

## Ombudsman's Determination

Applicant	Mr N
Scheme	MMC UK Pension Fund ( <b>the Fund</b> )
Respondents	Mercer Human Resources ( <b>Mercer</b> ), MMC UK Pension Fund Trustees Limited ( <b>the Trustee</b> )

## Outcome

1. I do not uphold Mr N's complaint and no further action is required either by Mercer or by the Trustee.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr N complains that the Trustee and Mercer, the Fund Administrator, have made a number of mistakes when administering his pension benefits, including:-
  - Failing to deal with a pension sharing order (**PSO**) correctly.
  - Causing a delay paying part of his benefits and failing to adequately deal with his enquiries in relation to this.
  - Using incorrect early retirement factors when calculating his early retirement pension in 2006 and his 'step-up' pension in 2016.
4. When responding to this Office, the Trustee has made submissions on behalf of, and has represented, Mercer.

## Background information, including submissions from the parties

5. Mr N joined the Hill Samuel Group Pension Scheme in November 1980. In 1991, his benefits were transferred into the TSB Group Pension Scheme and, in 1993, were transferred again into the Sedgwick Group Pension Scheme (**the Sedgwick Scheme**).
6. On 13 September 1993, Sedgwick Group Plc issued a memorandum (**the Memorandum**) to Noble Lowndes employees who were members of the TSB Group

Pension Scheme. This included Mr N. Relevant extracts from the Memorandum are provided in Appendix 1.

7. In October 1995, Mr N left employment with Sedgwick Noble Lowndes, at which point he became a deferred member of the Sedgwick Scheme.
8. In March 2000, the Sedgwick Scheme merged to form part of the Fund.
9. On 24 March 2000, a Deed of Variation adopted (for deferred members) the provisions of the Trust Deed and Rules (**the Rules**) applicable to the Sedgwick Scheme, dated 1 September 1993.
10. Due to Mr N's membership history, he is termed an 'ex-Hill Samuel Member'. The Fund has a normal retirement age (**NRA**) of 60.
11. Between 1997 and early 1999, Mr N corresponded with the Trustee, challenging the early retirement factors adopted by the Trustee. Mr N contended that the actuarial assumptions being used were no longer relevant and did not reflect the prevailing economic conditions.
12. In 2002, Mr N divorced and a PSO was granted, creating a debit of 68.8% against Mr N's benefits.
13. In 2006, aged 55, Mr N elected to take early retirement and started to receive benefits from the Fund. At that time, early retirement factors were used to calculate his pension, to reflect the fact that he was taking benefits before NRA.
14. As a consequence of taking early retirement, Mr N became entitled to a 'step-up' pension from 23 August 2016. With the 'step-up' representing the Guaranteed Minimum Pension (**GMP**) element of Mr N's benefits, payable from age 65.
15. On 23 February 2016, six months before reaching his 65<sup>th</sup> Birthday, Mr N contacted Mercer to warn it that he would soon be eligible to receive his 'step-up' pension. He asked Mercer to arrange for the 'step-up' benefits to be calculated. Mr N's letter said:

"A considerable amount of correspondence was exchanged between myself and the Administrators [sic]/Scheme Actuary of the Sedgwick Group Pension Scheme in 1998 and 1999 on the manner in which my Guaranteed Minimum Pension was included in my deferred pension and early retirement computations. My attention had then been drawn to the definition of an additional element of "G" in the deferred benefit Rules on page 123 of the Hill Samuel Group Pension Scheme, namely "G is payable from State Pensionable Date and is the increase in the Guaranteed Minimum Pension attributable to the revaluation in accordance with sub-rule (d) of Rule 16 less the increase in accordance with Rule 9 on the Guaranteed Minimum Pension which had accrued up to Normal Pension Date." As my Normal Pension Date was age 60, this means, in simple terms, the addition of the GMP revaluation between date of leaving and State Pensionable Date (age 65) less the

pension increases on the GMP between ages 60 and 65. This item is henceforth referred to as the “GMP step-up”.

The Scheme Actuary also disclosed that early retirement benefits were computed solely by reference to deferred benefits at Normal Pension Date and allowance was then made for GMP revaluation subsequent to date of leaving by providing an identical additional benefit of the GMP step-up at State Pensionable Date.

In practice, I elected to retire early from age 55 and I am thus giving you 6 months’ advance notice of the need to undertake the appropriate computation of the GMP step-up. In this respect, your calculations should also reflect the fact that 68.8% of my pension benefits were allocated to my former wife after my divorce in 2002.”

16. Although Mr N became entitled to receive his ‘step-up’ pension from 23 August 2016, this was not put into payment at that time. In the intervening period, Mr N chased matters up with Mercer.
17. On 12 October 2016, Mercer wrote to Mr N confirming that the ‘step-up’ pension would have the effect of increasing his annual income by £302.89. The first payment would be made on 1 November 2016, with an adjustment of £57.94 to allow for payments to be backdated to Mr N’s 65<sup>th</sup> birthday.
18. Mr N subsequently queried the ‘step-up’ calculation. On 27 October 2016, Mercer provided Mr N with a breakdown explaining how the ‘step-up’ pension had been calculated.
19. On 17 November 2016, Mr N sent a further letter to Mercer challenging the calculation. Mr N made the following points:-
  - When calculating his deferred pension, the GMP had not been calculated from age 65 as he was previously led to believe. The calculation methodology also differed to that previously disclosed. The effect of this is that his early retirement benefits should have been slightly higher, resulting in a reduced ‘step-up’ pension.
  - He was not informed that the calculation methodology had changed, so the 2006 early retirement calculation was misleading.
  - In 1998/99 he challenged the early retirement factors, arguing that these did not produce an actuarially equivalent benefit. The Trustee subsequently revised the discount rates and revaluation factors. However, he was currently:

“...similarly of the view that the combination of an assumed future excess revaluation factor of 2.75% p.a. with an early retirement factor of 0.66 (...) produces less than the actuarially equivalent of the deferred benefits and was thus non-compliant with the Law.”

- The Trustee's calculation assumed a pension debit of 69.5% rather than the correct 68.8% debit, as per the PSO.
20. Further correspondence followed which ultimately culminated in Mr N raising a complaint which was dealt with through the Fund's two stage internal dispute resolution procedure (**IDRP**).
21. On 25 January 2017, the Trustee issued the stage one IDRP decision. In addition to providing the Trustee's response, this also addressed the issues raised in Mr N's letter of 17 November 2016, addressed to Mercer. The response can be summarised as:-
- The Trustee acknowledged there had been a delay in confirming Mr N's 'step-up' benefit. In recognition of this, the Trustee offered him £250.
  - Mr N's early retirement benefit had been calculated using a different methodology than he had previously been informed. This had the effect of resulting in a higher initial pension and tax-free cash sum, and a lower 'step-up' benefit. However, the two methods would, overall, each be expected to provide a fair value of benefits from NRA, using the assumptions at that time. To remedy this the Trustee offered to; increase Mr N's pension with effect from age 65, to reflect the higher 'step-up' benefit he was expecting; and, request repayment of an overpayment of £10,953 that had accrued as a result of a higher than expected early retirement pension being paid between age 55 and 65.
  - The Fund's early retirement factors are periodically reviewed by the Fund's Actuary and the Trustee. The factors used when calculating Mr N's early retirement benefit had been reviewed in 2005 and were, "derived to be 'cost neutral' relative to the Fund's valuation basis."
22. On 27 March 2017, Mr N appealed the stage one decision. In this, he referred to a letter, sent to the Trustee dated 3 February 2017, in which he said:
- "The only potentially satisfactory resolution of this matter seems to be for either the Trustees to honour the benefit basis that had previously been outlined to me, without any historical benefit adjustment, or for the original deferred benefits to be re-instated from normal pension date, with a corresponding adjustment relating to the excess benefits paid to date in the period from my early retirement at age 55. Please also note that, if the second of these alternatives were to be adopted, I would also require it to take account of the different taxation position on receipt of retirement cash and the balance pension."
23. On 30 May 2017, the Trustee issued the stage two IDRP decision. This can be summarised as:-

- The offer of £250 remains available for Mr N to accept in recognition of the distress and inconvenience caused by Mercer's failure to deal with Mr N's enquiries appropriately.
- The early retirement factors were adopted by the Trustee on the advice of the Fund's Actuary. The Trustee considers that the factors, which are reviewed periodically, are reasonable and appropriate. For practical reasons the factors are not, "fully 'market related'" insofar as they are not continually updated to reflect changes in economic conditions and are instead, "fixed for a reasonable period of time for administrative simplicity."
- Following the implementation of the PSO, a pension debit was applied to Mr N's benefits, reducing them by 68.8%. But, because of the way the pension debit was projected in the early retirement calculation, it is possible for the percentage reduction to change over time. Although a valid method of implementing the PSO had been used, the Trustee agreed to adjust Mr N's pension to reflect the original, 68.8%, reduction and to make a payment to backdate the adjustment. The Trustee confirmed Mr N would be notified of this adjustment separately.
- Mr N was advised of the standard methodology for determining his initial and 'step-up' pensions in 1998/99. Applying the standard methodology would have resulted in a pre-commutation pension of £5,218.71 per year at age 55, with a 'step-up' pension of £1,699.87 per year from age 65. However, the Fund rules did not prescribe a specific calculation methodology to be used and an alternative methodology was applied when calculating Mr N's benefits. This had the effect of producing an initial, pre-commutation, pension of £6,022.92 per year, with a further 'step-up' of £302.88 per year from age 65.
- Although the two calculation methodologies could be expected to provide broadly equivalent actuarial values, the Trustee acknowledged that the calculation had not been performed in line with the methodology Mr N had been notified of. The Trustee reiterated the offer made in the stage one IDRP decision but, amended this, agreeing to recover only half of the £10,953 overpayment.
- The proposal made by Mr N to settle his complaint, as outlined in the 3 February 2017 letter, had been considered. But, the Trustee rejected this on the basis that:

"Option 1... would give [Mr N] a benefit considerably in excess of that to which [he is] entitled under the Rules of the Fund.

It is only possible to unwind a pension as proposed under Option 2 where it has been put into payment because of a fundamental mistake as to a member's entitlement which is not the case in [Mr N's] circumstances."

24. On 27 July 2017, the Trustee wrote to Mr N confirming the adjustment which was due as a result of amending the PSO pension debit percentage. The letter confirmed that

Mr N's pension would be increased to £6,751.92 per year (gross) and that he would be due a repayment of arrears, amounting to £1,433.18 in respect of the adjustment for the period 23 August 2006 to 31 August 2017.

25. On 10 August 2017, a further letter was sent to Mr N correcting a typographical error in the letter of 27 July 2017, which did not affect the actual value of the adjustments due to Mr N.
26. On 14 August 2017, Mr N accepted the offer made in the letter of 27 July 2017, relating to the adjustment to correct the PSO split. However, the remainder of Mr N's complaint points remained in dispute and the matter was referred to my Office.

### **Adjudicator's Opinion**

27. Mr N's complaint was considered by one of my Adjudicators who concluded that no further action was required by either Mercer or by the Trustee. The Adjudicator's findings are summarised briefly below:-
  - Mr N has disputed the method used to calculate his benefits saying, "My leaving service benefits are in fact set down in the Rules of a predecessor Scheme, namely on pages 122 and 123 of [the] Rules of the Hill Samuel Group Pension Scheme." However, it is in fact the Rules, which were adopted by the Fund, following the Deed of Variation on 24 March 2000, when the former Sedgwick Scheme merged with the Fund, which apply to Mr N. This is confirmed in Clauses three and four of the Deed of Variation which adopt the Rules for, "...employees of Sedgwick Noble Lowndes & Partners Limited... who on 30 September 1993 were members of the TSB Group Pension Scheme and who elected to transfer their benefits to the Scheme with effect from 1 October 1993 ("Option A Members")."
  - Section 4 of the Rules deals with Leaving Benefits. In particular Section 4.2 deals with the payment of early benefits and provides that:

"4.2 A Member entitled to a deferred pension from Normal Retirement Date may elect instead to receive an immediate pension calculated by reducing the deferred pension to take account of the earlier date of payment. The amount of the reduction shall be decided by the Trustees after consulting the Actuary and shall be such that the immediate pension is in the opinion of the Trustees, at least equal in value to the deferred pension."
  - The Adjudicator concluded that Rule 4.2 was relevant insofar as it does not prescribe a particular methodology to be used when calculating an early retirement pension. Although the Adjudicator could understand why Mr N would be disappointed with the eventual calculation in 2006, since the methodology differed to that he was informed of in 1998/99, he pointed out that when responding to Mr N's complaint, the Trustee offered to revisit the benefit

calculation and to apply the methodology Mr N had previously been informed would be used. The Adjudicator considered this to be adequate redress for any maladministration caused by using a calculation different to the one Mr N was led to believe would be used.

- If the Trustee recalculated Mr N's benefits using the 1998/99 methodology, then this would result in an overpayment of around £10,900. The Adjudicator explained that where maladministration has taken place, my role is to place those bringing the complaint, as far as is reasonably possible, back into the position they would have been in had the error not occurred. In view of this objective the Adjudicator concluded that the Trustee's offer to write-off half of the overpayment was more generous than he would have been minded to recommend.
- In relation to the actuarial assumptions, Rule 4.2 gives the Trustee wide discretion in determining the amount of early retirement pension to be paid. The only requirements are that the Trustee must consult the Fund's Actuary and that the benefits must, in the opinion of the Trustee, be at least equal to the pension at NRD. On 20 July 2005, the Fund's Actuary sought the Trustee's view on its review of various retirement factors and actuarial assumptions, it set out various options relating to early retirement pensions for deferred members. On 11 October 2005, following a period of consultation, the Actuary presented its recommendations to the Trustees. The proposed early retirement factors, which were ultimately adopted by the Trustee, were made on the basis that the factors were assumed to be cost neutral and reflected the, "relative generosity of early retirement benefit."
- The Adjudicator considered Mr N's comprehensive submissions on why the actuarial assumptions used by the Trustee were flawed. But, in view of the quite reasonable expectation that the early retirement factors could be anticipated to provide an early retirement pension broadly equivalent to the pension at NRD; that there was adequate time for the Trustee to consult the Fund's sponsoring employer before agreeing to adopt the proposed assumptions; and that it was the Trustee's preference to fix the retirement factors for a period of time for administrative ease, as opposed to having "fully 'market related'" assumptions, which would require regular review, the Adjudicator did not think the Trustee had acted incorrectly. The Adjudicator acknowledged why Mr N considered the assumptions to be flawed but concluded that the early retirement factors adopted were within the range of what would be considered reasonable. Therefore, he was unable to conclude that the Trustee had acted perversely in accepting the Fund's Actuary's recommendations.
- Mr N became entitled to his 'step-up' pension on 23 August 2016, however it was not until 1 November 2016, around two months later, that this was put into payment. The Adjudicator agreed this delay was unreasonable, even more so because Mr N wrote to Mercer six months in advance of his 'step-up' pension being due, to make it aware of the fact. However, in response the Trustee

agreed to backdate payments to Mr N's 65th birthday and offered Mr N £250 in recognition of his distress and inconvenience. The Adjudicator concluded that backdating Mr N's benefits provided suitable redress for the 'step-up' pension coming into payment late and said that £250 was an appropriate award for Mr N's non-financial injustice in view of the circumstances. He also pointed out that the Trustee's offer of £250 remained available for Mr N to accept.

- The PSO specified that a pension debit of 68.8% should be applied against Mr N's benefits. But the method used to implement this, resulted in a pension debit of 69.5% being used in the 'step-up' pension calculation. The Trustee agreed to adjust the calculation to reflect the lower debit, and Mr N accepted this proposal.

28. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his comprehensive further comments, summarised briefly below, which do not change the outcome:-

- The Deed of Variation dated 24 March 2000, has previously been withheld by the Trustee and Mr N has only recently learned of its existence. Mr N says the Trustee has, "‘form’ in relation to an obstructive attitude" when disclosing information. Further, "by selecting only those parts of Rule 4.2 which could possibly support the Trustee position on this matter (and omitting anything that didn't!)" the Trustee has attempted to mislead the Adjudicator.
- A significant difference between the calculation of benefits as set out in the original Hill Samuel Scheme Rules and the calculation following the Deed of Variation is that the Hill Samuel Scheme Rules make it clear that the GMP revaluation component of leaving service benefits would be payable from state pension age (**SPA**) and not from NRA, however the Deed of Variation is silent on this issue.
- The Deed of Variation and therefore the Rules, were not in force at the time Mr N left service. So, his leaving service pension should have been calculated in accordance with the provisions of the Hill Samuel Scheme Rules. A deferred pension statement Mr N received supports his view and he argues that:

“the only reliable computation of leaving service benefits for those Option A members, who had left prior to the Deed of Variation coming into existence, is derived from the Hill Samuel Scheme Rules.” (Original emphasis).
- Further:

“The Deed of Alteration explicitly refers to the 13 September 1993 announcement, which had promised the same past service benefits as those under the TSB/Hill Samuel Scheme, continuation of the benefit



formula for at least five years and a promise that these terms would in due course be adopted within the Sedgwick Scheme.”

- No part of the GMP revaluation element should have been included when calculating Mr N's early retirement pension since this element is not due for payment until SPA. Had Mr N known this had been included in the calculation in 2006, it would have been evident to him that the calculation was not cost neutral and he would have had the opportunity to decline early retirement. In relation to this Mr N said:

“...there was in fact no financial pressure on me to receive my MMC UK Pension Fund benefits early and any decision on this matter was solely dependent on whether the early retirement terms represented “fair” actuarial value – that did seem to be the case but I could scarcely have known at this time that this was **merely due to administrative error which the Trustee is now trying to justify with an inherently “flawed” early retirement methodology.**” (Original emphasis)

- Mr N further argued:

“...the Deferred Benefits formula that applied to me at my leaving service date took the following form:-

1. My Deferred Pension in excess of GMP at my date of leaving would be revalued at the lower of the increase in RPI and 5% p.a. up to Normal Retirement Date and added to my GMP at my date of leaving **with the result being paid from Normal Retirement Date** and
2. A GMP step-up **would be payable from State Pension Date** corresponding to revaluation of my GMP at my date of leaving at 7% p.a. from my date of leaving less the actual increases applied to my GMP at date of leaving between Normal Retirement Date and State Pension Date.” (Original emphasis)

- The Adjudicator has not fully understood the reasons why Mr N cannot accept the Trustees offer. Mr N presented an analogy to, “aid [the Adjudicator’s] understanding.” The full details of Mr N’s analogy are provided in Appendix 2.
- The evidence of the advice to the Trustee from the Fund’s Actuary is limited and does not, “convey the full picture”. Mr N says, “in practice, my early retirement pension was derived using a real investment return up to Normal Pensionable Date of 3.25% when UK index-linked gilts had a yield of only 1.25% at the time of my retirement so where does generosity feature there?” Mr N also points out that, “The actuaries also admit that the (2004 Actuarial) Valuation basis... is designed for ongoing funding and may not be appropriate for all factors but no further information is provided on this.”

- The £250 offered by the Trustee is, “wholly unreasonable” and does not reflect the time spent by Mr N in dealing with his complaint which is, “in excess of 150 hours.” In support of his claim that there has been significant distress and inconvenience Mr N reiterated the instances where he considered the Trustee had made administrative errors.

29. Although it accepted the adjudicator’s Opinion, the Trustee made the following further comments in response:-

- The Trustee has not deliberately tried to mislead Mr N and has not withheld information. If Mr N requires a full copy of the relevant Rules and Deeds which govern the Fund, the Trustee is willing to provide this.
- The provisions within the Hill Samuel Rules which Mr N has referred to (pages 122 and 123) are not relevant to the calculation of his benefits, since he did not retire at NRA. Mr N retired early therefore his benefits were calculated in accordance with Rule 4.2 of the Deed of Variation. In any case, the Trustee asserts that it:

“...see[s] no material difference between the Hill Samuel Rules and the Sedgwick Rules insofar as they relate to Option A members taking a deferred pension at Normal Pension Date. In short, the provisions that relate to [Mr N’s] benefits appear to be consistent across the two sets of rules.”

- Contrary to Mr N’s understanding, the Trustee does not consider that the Rules require that it follows absolutely a prescribed methodology for calculating Mr N’s benefits. On this point the Trustee has said:

“It was open to the draftsman of the Hill Samuel Rules to have cross-referred in the early retirement provisions to the methodology for calculating such deferred member’s pensions if he wished, but he did not do so. Nor is it a requirement of preservation or contracting-out law. For this reason we take the view that the Rules allow for some flexibility of approach in calculating a deferred member’s early retirement pension.”

- It appears that Mr N now considers that he has lost the opportunity to decline early retirement and that it would have been more advantageous for him to have waited until NRA to take his benefits. However, the Trustee is not obliged to compensate Mr N for any perceived loss of opportunity. Further, “he did not ask about early retirement factors, even though as an experienced actuary he ought to have realised that these may have changed during a 6 year period.”

30. I agree with the Adjudicator’s Opinion and I will therefore only respond to the key points made by Mr N for completeness.

## Ombudsman's decision

31. The majority of Mr N's contention flows from the fact that he considers provisions from the Hill Samuel Rules should have been used to calculate his early retirement benefits. In support of this Mr N has said the, "Deed of Variation was not in existence at the date I left service so, in its absence, my leaving service pension had by necessity to be calculated in accordance with the provisions of the Hill Samuel Scheme."
32. However, I do not find this to be the case. Although not executed until 24 March 2000, the Deed of Amendment makes it clear that the rules contained therein were to be applied retrospectively, from 1 September 1993:

"It is intended to replace the current Trust Deed and Rules with the trusts provisions and rules contained in Schedule 1 to this deed ("the new Trust Deed and Rules") with effect from 1 September 1993."
33. This is consistent with the Memorandum which confirmed, that the special conditions which applied for 'Option A' members, would, "in due course be reflected in the Trust Deed and Rules of the Sedgwick Scheme."
34. In October 1995, on leaving service, Mr N became a deferred member of the Fund and, by virtue of the retrospective provisions of the Deed of Amendment, it was, therefore, the Rules (rather than the Hill Samuel Rules) which governed the benefit calculation.
35. In 2006, when Mr N elected to take early retirement, he became entitled to benefits from the Fund. On becoming entitled to benefits, these were calculated with reference to the Rules which were in force at that time. Thus, I do not find that the Trustee has made an error in respect of the rules it has used to calculate Mr N's early retirement benefit.
36. I note Mr N's comment that his, "deferred benefits **MUST** therefore be determined in accordance with... the TSB/Hill Samuel Rules, which are exactly reflected in the details shown in the Deferred Benefit Statement." (Original emphasis). However, the deferred benefit statement is clear in confirming, "This statement is not a certificate of entitlement... all benefits are governed by the Trust deed and Rules and are therefore subject to confirmation." Further, the deferred benefit statement does not project Mr N's benefits to NRA and whilst it does provide some information about how his benefits would be revalued to NRA, Mr N did not reach NRA, he took early retirement. Consequently, I do not find that Mr N's early retirement benefit must be calculated so as to mirror those set out in the deferred benefit statement. This document makes it clear that the Rules take precedence.
37. I also acknowledge Mr N's comment that the Rules and the former Hill Samuel Rules are not the same since there is, "at least one significant difference and omission" insofar as the Hill Samuel Rules make it clear that, "the GMP revaluation component of leaving service benefits would be payable from [SPA] and not from [NRA], whereas

the Deed of Variation is silent on this issue.” It is not clear if this omission was intentional or not, but the fact is, the effective Rules which apply to Mr N’s early retirement benefit calculation do not prescribe that his benefits must be calculated in the way he has suggested. Consequently, I cannot find that the Trustee has made an error in failing to follow the methodology Mr N has proposed.

38. Further, it is not the case that Mr N elected to take benefits from NRA. Rather he elected to take early retirement. As such his early retirement benefits are calculated in accordance with Rule 4.2 of the Rules which states:

“4.2 Early Payment

A Member entitled to a deferred pension from Normal Retirement Date may elect instead to receive an immediate pension calculated by reducing the deferred pension to take account of the earlier date of payment. The amount of the reduction shall be decided by the Trustees after consulting the Actuary and shall be such that the immediate pension is in the Opinion of the Trustees, at least equal to the value of the deferred pension.”

39. I find that an ordinary reading of this rule cannot be said to prescribe an exact methodology of calculating the early retirement benefit. Further, I conclude that the rule gives the Trustee latitude in determining both the calculation methodology and the actuarial assumptions which result in the eventual early retirement benefits. Indeed, the only requirement is that the Trustee consult the Fund’s Actuary and must be satisfied that the resultant benefits are, “at least equal to the value of the deferred pension.”
40. Where, as is the case here, there is a dispute on how a discretionary decision has been made, my role is not to ‘step into the shoes’ of the decision maker and replace that decision with one of my own. Rather, it is to assess whether the decision was reached in a proper manner.
41. I do not find that the Trustee has erred in its decision making. There is clear evidence that the Trustee consulted with the Funds Actuary and that in response the Actuary made a number of proposals in relation to various retirement factors and actuarial assumptions. There is also evidence that there was adequate time for the Trustee to consider the Actuary’s recommendations before accepting these, thus I am satisfied that the Trustee has considered what it was required to and has not fettered its discretionary decision making.
42. Mr N has made very detailed submissions as to why he considers that the actuarial assumptions and early retirement factors adopted by the Trustee were not appropriate. I have considered these representations carefully but, having done so, I do not find that the Trustee was incorrect to follow the Actuary’s recommendation and I do not find that the Trustee’s decision to use the assumptions it did was perverse. It is also important to note that Mr N is making his submissions in relation to the actuarial assumptions with the benefit of hindsight, whereas the Trustee had to make

informed presuppositions in order to agree appropriate actuarial assumptions. It is rarely possible to accurately predict future market conditions.

43. My Office does not provide an actuarial service and is not an appropriate forum to consider disputes between qualified actuaries. Consequently, I do not consider it appropriate to address, in detail, the representations Mr N has made on this point.
44. Where there has been maladministration, my powers provide that I can direct redress to remedy any injustice as a consequence of that maladministration. Notwithstanding the fact that I do not conclude that the Trustee has made an error when calculating Mr N's early retirement pension, I note that the Trustee has accepted that the actual methodology may have differed to that Mr N was led to believe would be used. In recognition of this the Trustee offered to revisit the benefit calculation and to apply the methodology Mr N was informed would be used.
45. Much seems to have been made of the fact that Mr N was given information about how early retirement and 'step up' pensions were calculated in 1998/99, but that his eventual benefits were calculated on a different basis in 2006 and 2017 respectively. I do not agree that the weight that appears to have been attached to this argument is warranted in this case. Mr N has made it clear that he is an Actuary, and as such, I would expect him to have been aware that actuarial assumptions and calculation are regularly reviewed by the Trustees and that they are subject to change. The information Mr N has relied on was given to him six years before his early retirement, although he may have done so, there is no evidence to suggest that Mr N checked the calculation basis was still the same before taking early retirement. There is no requirement for the Trustee to notify members of a change to actuarial assumptions or calculation basis. If, as he now suggests, the calculation of early retirement benefits, and the 'step up' pension, was critical to Mr N's decision to retire early, then I would expect him to have made further enquires immediately prior to making his decision to retire. Especially given the time that had passed since he was provided with the information on which he says he based his decision.
46. In any event it is the calculation basis and actuarial assumption in force at the point of the calculation that is applicable to each member. In Mr N's case, his early retirement was calculated using the method and assumptions in force at that time. Due to this, and the reasons I have given, I consider the offer made by the Trustee to revisit the benefit calculation, and to apply the methodology Mr N was informed would be used, is more generous than I would direct in this circumstance. Therefore, I find the offer made is more than reasonable.
47. Finally, it is also accepted that there was an unreasonable delay paying Mr N's 'step-up' pension along with some other, relatively minor, administrative errors. But again, I note that the Trustee agreed to backdate payments to Mr N's 65<sup>th</sup> birthday and also offered £250 in recognition of the distress and inconvenience caused by this and the other administrative errors which it has accepted it caused.

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48. Overall, I find that the Trustee has offered appropriate redress to remedy its maladministration and has made a suitable award in recognition of the non-financial injustice Mr N has experienced. Mr N should contact the Trustee should he wish to accept its offer.

49. I do not uphold Mr N's complaint.

**Anthony Arter**

Pensions Ombudsman  
20 November 2018

## Appendix 1

### Relevant extracts from the 13 September 1993 Memorandum

#### **"Sedgwick Group Pension Scheme**

One of the most important issues in the sale of the Noble Lowndes Group to the Sedgwick Group is your pension benefits. Both Sedgwick and TSB together with their respective trustees have sought to ensure that your benefits have been protected.

We have decided to appoint two Noble Lowndes employees as directors to the board of the Sedgwick Group Pension Scheme Trustee. One director will be nominated and elected by Noble Lowndes members and the other director will be nominated by Sedgwick Group plc. I am enclosing a copy of our latest Trustee report which will give you some useful background information.

You may remain a member of the TSB Group Pension Scheme until the completion of the sale which is scheduled for 30 September 1993 but you will not be able to accrue any further benefits under the TSB Group Pension Scheme after completion date. If the sale is delayed for technical reasons then the revised completion date should be substituted for 30 September wherever it appears.

This letter explains the options available to you which are:

#### **OPTION A - You elect to transfer your accrued benefits to the Sedgwick Group Pension Scheme (Sedgwick Scheme) From the TSB Group Pension Scheme (TSB Scheme)**

Only by selecting Option A will you be provided with continuity of pensionable service and benefits on a non-contributory basis.

#### **OPTION B - You elect not to transfer your accrued benefits to the Sedgwick Scheme from the TSB Scheme**

These options are explained below.

#### **OPTION A**

You elect to transfer your accrued benefits to the Sedgwick Scheme from the TSB Scheme.

If, as we hope, you decide to join and transfer your accrued benefits to the Sedgwick Scheme by electing Option A, you will be entitled to special terms which will in due course be reflected in the Trust Deed and Rules of the Sedgwick Scheme. These terms will provide for continuity of your pensionable service and benefits on a non-contributory basis whereas Option B will not.

The special terms are as follows:

**1. Benefit Formula and Pension Age**

- (a) In respect of your pensionable service to 30 September 1993 your benefit formula and pension age in the Sedgwick Scheme will be the same as that which applied to you under the rules of the TSB Scheme.
- (b) Furthermore, your existing benefit formula and pension age will be maintained on a non-contributory basis, for future service for a period of at least 5 years. While Sedgwick have no current proposals for changes after the 5 years, it is the company's policy regularly to review benefits for their employees in the light of market practice, the financial circumstances of the company and any legislative requirements.

**2. Pensionable Salary**

For most employees the definition of pensionable salary will also remain unaltered for the five year period. However, in order to achieve a more consistent approach the definition will be amended for those employees who currently have bonus or commission payments included within pensionable salary. Those affected will be advised of the details in writing by 30th September 1993.

**3. Pension Increases**

- (a) Pension increases applying to any pension instalment made before 31 December 1999 (in relation to pension which has accrued on both your past service and future service) will mirror the increases awarded in the TSB Scheme (or any successor scheme to which most or all the members and pensioners of that scheme transfer) subject to each annual percentage increase not exceeding the annual percentage increase in the Retail Prices Index.
- (b) After 1998 pension increases in respect of pension which has accrued on service prior to 31 December 1998 will be guaranteed at a rate of 5% per annum or the annual increase in the Retail Prices Index if less. For most members there will be a minimum annual increase of 3%.

For most members in the TSB Scheme increases on the part of the pension qualifying for increases are guaranteed only at 3% but the TSB Scheme Trustee has expressed an intention (set out in the memo issued by Ken Bulteel on 16 February 1993), subject to certain conditions, to match increases to the Retail Prices Index, although this is not a guarantee or entitlement.

Both the TSB and Sedgwick schemes have good records of awarding discretionary increases and subject to the financial position of the Sedgwick Scheme we would hope to continue this practice. To date discretionary



reviews in Sedgwick have been used broadly to link pension payments to the Retail Prices Index.

These terms are subject to four important conditions:

- (a) pension increases from the Sedgwick Scheme will apply to the same element of pension which at present qualifies for increases in the TSB Scheme.
- (b) The special terms relate only to benefits guaranteed under the rules of the TSB Scheme.
- (c) Nothing said above will affect the ability of Sedgwick and the Sedgwick Trustee to terminate the Sedgwick Scheme or amend any provision in accordance with the powers set out in the Sedgwick Scheme Trust Deed and Rules.
- (d) Naturally all entitlements are governed by Inland Revenue limits.

Please note that Option A will only be available to you provided that the TSB Scheme Trustee receives your completed option form by no later than **1 November 1993.**"

(All emphasis original).

## Appendix 2

### Example analogy provided by Mr N to explain his loss

#### “ORCHARD DEAL

A farmer has two orchards, a larger one which yields 2A apples annually and a smaller one which yields A apples annually. He had had regular contact with an apple trader over the years and, consistent with the dealings they had discussed in previous years, he is offered £3000 for the apples that yield in one year from the larger orchard. The farmer agrees to these terms, which were acceptable in relation to apple prices at the time, and the trader duly made the arrangements to collect the apples for that year. It transpires, however, that the sum offered by the trader had been intended to cover the apples in both orchards and he thus proceeded to collect the apples from both. On doing so he paid the farmer the agreed sum of £3000.

On becoming aware of the removal of apples from both of his orchards, the farmer was naturally upset and asked for the return of the A apples that had been obtained from the smaller orchard. The trader explained that, as he had decided to reduce his apple purchase terms by one-third, he would only do so if £1000 of the purchase price were to be repaid.

After further objections from the farmer, the trader accepted he had made a mistake and offered “half way” compromise terms which would only involve the repayment of £500 i.e the farmer would then be receiving £2500 rather than the £3000 anticipated for the 2A apples, along with the return of the A apples from the smaller orchard. That was unacceptable to the farmer, however, so he asked for either the terms of the original deal or the return of all of his apples.

The trader refused both alternatives.

I trust that all reasonable individuals would agree that the farmer was being unjustly treated, even after the trader had made his “half way” compromise offer.

#### PENSIONS ANALOGY CORRESPONDING TO THE ORCHARD DEAL

Let me now repeat the above example with appropriate insertions of the corresponding pension events relating to me (*in blue below*).

A farmer has two orchards, a larger one which yields 2A apples annually (*the pension payable at Normal Retirement Date*) and a smaller one which yields A apples annually (*the further pension paid at State Pensionable Date*). He had had regular contact with an apple trader over the years and, consistent with the dealings they had discussed in previous years, he is offered £3000 for the apples that yield in one year from the larger orchard (*the early retirement terms*). The farmer agrees to these terms, which were acceptable in relation to apple prices at the time, and the trader duly made the arrangements to collect the apples for that year. It transpires,

however, that the sum offered by the trader had been intended to cover the apples in both of his orchards and he thus proceeded to collect the apples from both (*changes to the early retirement terms which were being masked at the time by the incorrect addition of part of the pension paid at State Pensionable Date in the calculations*). On doing so he paid the farmer the agreed sum of £3000 (*payment of the Early Retirement pension*).

On becoming aware of the removal of apples from both orchards, the farmer was naturally upset and asked for the return of the A apples that had been obtained from the smaller orchard (*re-instatement of the full extra pension payable at State Pensionable Date*). The trader explained, as he had decided to reduce his apple purchase terms by one-third (*changes to the early retirement terms which could not have been known or envisaged by the member at the time he retired early due to the incorrect calculation being unknown*), he would only do so if £1000 of the purchase price were to be repaid (*reduction in the early retirement pension to reflect the re-instatement of the full extra pension payable at State Pensionable Date*).

After further objections from the farmer, the trader accepted that he had made a mistake and offered “half way” compromise terms which would only involve the repayment of £500 i.e the farmer would then be receiving £2500 rather than the £3000 anticipated for the 2A apples, along with the return of the A apples from the smaller orchard (*“half way” compromise in the amount of the reduction in the early retirement pension to reflect the re-instatement of the full extra pension payable at State Pensionable Date*). That was still unacceptable to the farmer, however, so he asked for either the terms of the original deal (*the terms directly flowing from the Trust Deed on the basis that the early retirement pension quoted to him had been correct*) or the return of all of his apples in exchange for the return of the purchase payment (*re-instatement of benefits under the terms of the Trust Deed at Normal Retirement Date and State Pensionable Date with an suitable adjustment for the respective pension payment streams that had would have arisen from each scenario*).

The trader refused both alternatives.

I trust that all reasonable individuals would agree that the farmer was being unjustly treated, even after the trader had made his “half way” compromise offer. (*The Trustee refused both of the resolution alternatives offered by the member. I trust that all reasonable individuals would agree that the member was being unjustly treated, even after the Trustee had made his “half way” compromise offer*).