

PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE DEPUTY PENSIONS OMBUDSMAN

Applicant Mr Michael Ramsey
Scheme Honeywell UK Pension Scheme (**the Scheme**)
Respondent Honeywell Normalair-Garrett Limited (c/o Hogan Lovells International LLP) (**the Company**), the trustee of the Honeywell UK Pension Scheme (**the Trustee**) and Towers Watson (**the Administrator**)

Subject

Mr Ramsey complains that the Company, the Trustee and the Administrator failed to inform him of the personal tax liability that arose as a result of him taking his pension benefits in the manner that he elected to take them. Mr Ramsey argues that had he been aware of the potential tax liability when he elected to take his pension benefits he would have elected to take them earlier (i.e. to avoid the tax liability). To put matters right Mr Ramsey wants the Scheme to pay his personal tax liability in full.

The Deputy Pensions Ombudsman's determination and short reasons

The complaint should not be upheld against the Company, the Trustee or the Administrator because:

- none of the Company, the Trustee or the Administrator had any legal obligation to inform Mr Ramsey that he may be subject to an annual allowance tax charge if he elected to take his pension benefits in the manner he elected to take them; and
- even if the amount of the personal tax charge was made known to Mr Ramsey prior to making his election he would still, on the balance of probabilities, have taken his pension benefits in the manner he elected to take them.

DETAILED DETERMINATION

Material Facts

1. NormalAir-Garrett Limited was acquired by AlliedSignal Limited in 1998. At that time NormalAir-Garrett Limited ceased to participate in two defined benefit pension schemes. One of those schemes was the Westland Staff Pension Scheme (**the Westland Scheme**). Mr Ramsey was an employee of NormalAir-Garrett Limited (and a member of the Westland Scheme) and therefore ceased to accrue benefits under the Westland Scheme in 1998.
2. In 1998 AlliedSignal Limited offered employees of NormalAir-Garrett Limited membership of a defined contribution scheme – the AlliedSignal UK Retirement Plan. AlliedSignal Limited was acquired by Honeywell in 2000. NormalAir-Garrett Limited, as a subsidiary of AlliedSignal Limited, was also purchased at that time and changed its name to Honeywell Normalair-Garrett Limited (i.e. the Company). The AlliedSignal UK Retirement Plan is now a section of the Honeywell Retirement Plan (the HRP). The HRP is a defined contribution scheme. Mr Ramsey accrued benefits in the HRP from the date he ceased to accrue benefits in the Westland Scheme in 1998 up until the date he left the Company.
3. The “special arrangement” is a promise from the Company to top-up a member’s benefits to the level he would have received had he continued to accrue benefits in the Westland Scheme until he left the Company (the Special Arrangement). When an employee who is entitled to the Special Arrangement, such as Mr Ramsey, leaves the Company and the benefits he could secure under the HRP are lower than the benefits he would have received had he continued to accrue benefits under the Westland Scheme, he is given the option to transfer his benefits in the HRP to the Honeywell UK Pension Scheme (i.e. the Scheme).
4. The Scheme is a defined benefit occupational pension scheme. If an eligible employee elects the Special Arrangement, he joins the Scheme and then the Scheme pays him a pension equal in value to the pension he would have received from the Westland Scheme had he continued to accrue benefits under it to the date he left the Company.

5. Mr Ramsey elected to take his benefits under the Special Arrangement (and therefore joined the Scheme) in May 2011. Mr Ramsey signed the retirement option form and declaration on 14 May 2011.
6. The Government introduced a new rule requiring an individual's pension savings to be tested against the annual allowance in their year of retirement. This rule came into effect on 6 April 2011 – approximately a month before Mr Ramsey elected to take his benefits under the Special Arrangement.
7. The Trustee wrote to Mr Ramsey on 13 December 2012 to inform him that the benefits granted to him under the Special Arrangement had triggered an annual allowance tax charge. The letter said that Mr Ramsey's pension input amount for the tax year of his retirement was £215,603.64. The tax year of Mr Ramsey's retirement – 2011/2012 – constitutes his pension input period (PIP). The annual allowance for the 2011/2012 tax year (and thus Mr Ramsey's PIP) was £50,000. After his excess annual allowance from the past three tax years had been carried forward (which totalled £186,582.37), the Trustee said that Mr Ramsey had "excess pension savings" of £29,021.27 on which an annual allowance charge was due. The letter explained that tax would be charged on Mr Ramsey's excess pension savings as additional income received by him in the 2011/2012 tax year.
8. Although the amount of the annual allowance tax charge had not, at that time, been ascertained, the Trustee's letter made it clear that the charge was a personal tax charge and therefore payable by Mr Ramsey. The Trustee's letter also strongly recommended that Mr Ramsey should take advice from a tax adviser to ascertain the amount of his tax liability. The Trustee also said that the tax charge, once ascertained, was payable by 31 January 2013. The Trustee offered to pay the tax charge and recover it from Mr Ramsey's pension benefits in instalments.
9. Mr Ramsey's total personal tax liability was £7,553.43.
10. The Company, the Trustee and the Administrator (in their letters dated 12 September 2013, 13 December 2012 and 16 July 2013, respectively), made it clear that they were aware that the new rule introduced by the Government could raise issues for the members of the Special Arrangement. However, the letters said that the Company and the Trustee had spent a considerable amount of time and money

working with their advisors to address these issues. They said that the Company and the Trustee sought advice from Her Majesty's Revenue & Customs (HMRC) and had worked to investigate various options to reduce and remove any personal tax liability for affected persons (which they say was beyond the scope of their legal obligations to members). The Trustee's letter to Mr Ramsey of 13 December 2012 said that the Trustee and the Company had only confirmed with HMRC that there definitely would be a personal tax charge for affected members in late 2012.

11. Both the Company and the Administrator say that the annual allowance is a personal tax charge, which means that neither the Company, the Trustee or the Administrator had an obligation to inform Mr Ramsey of the changes to the rules which came into effect on 6 April 2011. Indeed, the Company's letter to Mr Ramsey dated 12 September 2013 says that the respondents' only (collective) obligation was to send Mr Ramsey a pension savings statement by 6 October 2013.

Summary of Mr Ramsey's position

12. Mr Ramsey believes that the Trustee and the Administrator had a responsibility to keep him "in an informed position" with regard to their correspondence with HMRC about the Special Arrangement. He therefore argues that, as this correspondence concerning the change to the legal position occurred before his election to take his benefits under the Special Arrangement occurred in May 2011, he should have been informed by the Trustee, the Company and/or the Administrator at that time of the possible detrimental tax implications of taking his benefits under the Special Arrangement.

Summary of the Company's position

13. They had no duty to inform Mr Ramsey that he may be subject to an annual allowance tax charge if he elected the Special Arrangement. This is because the annual allowance tax charge is a personal tax charge.

Summary of the Trustee's position

14. They have complied with their obligation to inform Mr Ramsey of the amount of annual allowance he used up when he elected the Special Arrangement within the timescales set out in the Registered Pension Schemes (Provision of Information) Regulations 2006 (the Regulations).
15. They had no obligation to Mr Ramsey before he elected the Special Arrangement because he was not a member of the Scheme at that time.
16. The Scheme is, according to the Trustee's letter to this office dated 11 April 2014, "simply the vehicle for meeting the company's obligation to individuals" in respect of the Special Arrangement.

Summary of the Administrator's position

17. They, in their capacity as administrator of the Scheme, had no duty to inform Mr Ramsey that he may be subject to an annual allowance charge if he elected the Special Arrangement.
18. Nonetheless, they fully complied with their obligation to inform Mr Ramsey of the amount of annual allowance he used up when he elected the Special Arrangement within the statutory timescales set out in the Regulations.

Conclusions

19. Mr Ramsey complains that the Company, the Trustee and the Administrator failed to inform him of the personal tax liability that arose as a result of him electing the Special Arrangement in May 2011. He argues that had he been aware of the potential tax liability he would have elected to take the Special Arrangement earlier (i.e. to avoid the tax liability). To put matters right Mr Ramsey wants the Scheme to pay his personal tax liability in full.

Legal obligations

20. I appreciate Mr Ramsey's frustration when he questions why, having been aware of the change in the law and having had seemingly protracted conversations with HMRC about potential tax charges that could arise under the Special Arrangement in connection with the change in the law, none of the respondents to this complaint

warned him that electing to take his benefits under the Special Arrangement could cause a personal tax charge to arise.

21. However, none of the Company, the Trustee or the Administrator had a legal obligation to contact Mr Ramsey prior to him electing to take his benefits under the Special Arrangement to warn him that he could be subject to a personal tax charge due to changes to the law concerning the annual allowance that came into force on 6 April 2011.
22. The Company did not have a duty to inform Mr Ramsey of the change in the law which led him to incur the personal tax charge. As the Company has said in their letter to my office dated 6 February 2014, the common law authorities make it clear that the Company is under no obligation to inform Mr Ramsey of the financial benefits of him taking his benefits before the law changed on 6 April 2011.
23. Regulation 15A of the Regulations provides that the Company's duty in relation to retirement benefits extends only to providing information to the Administrator to assist them in producing a pension saving statement for Mr Ramsey. The transitional deadlines in the Regulations provide that the Company must have provided the necessary information to enable the Administrator to produce the statement by 6 July 2013. It is clear that this information was sent to the Administrator well ahead of that deadline, as the finalised statement was sent to Mr Ramsey (by the Trustee) on 13 December 2012.
24. At first glance it may appear that the Trustee's failure to warn Mr Ramsey about the potential tax charge could constitute a breach of their general duty to act in the best interests of members/beneficiaries. As established in *Cowan v Scargill* [1985] 1 Ch 270, an occupational pension scheme trustee is under a duty to act in the best interests of the scheme beneficiaries. The "best interests" of a scheme's beneficiaries essentially means their best financial interests. However, having considered the issue, I do not think there has been any breach of this duty by the Trustee. As argued by the Trustee, when Mr Ramsey elected the Special Arrangement he was not a member of the Scheme. Accordingly, the Trustee, at the time Mr Ramsey elected the Special Arrangement, did not owe Mr Ramsey a duty to act in his best financial interests. I cannot refute this view. It follows that the Trustee was not in breach of

the general duty to act in a beneficiary's best financial interests when Mr Ramsey elected the Special Arrangement.

25. With respect to the Administrator's obligations to Mr Ramsey, Regulation 14A of the Regulations says that a scheme administrator must provide a pension savings statement automatically each year to members that exceed the annual allowance in the relevant pension input period. In this case, the deadline for providing such statement to Mr Ramsey was 6 October 2013. The statement was, in fact, sent to Mr Ramsey well in advance of that time (i.e. by the Trustee on 13 December 2012). Accordingly, the Administrator has complied with their obligations under the Regulations.

Election of the Special Arrangement

26. In addition to the points raised above, it is my view that, on the balance of probabilities, even had Mr Ramsey been told about the potential tax liability by all or any of the respondents in this complaint before he elected to take his pension benefits in May 2011 he would still have elected the Special Arrangement (rather than take his pension benefits under the HRP).
27. I have been provided with Mr Ramsey's most recent early retirement quotation under the HRP from 31 December 2009. This estimates that, should Mr Ramsey have put his pension into payment on 31 December 2009, he would have received £7,064.34 a year for life (or a lump sum of £53,420.00 and a pension of £5,298.26 a year for life).
28. Mr Ramsey's early retirement statement dated 3 May 2011, calculated on the basis that he elected the Special Arrangement, provides that should Mr Ramsey have put his pension into payment on that date he would have received £25,740.81 a year for life (or a lump sum of £131,013.59 and a pension of £19,652.04 a year for life). Further, Mr Ramsey's early retirement statement dated 16 August 2010, also calculated on the basis that he elected the Special Arrangement, provides that should Mr Ramsey have put his pension into payment on that date he would have received £23,946.77 a year for life (or a lump sum of £122,511.14 and a pension of £18,376.67 a year for life).

29. The disparity between the benefits payable under the HRP and under the Special Arrangement is clearly very considerable. Accordingly, given the comparatively small size of Mr Ramsey's personal tax liability it seems likely, on the balance of probabilities, that even had Mr Ramsey known of his tax liability he still would have elected the Special Arrangement rather than take his benefits under the HRP.

Electing the Special Arrangement prior to 6 April 2011

30. Mr Ramsey's main argument is that if he had known about the potential personal tax liability he would have elected the Special Arrangement before the change in the law coming into force on 6 April 2011.
31. Mr Ramsey has told my office that he considered retiring in the weeks prior to 6 April 2011 but had been told by Human Resources (presumably at the Company) that they were too busy to process his request at that time. There is no suggestion that Human Resources were aware of the imminent changes to pension legislation that would have affected Mr Ramsey, nor is there any suggestion that there was any conceivable benefit to the Company of intentionally delaying Mr Ramsey's election of the Special Arrangement. Accordingly, I do not see that Mr Ramsey's request to Human Resources in the weeks leading up to 6 April 2011 is a relevant issue in this complaint.
32. It is clear from the information this office has been sent that none of the Company, the Trustee or the Administrator made it clear to Mr Ramsey before he elected to take his benefits on 14 May 2011 that there could have been a benefit in him doing so earlier. Indeed, none of the Company, the Trustee or the Administrator even told Mr Ramsey what his PIP was when he elected to take his benefits (i.e. and what the significance of that period was in light of the recent legislative changes). Accordingly, it is clear that the Company, the Trustee or the Administrator did not give Mr Ramsey any information in the period prior to 6 April 2011 that electing to take his benefits under the Special Arrangement before that date could mean that he avoided a potential personal tax liability.

33. Nevertheless - despite not providing any information relating to the change in the law - the Company, the Trustee and the Administrator cannot be held responsible for Mr Ramsey's failure to elect the Special Arrangement prior to 6 April 2011. This is for a variety of reasons.
34. Firstly, and as established previously, each of the Company, the Trustee and the Administrator did not have a legal duty to bring the relevant legislative changes to Mr Ramsey's attention in these circumstances. Accordingly, they were not, either individually or collectively, legally bound to provide Mr Ramsey with any information concerning the possible benefits of him electing the Special Arrangement prior to 6 April 2011.
35. Further, although it makes no reference to the relevant change in legislation, the Administrator's letter to Mr Ramsey dated 11 May 2011 (which enclosed the relevant forms to allow Mr Ramsey to transfer his benefits in the HRP to the Special Arrangement and put them into payment), said that the provision of the retirement estimate (enclosed with the letter) did not constitute advice from the Trustee. Indeed, the letter said that if Mr Ramsey wanted to consider the estimates "on a different basis" or needed any financial advice, he should contact an independent financial adviser. This statement indicates that the Trustee was not giving Mr Ramsey advice in respect of his election to transfer his benefits (or not). Further, none of the other documentation my office has received suggests that any of the Company, the Trustee or the Administrator advised Mr Ramsey in respect of his election. As such, none of the Company, the Trustee or the Administrator can be said to have advised Mr Ramsey about whether he should elect to transfer his benefits in the HRP to the Special Arrangement (or not). To the contrary, it was made clear to Mr Ramsey that any election in respect of his benefits would be his election to make (whether he chose to do so alone or having taken independent financial advice).
36. Finally, the fact that the Company and the Trustee were involved in lengthy discussions with HMRC around the time of Mr Ramsey's election (which purportedly only reached a resolution in late 2012) suggests that it was not clear to them prior to 6 April 2011 that a personal tax charge would definitely arise for persons electing the Special Arrangement as a consequence of the changes to the

law. Accordingly, the Company, the Trustee and the Administrator could not reasonably have been expected to make it known to Mr Ramsey prior to 6 April 2011 that he definitively would (or would not) have been liable for a personal tax charge if he elected the Special Arrangement after 6 April 2011.

37. For these reasons Mr Ramsey's complaint against the Company, the Trustee and the Administrator is not upheld.

Jane Irvine
Deputy Pensions Ombudsman

1 August 2014