PO-26272

Ombudsman's Determination

Applicant	Mr S
Scheme	Honeywell UK Pension Scheme (**the Scheme**)
Respondents	The Trustee of the Honeywell UK Pension Scheme (**the Trustee**) Willis Towers Watson (**WTW**) Honeywell UK Ltd (**Honeywell**) Novar Limited (formerly Novar Plc) (**Novar**)

Outcome

1. Mr S' complaint against the Respondents is partly upheld. To put matters right the Trustee and WTW shall pay Mr S £1,000 in recognition of the serious distress and inconvenience which he has experienced whilst dealing with this matter.

Complaint summary

2. Mr S considers that he is entitled to take all his retirement benefits from the Scheme, without actuarial reduction from age 60. He has complained that the Trustee, Honeywell and his former employer, Novar, wrongly decided that only the middle tier benefits available to him from the Scheme can be taken unreduced from age 60 and that he will have to wait until age 62.5 if he also wants to take his lower tier benefits without reduction. Honeywell and Novar are the principal employer and a participating employer of the Scheme respectively.

3. He has also complained that WTW, the administrator of the Scheme (and the previous administrator, Paymaster) both incorrectly informed him that he could take his Scheme benefits unreduced from age 57.5 and that these mistakes have caused him considerable distress and inconvenience.

Background information, including submissions from the parties

4. Mr S joined the lower tier of the Novar Executive Pension Scheme (**the Executive Scheme**) on 29 April 1991, and the middle tier on 1 March 1998. He subsequently left this scheme on 7 February 2003 and became a deferred member.

5. In January 2009, the Executive Scheme was amalgamated into the Novar Pension Scheme. This pension scheme was transferred to the Scheme in April 2010.

6. Mr S' benefits in the Scheme are governed by the Trust Deed and Rules dated 6 September 1988 (as amended) (**the Rules**), that applied to the Executive Scheme at his date of leaving (**DOL**) in February 2003. The Rules permit retirement before Normal Pension Age (**NPA**) only with the Trustee's agreement and stipulate that pension taken before NPA should be actuarially reduced.

7. The definition of "Pension Date" in the Rules was changed by a Deed of Amendment dated 30 April 1993 and applied retrospectively from 1 January 1993. The new definition was as follows:

> ""Pension Date" in relation to a member means the day before his 65th birthday or such day as may be notified to the member in writing by the Company."

8. At the time of Mr S' DOL, the Rules did not distinguish between different tiers. The benefits set out in the Rules were those of the lower tier. If Novar wished to make a member a middle tier member, it would confirm this to the individual in writing.

9. The NPAs for the lower and middle tiers of the Scheme are 65 and 62.5 respectively. Mr S would have been notified of the relevant NPA at the time when he joined the lower tier and subsequently the middle tier through explanatory leaflets.

10. According to a document which Novar signed on 21 January 2003, entitled "Novar Executive Pension Scheme – Discretion on Early Retirement", it agreed to exercise its discretion "so that the early retirement factor relating to two and a half years before NPA be waived" for Mr S. The notional cost of this enhancement was £23,134.

11. Novar sent Mr S a letter dated 7 February 2003 providing details of the benefits available to him from his severance package. Novar said in this letter that:

> "The Company has exercised discretion to waive 2.5 years of any reduction to the pension payable to you from the Executive Scheme. This means that you could retire from the age of 60 (rather than 62.5) without an early retirement reduction being applied to the pension."

12. In its letter dated 8 August 2003, Paymaster, the administrator of the Executive Scheme, informed Mr S that arrangements had been made for him "to be able to retire 2.5 years early (i.e. at age 57.5) without an early reduction."

13. In a letter dated 6 October 2004, Hewitt, the actuaries of the Executive Scheme, provided Paymaster with details of the current cash equivalent transfer value (**CETV**) available to Mr S of £190,519. Hewitt said that:

> "The calculations have been carried out on the basis that Mr S will retire at age 62.5 as this is the age at which he can take all his benefits unreduced. However, a late retirement factor has been applied to Mr S' middle tier pension to reflect that these benefits may be taken as a right unreduced from age 60…
>
> In the Appendix, I have summarised the data used in our calculations."

14. This appendix showed that Mr S was entitled to the following revalued deferred benefits in the Executive Scheme calculated as at 20 September 2004:

- a lower tier pre 97 pension of £10,924.74 per annum;
- a lower tier post 97 pension of £1,692.57 per annum;
- a post 88 Guaranteed Minimum Pension (**GMP**) of £695.24 per annum; and
- a middle tier post 97 pension of £10,127.56 per annum.

15. On 12 October 2004, Paymaster wrote to Mr S and provided him with a Statement of Entitlement showing that the current CETV available to him in the Executive Scheme was £190,519 and his Normal Retirement Date (**NRD**) was 13 January 2026, that is his 65th birthday.

16. In June 2016, Mr S asked WTW whether he could retire at age 57.5 with a full unreduced pension from the Scheme. WTW replied on 22 June 2016 as follows:

> "Regarding your retirement date, I can confirm that because you have a 2.5 year early retirement waiver, your retirement age in respect of pension accrued in the Novar Executive lower tier is 60 and in respect of your pension accrued in the Novar Executive middle tier it is 57.5.
>
> So, if you were to retire at the age of 57.5, the early retirement reduction factor would be applied only to your pension from the Novar Executive lower tier."

17. WTW sent another e-mail to Mr S on 30 June 2016 correcting its mistake and informed him that:

> "Our records and the Rules indicate that the NPA for middle tier benefits is age 62.5 and for lower tier benefits is age 65. Therefore, the middle tier age would reduce to 60 and the lower tier age would reduce to 62.5."

18. In July 2016, Mr S informed WTW that he had kept Paymaster's letter dated 8 August 2003 showing that he could retire 2.5 years early at age 57.5 with an unreduced pension. He said that he had "taken this letter as a statement of fact provided by an authorised pension scheme representative" for the last 13 years.

19. On 9 December 2016, after carrying out an investigation into this matter, the Trustee apologised to Mr S for the tardiness of its response and notified him that it agreed with WTW's position.

20. On 13 December 2016, WTW informed Mr S that it would be paying his benefits in accordance with the document entitled "Novar Executive Pension Scheme – Discretion on Early Retirement". It said that if Mr S could provide any evidence showing that Novar had notified him of a different NPA to that set out in this document, he should send it to Trustee for consideration.

21. Mr S was dissatisfied with this response and made a complaint under the Scheme's Internal Dispute Resolution Procedure (**IDRP**). The Trustee did not uphold his

complaint at both stages of the IDRP in September 2017 and March 2018 for the following reasons:

- it is obliged to act in accordance with the Rules and any overriding law;

- Mr S is only entitled to benefits set out in the Rules unless he and Novar had formed a contract in which Novar agreed to exercise its discretion to fund for an enhancement of his benefits in the Scheme;

- the starting point is therefore that Mr S has NPA of 65 and 62.5 for his lower and middle tier benefits respectively;

- under the Rules, Mr S has no right to retire before these ages without the Trustee's consent and if he is permitted to retire early, his benefits for each tranche must be actuarially reduced;

- Honeywell's interpretation of the contractual agreement is that the 2.5 years early retirement waiver applied separately to Mr S' lower and middle tier benefits in the Scheme and both tranches of benefits had to be taken at the same time;

- it is satisfied that Honeywell's interpretation is reasonable because:

    1. WTW's records showed that Novar had told the former administrators in 2004 that it intended to allow unreduced early retirement from age 62.5 and 60 for lower and middle tier benefits respectively;

    2. this was the recognised administrative practice inherited by WTW;

    3. the calculation of the "notional cost of enhancement" of £23,134 was no longer available but the current Scheme actuary had determined that this figure did reflect the cost of unreduced benefits from age 62.5 and 60 for the lower and middle tiers respectively at the time; and

    4. the Scheme actuary had also estimated that this cost would be higher if lower tier benefits could be taken unreduced 5 years earlier at age 60.

- Paymaster had made a mistake in its letter of 8 August 2003 by saying that Mr S could retire early at the age of 57.5 with an unreduced pension;

- WTW made a similar error in its e-mail dated 26 June 2016 but promptly corrected it on 30 June 2016;

- there was no evidence that Mr S had suffered any financial loss by relying on the incorrect statements made by WTW and Paymaster; and

- it sincerely apologised to Mr S for the errors and in recognition of the distress and inconvenience caused by them, was willing to offer him an award of £500 as a gesture of goodwill.

22. Mr S declined this payment. During my investigation, the Trustee increased its award to £750 in order to try settling the complaint on an amicable basis. Mr S has not accepted the improved award.

Summary of Mr S' position

23. The crux of this matter is the interpretation of the contractually binding agreement between him and Novar. The natural meaning of the agreement is plain and straightforward. There is no better evidence of its meaning than the wording of the agreement itself. Mr S is entitled to retire at age 60 without actuarial reduction to any of his benefits. There is no reference to more than one retirement date in the agreement. Moreover, it is not stated anywhere that a 2.5 years early retirement reduction factor would apply to two distinct tiers of benefits from age 60.

24. There is no contemporaneous evidence available to support the Trustee's view that NPA of 62.5 did not also apply to his lower tier benefits following augmentation.

25. Novar had "complete freedom to agree whatever enhancement to his pension they wished on his leaving Novar's employment".

26. He did not have any reason to suspect that the agreement between him and Novar did not mean exactly what it plainly said.

27. The Trustee's interpretation of the contract is neither fair nor reasonable. There can be no justification for its interpretation which involved "implying additional wording into this contract given its plain meaning".

28. As the language used in the agreement is clear, there is "no basis in law to seek guidance from the circumstances surrounding the formation of the contract".

29. The correspondence between Hewitt and Paymaster in October 2004 concerning the CETV calculation took place some 20 months after the agreement was made and did not even refer to this agreement.

30. The advice from the Scheme Actuary was a reconstruction of the notional cost of enhancing his benefits and was not contemporaneous. There are many ways in which this figure could have been calculated. This advice was speculative and of no value as evidence.

31. The Trustee, Honeywell and WTW were not parties to the agreement so their views on its interpretation must, as a matter of law, be of extremely limited value. No contemporaneous evidence has been provided or apparently been sought from anyone at Novar who was involved in his termination of employment in 2003.

32. The explanatory notes about the benefits available from different tiers in the Scheme did not form part of the Rules. They showed different NPAs for members of the lower

and middle tiers but were silent on the impact of NPA when moving from the lower to middle tier.

33. Case law support a plain and straightforward interpretation of contracts:

> "The primary source for understanding what the parties meant is their language interpreted in accordance with conventional usage" (Bank of Credit and Commerce International SA (in compulsory liquidation) v Ali {2001], Lord Hoffman).

34. Senior courts have issued a series of warnings to judges not to disregard or override the literal wording of the contract in pursuit of what might be thought to be commercial common sense. In Arnold v Britton [2015], Lord Neuberger said:

> "…the reliance placed in some cases on commercial common sense and surrounding circumstances…should not be invoked to undervalue the importance of the language of the provision…the clearer the natural meaning the more difficult it is to justify departing from it."
>
> And
>
> "…a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight. The purpose of interpretation is to identify what the parties have agreed, not what the court thinks they should have agreed. Experience shows that it is by no means unknown for people to enter into arrangements which are ill-advised, even ignoring the benefit of hindsight, and it is not the function of a court when interpreting an agreement to relieve a party from the consequences of his imprudence or poor advice. Accordingly, when interpreting a contract, a judge should avoid re-writing it…to assist an unwise party to penalise an astute party."

35. He was told that as a member of the middle tier his retirement age was 62.5. He was not told that this new retirement age would not apply to the benefits he had previously accrued in the lower tier.

36. None of the benefit statements which he received showed more than one NPA.

37. It is commonplace for the pension ages of executive or special members of pension schemes to be reduced as they move thorough tiers of benefits and for a lower pension age to apply to all such benefits.

38. He does not accept he should have reasonably known that the first sentence concerning his pension benefits in the agreement applied to different NPAs for lower and middle tiers in the Scheme. He had signed the agreement on the understanding that he could take all his benefits at 60 without reduction. It is difficult to conceive how any reasonable person in his position cold objectively have understood those plain words to mean anything else.

39. Novar drafted the agreement with the benefit of legal advice and specialist knowledge of how the Scheme operated. If the agreement was incorrectly drafted, Novar should be held responsible for this.

40. He has not detrimentally relied on the incorrect information provided by WTW and Paymaster but has suffered considerable distress and inconvenience because of it.

41. The improved award of £750 for distress and inconvenience offered by the Trustee does not adequately reflect the gravity of the errors which have occurred or the considerable legal costs which he has incurred dealing with this matter.

42. To put matters right, he is consequently seeking (a) an award in the region of £2,500 for non-financial injustice and to cover his legal fees and (b) confirmation that he can take all his benefits from age 60 in the Scheme without actuarial reduction, as shown in Novar's letter dated 7 February 2003.

Summary of Respondents' position

43. They do not accept Mr S' view that the natural meaning of the agreement between him and Novar was that he could take all his pension benefits in the Scheme unreduced from age 60.

44. Mr S' accrued pension benefits in two distinct tiers of the Scheme were calculated separately to reflect different accrual rates and NPAs. Mr S would have been notified of this at the time he became a member of the middle tier by means of an explanatory leaflet. The fact that details of benefits available to him from the middle tier of the Scheme had not yet at the time been incorporated into the Rules does not make them less valid.

45. In the Supreme Court case of Arnold v Britton ([2015] UKSC 36), Lord Neuberger set out some principles in respect of contractual interpretation. In summary, he said, "When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean…"

46. Lord Neuberger continued, "And it [the court] does so by focussing on the meaning of the relevant words…in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions…(iii) the overall purpose of the clause…(iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions."

47. The comments made by Lord Neuberger in Arnold v Britton followed the statement of the key principles of contractual interpretation set out by Lord Hoffmann in the earlier House of Lords case of Investors Compensation Scheme Ltd v West Bromwich Building Society ([1997] UKHL 28).

48. In that case, Lord Hoffman said that, “Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract”. He went on to set a test for the admissible background, saying that, “Subject to the requirement that it [the background] should have been reasonably available to the parties and to the exception to be mentioned next [the previous negotiations of the parties and their declarations of subjective intent], it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.”

49. The case of Absalom v TRCU Ltd ([2005] EWHC 1090) qualified this principle, providing that such background material must be relevant.

50. The courts have established that background evidence, if it otherwise meets the tests for admissibility, can be allowed for even if the terms at issue appear, if read alone, to have a clear meaning. The case of Westminster City Council v National Asylum Support Services ([2002] UKHL 38) established that it is not necessary to first show that the relevant wording is ambiguous before the background can be considered.

51. When interpreting the provisions of Novar’s letter dated 7 February 2003 (**the 2003 Letter**), in line with the principles set out in Arnold v Britton, it is therefore proper to allow for the background which was known to both parties of that letter.

52. In the case of Bank of Credit and Commerce International (BCCI) SA (in compulsory liquidation) v Ali (No 1) ([2001] UKHL 8) the judge concluded that, “The primary source for understanding what the parties meant is their language interpreted in accordance with conventional usage.” They do not dispute that the particular words used in a contract are the primary source for interpretation. However, as Lord Neuberger said in the extracts from Arnold v Britton (as shown in paragraphs 45 and 46 above), there are a number of principles which may be taken into account when deciding on the correct interpretation of a provision, including that it is appropriate to read a clause in light of relevant background facts which were known to the parties.

53. Case law has therefore established that “the purpose of interpretation is to identify what the parties have agreed”. The test of the parties’ intention to a contract is an objective one and based on what a rational person would understand if he was aware of the relevant background information that was reasonably available to the parties when the agreement was made. It is their view that this hypothetical person would have understood the meaning of the agreement between Mr S and Novar to be that he could take his benefits unreduced 2.5 years before the NPA applicable to each separate tier of benefits.

54. This would be the case whether they were parties to the agreement or not. Evidence from individuals who were involved at the time of Mr S’ termination of employment would indicate their subjective interpretation of the agreement. But as the test for the meaning of the agreement is an objective one, this would have a limited relevance.

Their position regarding the objective meaning of the agreement is consistent with the evidence and their understanding of the agreement at around the time it was made. It has not been adopted with hindsight.

55. The explanatory notes are a part of the background which would be available to the objective person in Mr S' position and, as such, it informs the objective interpretation of the agreement. Both the historic administration records and the reconstruction of the cost of enhancing Mr S' pension are also relevant. They demonstrate the understanding of Novar and Paymaster on the meaning of the agreement around the time it was made.

56. For the avoidance of doubt, their position is not that it is necessary to interpret the 2003 Letter in order to reflect the principle of commercial common sense. Rather, it is their view that on an objective test, the relevant sentences read in the knowledge of the pertinent background have that meaning. Applying the objective test set out by Lord Neuberger, the "reasonable person" with the relevant background knowledge would not understand the 2003 Letter to have awarded a waiver of five years' worth of reductions for lower tier benefits given the absence of specific and express wording to that effect.

57. The letter from Hewitt to Paymaster dated 6 October 2004 regarding a CETV calculation for Mr S states that only his middle tier benefits were payable unreduced from age 60. This is consistent with their interpretation of the agreement.

58. There is no evidence that Mr S' benefits accrued in the lower tier were upgraded when he joined the middle tier. Such an upgrade would have been a significant benefit augmentation and a disincentive to promote employees between tiers. If there had been such an augmentation in Mr S' case, they would expect it to have been clearly and fully documented.

59. The Statement of Entitlement which Paymaster sent Mr S in October 2004 showed that his NRD was his 65th birthday, that is, 13 January 2026. If, as Mr S believes, his entire period of pensionable service related to the middle tier of the Scheme, his NRD would have been the date upon which he attained age 62.5 and not 65.

60. Mr S had not previously disputed that he was entitled to different benefits under the lower and middle tiers. In an e-mail dated 23 June 2016 to WTW, he asked for, "the percentages of my pension" attributable to the lower and middle tiers of the Scheme.

61. They are consequently satisfied that there was no contractual agreement between Mr S and Novar to allow him to take his entire pension from age 60 unreduced.

62. Novar had appointed leading law firms for legal advice, but this did not necessarily mean that it had sought such advice from them at the time of drafting the agreement.

63. They have offered Mr S an equitable compensation payment of £750 as a gesture of goodwill for the distress and inconvenience which he has suffered dealing with this matter.

Adjudicator's Opinion

64. Mr S' complaint was considered by one of our Adjudicators who concluded that further action was required by the Trustee and WTW. The Adjudicator's findings are summarised below.

65. Mr S' complaint essentially centres on the interpretation of the paragraph in the 2003 Letter providing details of the augmentation to his benefits in the Scheme which Novar would pay for as part of his severance package.

66. The Rules applying at the time Mr S left Novar did not distinguish between different tiers and set out the benefits available in the lower tier. The definition of "Pension Date" in the Rules had been amended by that time, however, to be "the day before his 65th birthday or such day as may be notified to the member in writing by the Company."

67. The Respondents said that Mr S would have been notified by Novar of the different NPAs applying to the benefits available to him from the lower and middle tiers of 65 and 62.5 respectively at the appropriate time in writing through explanatory leaflets.

68. The Adjudicator saw no reason to doubt this statement and was therefore prepared to accept that Mr S had been made sufficiently aware that his pension benefits accrued in the two tiers would be calculated separately to reflect different accrual rates and NPAs before the agreement in February 2003 between him and Novar was made.

69. The first sentence of the relevant paragraph of the agreement states that Novar had exercised its discretion to waive 2.5 years of any reduction to the pension payable to Mr S from the Scheme. In light of the conclusion above, it was the Adjudicator's view that Mr S should reasonably have understood this statement to mean that the 2.5 years waiver would be applied to the NPAs applicable to each tier of benefits and that the second sentence only applied to his middle tier benefits.

70. The document which Novar signed on 21 January 2003, entitled "Novar Executive Pension Scheme – Discretion on Early Retirement", showed that it agreed to pay the cost of waiving "the early retirement factor relating to two and a half years before NPA" which had been calculated to be £23,134. While the document did not explicitly state that different NPAs applied to Mr S' lower and middle tier benefits, this was the position at the time in accordance with the Rules and the explanatory leaflets. The Adjudicator therefore agreed with the Respondents that the objective meaning of the agreement was that Mr S could take his benefits unreduced 2.5 years before NPAs of each separate tranche of benefits, that is at 60 and 62.5 for middle and lower tier tranches respectively.

71. It was regrettable that the original calculation of the notional cost of the enhancement was no longer available. The current Scheme actuary's reconstruction of the calculation would have been based on the same information available in January 2003 and using a valuation basis which in his/her professional judgement was suitable. In the Scheme actuary's opinion, the figure of £23,134 did reflect the cost of

unreduced benefits available to Mr S from age 62.5 and 60 for the lower and middle tiers respectively of the Scheme at the time of the original calculation and the Adjudicator was prepared to accept this opinion.

72. The evidence was clear that in October 2004, Hewitt, who employed the actuary of the Executive Scheme, provided Paymaster with details of the current CETV available to Mr S of £190,519 which had been calculated assuming a retirement age of 62.5 and that a late retirement factor applied only to his middle tier pension to reflect that this could be taken unreduced from age 60.

73. In the Adjudicator's view, the evidence available therefore fell short of establishing that Novar had agreed to augment Mr S' deferred pension in the Scheme so that it could be taken entirely without actuarial reduction from age 60 and the first part of his complaint could not be upheld.

74. Turning to the second limb of his complaint, there was no dispute that Paymaster mistakenly informed Mr S in August 2003 that he could retire "2.5 years early (that is at age 57.5) without an early reduction." This error clearly constituted maladministration on the part of the Trustee which ultimately remained responsible and accountable for the proper running of the Scheme. Having been informed only six months earlier by Novar that he could retire at age 60 without an early retirement reduction applying to part of his pension, it was somewhat surprising, however, that Mr S did not query the accuracy of Paymaster's information at the time.

75. It was most unfortunate that WTW made a similar mistake in June 2016 when Mr S enquired whether he could retire at age 57.5 with a full unreduced pension from the Scheme. This mistake represented maladministration on the part of WTW however WTW took swift remedial action to correct its error by informing Mr S of the correct position.

76. Mr S admitted that he had not relied to his financial detriment on the incorrect statements. The Adjudicator agreed with Mr S that he had suffered serious distress and inconvenience because of the maladministration identified. The improved award of £750 was, in the Adjudicator's view, still slightly lower than what I would likely direct the Trustee and WTW to pay given Mr S' circumstances, that is an award of £1,000.

77. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. I note Mr S further comments, but I agree with the Adjudicator's Opinion.

Ombudsman's decision

78. Mr S has requested that I consider the points which he has made about the law concerning the interpretation of contracts, as shown in the summary of his position in paragraphs 33 and 34 above prior to forming my Determination on his complaint.

79. In particular, he contends that the meaning of the 2003 Letter could not have been clearer and there was consequently no need in law to (a) disregard or override this literal meaning or (b) to consider further evidence as to its meaning.

80. The Respondents say that members of the Scheme with periods of service in different tiers would have their benefits for each tier calculated in separate tranches reflecting different accrual rates and NPAs. They contend that it was usual Scheme practice to notify members of this principle when they moved between tiers. They also said that Mr S has not challenged this general principle and proffered in support of this view: Mr S' e-mail dated 23 June 2016 to WTW asking for the percentages of his pension attributable to the lower and middle tiers of the Scheme, as an example.

81. Based on the available evidence, I am prepared to accept, on the balance of probabilities, that Mr S was made sufficiently aware that his pension benefits accrued in the two tiers would be calculated separately to allow for different accrual rates and NPAs before the agreement was made in February 2003, between him and Novar.

82. In the 2003 Letter, Novar said that it had "exercised discretion to waive 2.5 years of any reduction to the pension payable" from the Executive Scheme to Mr S. This was followed by an explanatory sentence which said Mr S "could retire from the age of 60 (rather than 62.5) without an early retirement reduction being applied to the pension."

83. While the natural meaning of the words used in a contract is clearly important in its interpretation, I agree with the Respondents that when interpreting the provisions of the 2003 Letter, in line with the principles set out in Arnold v Britton, it is proper to allow for the background which was known to both parties of that letter.

84. Case law has established that "the purpose of interpretation is to identify what the parties have agreed". The test of the parties' intention to a contract is an objective one and based on what a rational person would understand if he was aware of the relevant background information that was reasonably available to the parties when the contract was made.

85. It is my view that this hypothetical reasonable person would have understood the meaning of the agreement between Mr S and Novar to be that he could take his benefits unreduced 2.5 years before the NPA applicable to each separate tier of benefits. It cannot therefore be said that the natural meaning of the agreement was that Mr S could retire from the age of 60 without an early retirement reduction being applied to the whole of his pension.

86. The evidence is clear that both WTW (and the previous administrator, Paymaster) incorrectly informed Mr S that he could take his benefits in the Scheme unreduced from age 57.5 and that these mistakes have caused him considerable distress and inconvenience.

87. Mr S' complaint should be partly upheld against the Trustee and WTW to the extent that he has suffered serious distress and inconvenience. I make the appropriate directions below to remedy this injustice.

Directions

88. Within 21 days of the date of this Determination, the Trustee and WTW shall pay £1,000 direct to Mr S for the serious non-financial injustice which he has suffered dealing with this matter. I shall leave it to the two parties to decide in what proportion each shall contribute to this sum.

Anthony Arter

Pensions Ombudsman
9 September 2020