

Ombudsman's Determination

Applicant	Mr N
Schemes	Honeywell Retirement Plan (the Plan) Honeywell UK Pension Scheme (the Scheme)
Respondent	Honeywell Normalair-Garrett Limited (Honeywell)

Outcome

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

Complaint summary

3. Mr N has complained that he had to pay more income tax than was necessary, due to Honeywell's method of funding his additional pension.

Background information, including submissions from the parties

4. Mr N was employed by Honeywell's predecessor company from 9 September 1974. He was a member of the GKN Westland Final Salary Pension Scheme (**the GKN Scheme**), which closed to future accrual in 1998. Mr N then joined the Allied Signal UK Retirement and Share Ownership Plan (**the Allied Signal Scheme**), which was a defined contribution pension scheme.
5. In 1998 the company sent Mr N details of the "Special Arrangement", saying:

"We will provide for every employee who retires at age 60 or later, the greater of the benefits provided by the Allied Signal Scheme or the benefits of your current GKN Scheme.

...

The Company will take the steps necessary to make up the shortfall. The Company may use any of the following methods:

Arrange for an extra contribution to the Allied Signal Scheme equal to the shortfall;

Arrange for you to transfer the fund which you have accumulated in the Allied Signal Scheme to another scheme in which the Company participates and subsequently arrange for pension payments, or

Arrange for an extra pension relating to the shortfall to be paid from the Company's payroll."

6. The Allied Signal Scheme was subsequently incorporated into the Plan.
7. The Finance Act 2004 provided for a tax charge on payments which exceeded the annual allowance. Honeywell sought a dispensation from HMRC for Special Arrangement cases but was unsuccessful. Honeywell says that it then proposed alternative methods to HMRC with the aim of reducing the impact of the tax charge, with only limited success.
8. Mr N retired on 30 May 2013. He pressed Honeywell and the Plan administrator to ensure that his Special Arrangement benefits were paid in the most tax efficient way, preferably via Honeywell's payroll. Honeywell refused, saying that it could choose which method to use, and its practice had always been to transfer the member's accumulated fund into the Scheme. The augmented benefits were then paid in full from the Scheme.
9. Honeywell says that it discussed with its legal advisers whether to use one of the other methods set out in 1998, in particular, Mr N's preferred method of paying the Special Arrangement benefits through Honeywell's payroll. The advice received by Honeywell was that if it paid the Special Arrangement benefits to Mr N through the payroll, he would be entitled to a lower amount of tax free cash. Further, if Honeywell became insolvent Mr N would be an unsecured creditor and would have to claim his pension through the insolvency process, resulting in a risk that his claim would not be satisfied in full. By providing the Special Arrangement augmentation through the Scheme, all Mr N's benefits would be eligible for entry into the Pension Protection Fund. Honeywell was also advised that paying unsecured pension promises through payroll could have an impact on the Company's ability to enter into any future restructuring exercise or other commercial transactions.
10. Honeywell suggested that Mr N's Special Arrangement benefits, which were payable to age 65, be converted to a whole of life pension. This would have reduced Mr N's tax liability by approximately £44,000. Mr N declined this offer. He decided that he would be worse off under this option unless he lived past 77, the factors used were unsatisfactory and he hoped at that stage that no tax at all would be payable.
11. The Scheme administrator suggested "scheme pays", whereby the tax charge was deducted from Mr N's pension in instalments, instead of paying it as a lump sum in the relevant tax year. Mr N chose this option.

12. Mr N was provided with some incorrect information about “scheme pays” during the protracted correspondence between him, Honeywell and the Scheme administrator. The correct information was subsequently provided and Honeywell apologised for the error.

Adjudicator’s Opinion

13. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Honeywell because:
- Honeywell had funded the Special Arrangement in full and had kept to the promise made to Mr N when he joined the Allied Signal Scheme;
 - Honeywell was under no obligation to pay Mr N's pension and lump sum in a way that was most tax efficient for him, bearing in mind that what was the most tax efficient would be different for different members; and
 - Mr N made a free choice to transfer from the Plan to the Scheme.
14. Mr N did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. I agree with the Adjudicator’s Opinion, summarised above, and I will therefore only respond to the key points made by Mr N for completeness.
15. The Special Arrangement was set up before the introduction of new legislation governing workplace pensions, which resulted in the tax charge. Honeywell appears to have made considerable efforts to alleviate the effects of these changes. Honeywell was under no obligation to advise Mr N on the best course of action and he has confirmed that he took professional advice.
16. The 1998 announcement made it plain that the Company could choose which method to use when implementing the Special Arrangement. Honeywell made a considered decision after taking professional advice.
17. Mr N was given an incorrect "scheme pays" monthly deduction figure at one point in the correspondence, but the mistake was put right and there is no suggestion that Mr N relied on the incorrect figure. Whilst the mistake was regrettable, Honeywell apologised to Mr N and I do not think that any further action is required.

Ombudsman’s decision

18. Therefore, I do not uphold Mr N's complaint.

Anthony Arter
Pensions Ombudsman
1 August 2016