments from their registered pension schemes. Following a trigger event, the money purchase annual allowance is restricted to £10,000 per tax year and contributions in excess of this amount will be subject to the annual tax charge."

25. On 31 January 2018, Mr Y sent an email to WTW and said that he had not been previously made aware about the impact of the MPAA. He was concerned at the restrictions this would place on his future pension arrangements. Mr Y also queried the correct amount of MPAA, as he had recently been told it was £4,000 per year and not £10,000 as BlackRock's letter had stated.

26. On 8 February 2018, WTW responded to Mr Y and said that it had instructed BlackRock to arrange payment of his AVC as a taxable lump sum, as per his instructions. WTW suggested that he should speak to an independent financial adviser if he had concerns regarding the effect of this payment to his future pension arrangements.

27. On 27 March 2018, Mr Y complained to BlackRock. He said:-

    - He was concerned with the misinformation he had been given regarding the drawing down of his pension and the impact this would have to his future pension arrangements.
    - Due to the MPAA, he had been informed that he could only receive tax relief on pension contributions totalling up to £3,600 gross per year.
    - This was of major concern to him because he was self-employed and needed to build up his pension.

- He was never informed about the MPAA. He was notified about it after his decision to take his AVC as a lump sum.
- BlackRock's letter of 10 January 2018 said that the MPAA restrictions would be up to £10,000 per year. He had since received financial advice and was aware that this amount was £3,660 per year.
- Had he known about the MPAA, he would not have paid his VR payment into the Scheme as an AVC. Had he also known that his Scheme benefits would have an impact on MPAA, he would not have taken those benefits either.

28. On the same date, Mr Y emailed a copy of his complaint to WTW.

29. In July 2018, Aegon took over the administration of the Scheme's DC section from BlackRock. The two parties agreed that Aegon would deal with any complaints arising against BlackRock.

30. On 13 July 2018, WTW responded to Mr Y's complaint. It said:-

- It was unable to comment on any discussions Mr Y might have had with the Employer, regarding the payment of the taxable element of his VR payment into an AVC with the Scheme.
- When Scheme members paid AVCs, its normal practice was to send a number of documents to them, which included a booklet from Money Advice Service. This booklet included information about MPAA. However, such a booklet was not issued to members with DB only. When WTW processed Mr Y's retirement illustration in March 2017, it had not been made aware of his intention to pay AVCs. Consequently, it did not include the booklet in the retirement pack it sent him.
- When Mr Y informed WTW of his intention to pay into an AVC, on 7 April 2017, a separate illustration was issued detailing his options in the AVC. As this was not a full retirement pack, the Money Advice Service booklet was not included. WTW accepted that it should have provided Mr Y with the booklet.
- As Mr Y had told WTW that he would be speaking to an independent financial adviser, WTW expected Mr Y to receive advice about the impact of taking the entire AVC fund as a lump sum.
- The decision to pay into an AVC depended on the member's personal circumstances. The onus was on Mr Y to obtain suitable advice. WTW was unable to give any financial or tax advice.
- WTW was not party to Mr Y's decision to pay into an AVC, so it would not have been in a position to notify him of the MPAA. In any case, WTW was not required to notify him.

- Where an individual flexibly accessed their money purchase benefits, they were subject to a restricted annual allowance known as MPAA. As a result, all subsequent payments to a money purchase scheme were subject to a limit, which had reduced from £10,000 to £4,000 in September 2017 (with a retrospective effective date of 6 April 2017).

- Had Mr Y elected to take his AVC as a small lump sum and a pension, or in the form of a pension only, the MPAA would not have applied to him.

- If Mr Y wished to reconsider his AVC options and return the lump sum he had received, he should contact WTW. By selecting a smaller lump sum and a pension, or just a pension, his future pension contributions would not be restricted.

31. On 18 November 2018, Mr Y complained to the Employer. He said:-

- He had received an Annual Allowance Statement from WTW, which showed that his payment into the AVC was made in the tax year 2016/17. This was consistent with what he expected to see.

- However, he had also received an Annual Allowance Statement from Aegon, which showed that the payment had been made in the tax year 2017/18. Upon querying this with Aegon, he was told that the payment had been made on 13 April 2017, after receiving instructions on 12 April 2017.

- When he left the Employer, he was not told that the AVC would be paid into a DC scheme. This had an impact on his MPAA. He was under the impression that his AVC would be paid into his main Scheme. He wanted to know when the Employer decided that the AVC payment should be paid into a DC scheme.

- He had asked WTW on numerous occasions to clarify the issue of his AVC payment and its impact on his MPAA. WTW kept on replying that this was a complex issue and it was seeking legal advice.

- He paid his VR payment into an AVC on advice from the Employer's Pensions Department, in order to gain tax efficiency on the first 25% of that lump sum. If he knew about the MPAA, he would have taken his entire VR payment and accepted the higher tax amount.

- He never intended to take his main Scheme benefits. His preference was to look at transfer options. He was never told that if he took his benefits from the AVC he would also have to take his main Scheme benefits.

32. On 5 February 2019, WTW wrote to Mr Y and said:-

- He could not return the UFPLS and have his AVC refunded. The Employer and the Trustee had advised WTW that such an option was not possible, as the Scheme's Trust Deed did not allow the Scheme to pay money back to the Employer.

- However, it was still possible for Mr Y to repay the UFPLS and take either 25% of its value as TFC with the balance used to purchase a pension, or to convert the entire AVC into a pension.

- As these two options were not flexible benefit options, this meant that Mr Y would retain the full value of his Annual Allowance, which was currently £40,000 per year.

- If Mr Y selected any of the two options, his pension payments would be backdated to his original retirement date.

33. On 18 February 2019, Mr Y wrote to the Employer and WTW, in response to WTW's letter of 5 February 2019. He said that WTW had not addressed the basis of his complaint, which was the circumstances and events that led to the redundancy money being paid as an AVC into the DC part of the Scheme. If that payment had not been made, he would never have had to consider drawing his benefits and subsequently fallen under the MPAA. Mr Y reiterated the issues he had raised in earlier correspondence and requested that they be fully considered.

34. On 5 April 2019, the Employer responded to Mr Y's complaint. It said:-

    - Employees were able to ask the Employer to pay the amount of their VR payment above £30,000 into an AVC/DC pot, which was part of the Scheme. There was no option to pay it directly into the DB section of the Scheme.

    - Neither the Employer nor the Scheme Administrators were able to advise Mr Y on whether he should do this, as they were not qualified to provide financial advice.

    - The MPAA was triggered when individuals flexibly accessed pension benefits. Paying part of the VR payment into an AVC did not automatically mean that this would affect Mr Y. It was the option under which he selected to take his AVC benefits that triggered the MPAA.

    - Mr Y could still pay more into a pension scheme, but he could not receive tax relief on contributions above £4,000.

    - Mr Y had completed a form to say that he had received independent financial advice before the value of the AVC was paid to him. Other options had been provided to him, which would not have triggered the MPAA. He had chosen to take the entire value of the AVC as a lump sum, even after receiving financial advice.

35. On 16 April 2019, Mr Y complained under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**). He repeated the points he raised in his earlier complaints and added:-

    - He decided to pay part of his VR payment into an AVC after receiving advice from the Employer's Pensions Department.

- His instructions were to pay the money into his pension scheme. He believed the Scheme to be a DB one and was under the impression that the AVC would be paid into that part.
- He did not recall being given the explanation that the VR payment would be paid into an AVC/DC pot.
- Neither he nor the Adviser were aware that the AVC had been paid into the DC section of the Scheme.

36. On 9 July 2019, the Employer responded to the complaint under stage one of the Scheme's IDRP. It did not uphold it and said:-
    - The MPAA did not restrict the amount of pension contributions Mr Y could make. It restricted the amount of tax relief granted on these contributions.
    - The Trustee's responsibility was to ensure that the Scheme was run appropriately, that members' benefits were paid correctly and that these benefits were financially secure. The Trustee had to also act in accordance with the Trust Deed and Rules that governed the Scheme and within the applicable legal framework.
    - The Trustee did not have a responsibility to inform members of potential implications of decisions where this involved the wider tax regime, even if it was aware of the member's plans.
    - The MPAA applied under wider tax legislation and not under the Scheme Rules. So, neither the Trustee nor the Employer were duty bound to warn Mr Y of the tax consequences of his decision.
    - In recognition of the distress and inconvenience Mr Y had experienced, the Employer offered him £1,000.
37. On 12 July 2019, Mr Y appealed the Employer's decision under stage two of the Scheme's IDRP. He said:-
    - He was not told to speak to a financial adviser before paying the AVC into the Scheme.
    - His decision had to be made quickly due to payroll cut off.
    - WTW was not informed about the AVC payment by the Employer. He brought it to WTW's attention on 4 April 2017, when he asked about withdrawing his redundancy money. Because of this, WTW did not send him the Money Advice Service booklet, which would have warned him about the MPAA.
    - The reduction to the MPAA from £40,000 to £4,000 meant that he faced a potential "tax inefficiency" of £14,400 per year.
38. On 7 October 2019, the Trustee responded under stage two of the Scheme's IDRP. It said:-

- It had no duty to discuss a Scheme member's future plans regarding their pension benefits, in order to work out what tax implications there could be or inform the member of those implications.

- There was no evidence that Mr Y was advised to take some of his Scheme benefits as a UFPLS.

- On 4 April 2017, Mr Y told WTW that he was speaking to an independent financial adviser. Mr Y confirmed this in writing, on 6 June 2017.

- In May 2017, BlackRock told Mr Y to seek advice from an authorised financial adviser, if he was not sure what option to choose. This shows that Mr Y was advised and had the opportunity to obtain financial advice before taking a UFPLS, which resulted in the application of the MPAA.

- It was also the Trustee's understanding that Mr Y had received financial advice.

- Mr Y complained that he had to decide to pay his redundancy payment into the Scheme quickly, due to "payroll cut-off". However, the MPAA was caused because Mr Y received his AVC benefits as a UFPLS, not because he paid his redundancy money as an AVC.

- Mr Y's decision to access his AVC was made after his redundancy payment had been paid as an AVC and after he had left employment. The Trustee could not have intervened, had it felt under a duty to do so.

- Once Mr Y's decision to pay part of his redundancy money as an AVC had been actioned, it could not have been reversed. This is because HMRC did not provide any scope for members to undo payments into a pension scheme. So, had Mr Y received the Money Advice Service booklet and decided to cancel the AVC, this would not have been cancelled.

- Mr Y had also complained that the letter from BlackRock, on 20 January 2018, referred to the MPAA as being £10,000 rather than £4,000. The Trustee did not consider that this information was influential in Mr Y's decision to take the AVC's value as a UFPLS. This is because the letter was provided to Mr Y after he had decided to take the UFPLS.

39. In his submissions to The Pensions Ombudsman (**TPO**), Mr Y said in summary:-

- He acted on the advice of the Employer and paid part of his VR payment into an AVC, in order to gain tax efficiency on the first 25%. He was not aware of that possibility until the Employer's advice.

- He had never held an AVC prior to the advice. He did not have time to seek advice from an independent financial adviser, due to the timescales required to meet payroll deadlines.

- He disagreed with the Employer's view that it did not advise him to take out the AVC. The tax benefits on the remaining lump sum were "pushed" to him as a real benefit and none of the AVC impacts regarding UFPLs and MPAA were mentioned.

- He disputed the impression created by the Employer that he had until early April 2017 to make a decision regarding paying into an AVC. A response was required at the time he sent an email to the Employer, on 7 March 2017. This was required so that final redundancy letters could be issued.

- The subsequent decision to take out a UFPLS was forced upon him, since he needed the redundancy money. It was never his intention to leave the AVC in the Scheme.

- The Trustee said that there was no evidence of the advice being given to him and that, in any event, this would be an issue for the Employer and not the Trustee. He had provided copies of emails involving the Employer, which supported his claim.

- The Trustee's response was silent on other errors and omissions in the process, such as WTW not being informed of the AVC prior to the retirement pack being issued. As a result, the Money Advice Service booklet (which would have provided information regarding the MPAA) was not included in the pack.

- The letter from BlackRock, in January 2018, was incorrect in that it confirmed the MPAA would be reduced to £10,000 per year, not £4,000 per year. The Employer, the Trustee and WTW never responded to this point. They only said that it was after the event and bore no consequence to his decision. Even though he had no option but to withdraw the redundancy money, since he needed the funds, the error in this letter was another example of flaws and mistakes in the process.

- He was aware that the offer of £1,000 was still available and that the Pensions Ombudsman (**the PO**) might not make any award or award him a lower amount. In his view, this amount was considerably less when compared to the restrictions the MPAA imposed on his future investments and financial security.

40. In its submissions to TPO, the Employer said in summary:-

    - It did not advise Mr Y to take any particular course of action in relation to his VR payment. It informed him of the option, under the Scheme Rules, to pay part of the VR money into the Scheme as an AVC and that it would be possible to draw part of the AVC benefits as a TFC.

    - It was under no duty to inform Mr Y of all possible tax consequences of such a decision. These would have been specific to Mr Y's circumstances. The Employer was not aware of Mr Y's intentions regarding his future pension savings or the amount of his future contributions.

- It had spoken to the individual who Mr Y alleged had advised him to pay part of his VR money into the AVC. The individual confirmed that in their role as Pensions Manager they regularly met with employees. However, given the passage of time, that person could not recall the exact contents of their conversation with Mr Y. Their general approach to these conversations was to give employees information regarding their pension options and not to provide any form of advice, including financial advice. They would have never told employees what to do with their money and would usually have suggested that they take financial advice before reaching a decision.

- In its view, Mr Y's statement that he thought the AVC would be paid into the DB section of the Scheme was inconsistent with his statement that he intended to take his AVC as a lump sum.

- The MPAA did not arise as a result of Mr Y's decision to pay part of his VR money into an AVC. It was a result of his decision to take the entire AVC value as a UFPLS.

- Mr Y should have sought financial advice before deciding to pay his VR payment into an AVC. He should have also taken financial advice before making a decision to draw his Scheme benefits.

- In University of Nottingham v Eyett [1998] EWHC 317 (Ch), it was held that there was no maladministration or breach of duty on the employer for failing to provide an employee with information on retirement benefits.

- In Crossley v Faithful and Gould Holdings Ltd [2004] EWCA Civ 293, the Court held that implying a term to safeguard an employee's economic wellbeing would impose an unfair and unreasonable burden on employers and there were no obvious policy reasons to impose such a general duty on an employer.

- In previous Determinations under reference PO-3209, PO-7038 and PO-25827, the PO supported the Employer's assertion that it did not owe a duty to Mr Y to be aware of all extraneous tax matters which may relate to benefits paid under the Scheme, or to advise him on the repercussions of his retirement options or give tax advice.

- The information provided to Mr Y did not amount to a negligent misstatement. It was accurate and did not purport to, nor did it take account of any of Mr Y's individual financial circumstances.

41. In their submissions to TPO, the Trustee and WTW said in summary:-

- They had a duty to administer the Scheme in accordance with its Trust Deed and Rules, as well as relevant legislation. Members who accessed their benefits in a particular way were not entitled to reverse their decisions purely because they regretted them.

- There were circumstances under which the Trustee, WTW or other party responsible for the Scheme were required to put a member in the position they would have been, but for some act or omission on the part of that responsible party. The Trustee's and WTW's position was that no such circumstances applied in Mr Y's case.

- It was well established by the courts that pension scheme Trustees and Administrators did not owe a duty to advise scheme members.

- They encouraged Mr Y to obtain independent financial advice before making his decisions. They were not duty-bound or authorised to provide such advice. It was down to Mr Y to seek appropriate advice to understand the financial and tax implications of his proposed decisions before taking them. Mr Y informed WTW that he had appointed an independent financial adviser.

- The PO had recognised in previous Determinations that a member's tax planning was their own responsibility and not the Trustee's or the Administrator's.

- There was no evidence that the Trustee or WTW had provided Mr Y with incorrect information. Even if they had, he had not demonstrated that he would have made a different decision. Had he transferred his Scheme benefits, he would have lost the enhanced redundancy terms and the opportunity to take those benefits before age 55.

- The offer of £1,000 to Mr Y was still available, on the basis that it would be in full and final settlement of his complaint and that the PO did not recommend a lower amount.

42. In its submissions to TPO, Aegon said in summary:-

    - Its role was to administer the DC section of the Scheme.

    - It accepted that BlackRock's letter of 10 January 2018 wrongly referred to an MPAA of £10,000. However, this error did not cause any detriment to Mr Y. This was because the incorrect information was provided after he had taken his AVC benefits.

    - In the forms he completed in order to take his AVC benefits, Mr Y declared that he had received financial advice. Aegon would expect the MPAA issue to have been discussed with the Adviser.

Adjudicator's Opinion

43. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Respondents. The Adjudicator's findings are summarised in paragraphs 44 to 55.

44. According to Mr Y, the Employer told him that he could pay the taxable part of his VR money into an AVC and gain tax efficiency on the first 25%. The Employer has accepted that it told Mr Y that it would be possible to draw part of the AVC benefits as TFC. In the Adjudicator's view, what the Employer told Mr Y was correct. He could pay the taxable part of his VR money into an AVC and could take 25% of the AVC's value as TFC. So, there had been no negligent misstatement by the Employer about this issue.

45. There was no contemporaneous evidence to show that Mr Y's specific intentions were discussed with the Employer. Even if such a discussion took place, the Employer would not have been in a position to give financial or tax advice to Mr Y. None of the Respondents were permitted or had a duty to give financial or tax advice.

46. The MPAA was not triggered as a result of Mr Y paying part of his VR money into an AVC. It was triggered by his decision to take the entire value of the AVC as a lump sum.

47. The only way Mr Y could take the entire AVC value as a lump sum was in the form of a UFPLS. However, he did not have to take a UFPLS. Had he chosen Option 2 or Option 3, an MPAA would not have been triggered. He would have been able to take 25% of the AVC value as a TFC and use the balance to receive a regular pension.

48. Prior to selecting Option 1, WTW was in communication with the Adviser. In addition, Mr Y signed a declaration form which confirmed he had received financial advice regarding his AVC benefits. As Mr Y received financial advice and elected the option that triggered the MPAA, none of the Respondents were responsible for any financial loss he had incurred as a result of that decision.

49. On 13 July 2018 and 5 February 2019, Mr Y was given the opportunity to return the UFPLS and select one of the alternative options. Had he returned the UFPLS and chosen either Option 2 or Option 3, he would have avoided the MPAA.

50. Mr Y said that it was always his intention to take the entire AVC as a lump sum. However, as he had already received TFC of £53,720.12 from his main Scheme benefits, an amount that he did not plan to receive originally, he could have selected Option 2 or 3, instead of Option 1. The Respondents gave Mr Y the opportunity to avoid an MPAA. As he decided to retain the UFPLS, they were not liable for Mr Y incurring an MPAA.

51. Mr Y had also complained about not being informed that he had to take both his AVC and Scheme benefits at the same time. Had he decided to defer taking his main Scheme benefits, or had he transferred them, he would not have been able to access them until age 55. Given that any early retirement reduction would have been offset by the 6% top-up that applied to his benefits, the Adjudicator concluded that it was more likely that he would have selected the last option. This was because it would have allowed Mr Y to receive his main Scheme benefits five years earlier, with any reduction for early retirement being offset by the 6% top up to his benefits. He would

have also received 25% of the taxable VR money free of tax and he would not have triggered the MPAA, assuming he had chosen Options 2 or 3.

52. Consequently, even if Mr Y had been made aware about taking both the AVC and main Scheme benefits at the same time, the Adjudicator's opinion was that he would have been in the same position as he currently was. The only significant difference being that he had incurred an MPAA because he selected Option 1 (for which the Respondents were not responsible).

53. The Adjudicator accepted that the Employer could have informed WTW earlier, about Mr Y's intention to pay AVCs. Had it done so, it was likely that Mr Y would have received the Money Advice Service booklet and would have been informed about the MPAA. However, regardless of the lack of communication between the Employer and WTW, Mr Y had the opportunity to reverse the MPAA but chose not to do so. So, the non-provision of the booklet and the lack of communication between the Employer and WTW did not cause Mr Y any financial injustice.

54. As the Respondents were not responsible for Mr Y incurring an MPAA, they were also not liable for any financial injustice he had suffered as a result of the MPAA.

55. The Trustee offered Mr Y £1,000 for any inconvenience this matter had caused him. The Adjudicator concluded that the Employer's lack of communication with WTW and BlackRock's letter of 27 March 2018 did not cause Mr Y a level of distress and inconvenience that would warrant an award by the PO towards non-financial injustice. Particularly as he did not consider that the Respondents were responsible for Mr Y's financial injustice.

56. Mr Y did not accept the Adjudicator's Opinion and said that he disagreed with the Opinion "for the reasons and facts" he had already provided.

57. Mr Y's complaint was passed to me to consider. I have noted that Mr Y has not submitted any further comments or information following the Adjudicator's Opinion. I find that the available information does not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

58. Mr Y gives significant importance to his discussions with the Employer regarding his VR payment. In his view, the Employer should have made him aware about the potential effect a payment of the VR into an AVC would have to his MPAA.

59. The Employer's duty was to inform Mr Y of his available options under the Scheme so as to enable him to make the choice which was in his best financial interests. I consider that the MPAA relates to an individual member's tax considerations and, consequently, operates outside of the Scheme Rules. The alleged failure in this case does not relate to the terms of the Scheme, but to the tax consequences affecting Mr Y's future pension contributions by reason of his own decisions, which are unrelated to the Scheme.

60. A finding of a duty in these circumstances would widen considerably the scope of the duty as determined by the courts in Scally v Southern Health and Social Services Board & Anor [1992] 1 AC 294 (**the Scully Duty**), as it would extend the requirement that the Employer should be aware of the Scheme Rules to a requirement that it be aware of extraneous matters, such as the tax regime which relates to the Scheme or even another pension arrangement. I consider this is beyond the scope of the Scally Duty. If such a duty existed, it would have been mirrored in provisions imposing further statutory obligations on employers.

61. Regarding WTW's failure to provide Mr Y with the Money Advice Service booklet, and the incorrect MPAA figure given in Aegon's letter, as Scheme Administrators and under the Finance Act 2004 their duties include:

- registering the Scheme with HMRC;
- operating tax relief on contributions under the relief at source system;
- reporting events relating to the Scheme and the Scheme Administrator to HMRC;
- making returns of information to HMRC;
- providing information to Scheme members, and others, regarding the Lifetime Allowance, benefits and transfers;
- acting as the point of contact for communications with HMRC;
- paying certain tax charges in respect of the Scheme.

62. WTW and Aegon owed a duty to Mr Y to act with reasonable care and skill in the performance of the functions set out in paragraph 61. But in this case, the MPAA was triggered by Mr Y's decision to take his AVC benefits under Option 1. To impose liability on WTW or Aegon by reason of an obligation to perform functions which did not cause the loss claimed, has no substance.

63. In addition, Mr Y was given the opportunity to avoid an MPAA, by returning the lump sum he received from the AVC and choose Option 2 or Option 3 instead. His decision not to do so, meant that he decided to trigger the MPAA in full knowledge that any tax relief in future pension contributions would be limited. I find that any financial loss Mr Y has incurred or will incur as a result of this decision cannot be attributed to the Respondents.

64. I have reviewed the remaining issues that Mr Y has raised in his complaint. I do not intend to address them in detail, as I agree with the Adjudicator's opinion and for the same reasons.

65. While I accept that the Employer could have communicated with WTW more efficiently and Aegon could have provided the correct MPAA figure in its correspondence with Mr Y, these issues did not cause Mr Y a level of distress and

inconvenience that would warrant an award towards non-financial injustice and I make no such award.

66. I do not uphold Mr Y’s complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
23 March 2023