

## Determination by the Deputy Ombudsman

<b>Applicant</b>	Dr Stephen White
<b>Scheme</b>	Thames Water Mirror Image Pension Scheme ( <b>the Scheme</b> )
<b>Respondent(s)</b>	Thames Water Pension Trustees (MIS) Limited ( <b>the Trustees</b> )

### Complaint summary

Dr White has complained that Trustees have not calculated his pensionable remuneration correctly in that they did not include all of his management annual bonus paid to him in July 2012.

### Summary of the Deputy Ombudsman's determination and reasons

The complaint should not be upheld against the Trustees because they had calculated his pensionable remuneration correctly and in accordance with the Scheme rules.

## Detailed Determination

### Material facts

1. The Scheme was a defined benefit arrangement. The relevant provisions of the Scheme rules says,

1. **“Definitions.”**

- “Normal Pension Period”**, means the year ending with the day on which the person ceases to hold the employment...

- “Pensionable Remuneration”** means, in relation to a Member, his Remuneration for so much of the Relevant Pension Period as he is entitled to reckon as Reckonable Service in relation to his employment...

- “Relevant Pension Period”** means... the Normal Pension Period except that-

- (i) Where the Relevant Pension Period would otherwise be the Normal Pension Period but either one or each of the 2 immediately preceding years would yield a higher amount of pensionable remuneration...

- “Remuneration”** ...means,

- (i) ...all the salary, wages, fees and other payments paid or made to an employee as such for his own use and the money value of any apartments, rations or other allowances in kind appertaining to his employment...”

2. Dr White received a management annual bonus in July 2012.

3. The Thames Water 2011/2012 Management Annual Bonus Plan Rules of Eligibility says,

- “General

- The Applicable Annual Bonus Plan year runs from 1 April 2011 to 31 March 2012 (the “Plan Year”)

- Eligibility

- You will not be entitled to any annual bonus payment for the Plan year if you:-

- Have left the employment of the Company prior to the Payment Date ...

- Payment Date

The Payment Date will be the first available pay day it is administratively practicable to make the payment after the financial results of the Group Company for the Plan Year have been subject to a full audit by the auditors of the Company...This is expected to be, but not guaranteed to be in July each year.

#### Payment Calculation

... Bonus payments will be calculated using your base salary on 31 March 2013...

#### Calculation of Pensionable pay for Employees in the Mirror Image Pension Scheme

...any Bonus counts towards your pensionable pay. However, you should be aware that for pensionable pay purposes the Bonus earned in any specific year is attributed evenly to the months in which it was earned (i.e. over the 12 months of the Plan Year) and not when it is paid.”

4. Dr White retired on 11 September 2013 and became a pensioner member of the Scheme from that date.
5. The Trustees determined that his relevant pension period for the purpose of calculating his retirement benefits was 11 September 2011 to 10 September 2012. This was because it yielded the highest amount of remuneration received by Dr White.
6. The Trustees included a portion of the management annual bonus that he received in July 2012 in their calculation of his pensionable remuneration and disregarded the part of that bonus payment that they say was earned during the period March 2012 to September 2012.

#### **Summary of Dr White’s position**

7. The Trustees have not dealt with his annual management bonus he received in July 2012 in accordance with the Scheme rules. They did not included all of that bonus in their calculation of the pensionable remuneration used to determine his retirement benefits .The bonus payment was regarded as a pensionable payment it should be treated as a one off addition to his remuneration in that month.
8. The Trustees have misinterpreted the term “Pensionable Remuneration”. He says that the definition relates to whether or not remuneration was paid during a relevant pension period. As he was a member of the Scheme before, during and after the relevant pension period used to determine his retirement benefits, his July 2012 bonus payment should form part of his pensionable remuneration.

9. Where the relevant pension period is less than or more than one year it is clear that “Pensionable Remuneration” means remuneration during the relevant pension period. It is therefore irrational to conclude that where the relevant pension period is precisely one year as in his case that “Pensionable Remuneration” means something different.
10. The Trustees interpret the words “Remuneration for so much of the Relevant Pension Period...” to mean any bonus paid to a member which has been earned within the member’s relevant pension period. However, the term “earned” does not appear in the Scheme rules.
11. The Pensions Ombudsman had previously considered Mr Buffon’s complaint, PO\_-1182, which was similar to his, where he determined that the performance related pay lump sum in question was to be regarded as a one off increase in salary “for” the year in which it was paid. That is, paid by reference to and in acknowledgement of the previous period’s performance does not make it a payment “for” that period.
12. The process of challenging the Trustees’ decision has caused him distress and inconvenience and he should receive £300 compensation because of it.
13. The rules of the Management Annual Bonus Plan should reflect the Scheme rules and not the other way around.

### **Summary of the Trustees’ position**

14. For the purpose of determining if a member’s management annual bonus is pensionable the Trustees has always interpreted the words “ Remuneration for so much of the Relevant Pension Period...” to mean any bonus made or paid to the member which has been earned within the member’s relevant pension period. This is consistent with the Scheme rules and the terms of the Management Annual Bonus Plan which clearly states that the bonus year runs from 1 April to 31 March each year.
15. Dr White’s relevant pension period was 12 September 2011 to 11 September 2012 because this is the year which yielded the highest pensionable remuneration. The management annual bonus paid to him in July 2012 was earned in the year April 2011 to March 2012. This why the Trustees in calculating his pensionable remuneration excluded only the part of that bonus payment that he earned in the period March 2012 to September 2012.
16. The bonus would have been divided by twelve and a twelfth retrospectively added to other remuneration earned in each of those 12 months. The Management Annual Bonus Plan requires that an entitlement to a bonus will only arise if the employee is in service on the payment date. Hence the Trustees practice of ignoring any annual management bonus payments a member did not receive (or is treated as having not received due to higher Pensionable Remuneration from an earlier year being used to

calculate the member's pension) because the member left service before the payment date of July each year.

## **Conclusions**

17. I consider that the Trustees' decision to use the relevant pension period of 12 September 2011 to 11 September 2012 to calculate Dr White's retirement benefits because it was the period in which his highest pensionable remuneration was achieved was consistent with the Scheme rules.
18. Dr White contends that all of the annual management bonus payment paid to him in July 2012 should have been included in the Trustees' calculation of his pensionable remuneration. The term "Pensionable Remuneration" in the Scheme rules says "Remuneration for so much of the Relevant Pension Period as he is entitled to reckon as Reckonable Service". The key word in this rule is "for" the relevant pension period. "For" in this context means "relating to". This is not the same as, for example, pay received in the relevant pension period. (which is in effect what Dr White is arguing for). I find that the Scheme rules imply that pensionable remuneration is pay earned for, as opposed to received in the relevant pension period irrespective of the length of the relevant pension period in question .
19. Dr White refers to the Pensions Ombudsman's previous determination of Mr Bufton's case which was upheld. He says that this case was similar to his complaint. However, I do not consider that the circumstances of the two cases are the same. Part of Dr White's annual management bonus payment received in July 2012 was in fact paid in arrears. As indicated in the terms and conditions of the Annual Management Bonus Plan, it was paid when it was administratively practicable to make the payment after the financial results of the Group Company for the Plan Year had been finalised. Therefore, it clearly related to his earnings in the previous year, which according to the rules of the Annual Management Bonus was from 1 April to 31 March. I therefore do not consider that the Trustees acted incorrectly in excluding the part of the July 2012 bonus payment attributable the period March to September 2012 as this was not earned in relevant pension period 12 September 2011 to 11 September 2012. In addition, based on Dr White's argument, any annual management bonus pay received after the period 12 September 2011 to 11 September 2012 but earned during that period would be non-pensionable, which would be an unsatisfactory consequence. The way the Trustees have interpreted the Scheme rules in this regard would avoid any similar anomalies.
20. Dr White asserts that the terms and conditions of the Annual Management Bonus Plan should reflect the Scheme rules and not the other way around. However, I do not see that there are any discrepancies between the Scheme rules and the Annual Management Bonus Plan or that the Trustees had incorrectly applied the rules in relation to Dr White's case.

21. Dr White claims that the process of challenging the Trustees' decision has caused him distress and inconvenience and he should receive £ 300 compensation because of it. However, I do not find that the Trustees had acted incorrectly in the calculation of Dr White's retirement benefits. I therefore do not think that his claim in this regards is justified.

22. For the reasons I have given above, I do not uphold Dr White's complaint.

**Jane Irvine**

Deputy Pensions Ombudsman

5 March 2015