The Pensions Ombudsman

Ombudsman's Determination

Applicant	Professor M
Scheme	Universities Superannuation Scheme (**the Scheme**)
Respondents	Universities Superannuation Scheme Ltd (**USS**)

Complaint Summary

Professor M has complained that USS either misinterpreted the Scheme Rules in respect of the non-application of a Late Retirement Factor (**LRF**) to his entitlement or that the Scheme Rules are so drafted that they cannot be interpreted fairly.

He has also complained that a retirement quotation issued to him on 16 February 2016 (**the Quotation**) included a late retirement enhancement in the benefit figures but failed to explain that the enhancement would be lost were he to withdraw from the Scheme.

Summary of the Ombudsman's Determination and reasons

I do not uphold this complaint against USS as it has applied the Rules of the Scheme correctly and I do not find that Professor M relied on the Quotation in making his decision to withdraw from the Scheme.

Detailed Determination

Material facts

1. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.

2. Professor M complained that USS has misinterpreted the Scheme Rules in deciding that he is not entitled to an LRF following his decision to opt out of the Scheme. He separately complained that USS breached its duty of care to him in failing to explain that the late retirement enhancement would be lost were he to withdraw from the Scheme. The two complaints were accepted under separate case references but are sufficiently interlinked that I have decided to deal with both in this one decision.

3. At the time of the matters Professor M complains about, the Scheme was governed by Rules dated 30 April 2009 (**the Rules**), as amended up to and including the Fifteenth Deed of Amendment dated 9 December 2014. A new set of rules was adopted on 19 November 2015 (**the 2016 Rules**), but those apply only to "persons who are or become active members at any time on or after 1 April 2016". As Professor M withdrew from the Scheme on 31 March 2016 the 2016 Rules do not relate to him. Extracts from the Rules which are relevant to the complaint can be found in the Appendix below.

4. On 1 April 2016 the benefit structure of the Scheme changed. Prior to that date, it had been a defined benefit (**DB**) arrangement. From 1 April 2016, the basis for existing members was replaced with a DB section for earnings up to £55,000 but for earnings above that level, a defined contribution (**DC**) section was put in place.

5. Professor M is now a pensioner member of the Scheme. His pensionable service began on 26 April 1989. At that time he transferred in benefits from his previous scheme, the NHS Pension Scheme, and was credited with 18 years and 241 days pensionable service in the Scheme. He reached the Scheme's Normal Retirement Age (**NRA**) of 65 on 17 April 2015 but remained an active member of the Scheme.

6. Professor M says that in advance of his NRA he undertook a lot of research into his pension position in order to ensure that his benefits were maximised and risks to their accrual minimised. He planned carefully for retirement as a result of a number of converging factors:

   - changes to the Lifetime Allowance and the need to ensure the retention of Enhanced and Primary Protection;
   - the introduction of the new Scheme basis from 1 April 2016;
   - his attainment of NRA on 17 April 2015; and
   - the benefit of an LRF for members who retired after NRA.

7. He understood from this planning that:

   - he would need to opt out of the Scheme before the new basis came into effect;

- by doing so he would not jeopardise the benefits he had accrued to date;
- he would retain his Enhanced and Primary Protection; and
- the benefits accrued prior to his opting out on 31 March 2016 included 11 months beyond NRA which meant that he qualified for an LRF enhancement.

8. On 18 August 2015, the Head of Pensions at the University of Manchester (the **Employer)** emailed Professor M a link to a summary of the recently agreed changes to the Scheme which had been prepared by USS. The email said that "[the summary] confirms the headline changes and agreed modifications…".

9. On 28 August 2015, Professor M emailed his Employer to ask whether he could continue to be a member of the DB section after April 2016. He said:

   > "As I have a USS pension that enjoys both enhanced and primary protection, I am advised that I cannot contribute to the defined contribution scheme that comes into force in April 2016. I need advice from you as to whether I can continue my defined benefits scheme or whether we need to ensure that no contributions are made to the defined contribution scheme. I must not invalidate my enhanced protection certificate!".

10. The Employer replied on 2 September 2016 to say that to continue to participate in the DB section he would have to `be a member of the DC section. But, in order not to lose his enhanced and primary protection he would need to take steps to cease contributions when the new scheme basis was rolled out.

11. On 4 September 2015, Professor M wrote to his Employer's pensions office to confirm that he wished to cease all pension contributions to the Scheme after 31 March 2016.

12. On 9 September 2015, Professor M emailed the British Medical Association (**the BMA**) seeking advice. He said that he knew he could not contribute to the Scheme after April 2016 as he would lose the benefits of his primary and enhanced protections. His decision was now whether to retain the security of his existing job up until April 2018, when he wanted to retire, or take '24-hour retirement' and then return to virtually full-time work so that he could take his pension from April 2016. This would deliver approximately half his current total salary and there would be no benefits from delaying taking his pension beyond April 2016.

13. On 22 September 2015, in an email to the Advisory Committee on Clinical Excellence Awards (**ACCEA**) Professor M said that he was a platinum merit award holder. He knew that the Scheme was changing to a defined contribution basis in April 2016 and that he would not be able to contribute after March 2016. In effect this meant that he must 'retire and return' or accept flexible retirement. He wanted to know if there were any circumstances under which he could retire and return but retain his platinum merit award.

14. In response, the ACCEA said that there was no flexibility for Professor M to retain his current award.

15. On 22 September 2015, Professor M emailed the Employer to say:

    "Over this last month it has become clear that the changes to the USS pension arrangements from April 2016 have a more profound impact on me then [sic] I was anticipating. The introduction of the defined benefit [sic] scheme from April 2016 means that neither the university nor I can contribute to my USS pension after the end of March 2016. Despite primary and enhanced protections registered with HMRC since "A Day" in 2006, any contributions under the defined benefit [sic] scheme would incur punitive tax rates."

16. Later on 22 September 2015, Professor M emailed the Employer to say that he would need to cease to contribute to the Scheme in March 2016 as he had primary and enhanced protection and any further contributions would incur tax penalties. He understood that the most sensible arrangement would be to retire from April 2018 and then look to return as he had a number of research objectives he wanted to complete before he retired.

17. Further emails followed as Professor M sought to clarify and agree his plans for a 'retire and return' with his Employer.

18. He believed that USS guidance, as provided on an Enhanced Opt Out (**EOO**) document, clearly stated that he would retain any LRF enhancement achieved up until the date of opting out. He maintains that no mention was made to him that the position was different if an ordinary opt out was pursued, although he did query the specific benefits of the EOO in an email with his employer on 8 February 2016.

19. On 24 September 2015, the BMA responded to Professor M's email of 9 September 2015. It said it understood that Professor M was currently contributing to the Scheme and that he was weighing up the pros and cons of retiring and returning to work in April 2016. The BMA referred to guidance on the USS web site which said:

    "Working after retirement

    In order to qualify for a pension you must terminate your current pensionable employment. Reaching age 65, or achieving 40 years' service, does not automatically make you eligible for a pension if you haven't stopped working.

    You would not be deemed to have retired if you intend to commence another job with your current employer, or with any other employer that participates in USS, that is pensionable in USS. If however, after you have retired you are subsequently offered new employment your employer may have a duty to enrol you into a pension scheme. You will need to seek advice from your employer as to your eligibility and whether you are able to rejoin USS."

20. The BMA said that flexible retirement would enable Professor M to remain in his post, although he would need to take a 20% reduction in his hours and salary, and he could claim up to 80% of his accrued pension. If he opted to take full retirement and then return to employment the income from the Clinical Excellence Award would no

longer be payable. It would be up to Professor M to agree an appropriate rate of income with his employer.

21. Referring to Primary and Enhanced Protection, the BMA said that Professor M might be able to withdraw from the Scheme while not fully retiring. It noted the following, apparently quoted from the USS web site:

    "If I elect for enhanced opting-out after age 65, will I still receive any late retirement augmentation?

    Yes, you keep the late retirement increases which have been applied up to your date of election. No further allowance for late retirement will be added."[1]

22. On 8 February 2016, Professor M emailed the Pensions Office at his employer, Manchester University (**the Employer**). He said:

    "I have been advised that I must not make any further pension contributions following the contribution that I make in March 2016. I have recently received the email from [USS] relating to enhanced opt out. My understanding is that my pension income is secure whether or not I die or suffer an illness. I believe that my total pensionable service is currently over 45 years and I doubt that contributing 2.5% of my salary to participate in EOO represents value for money for me: please explain whether or not there is any real benefit in participating in this rather than simply opting out."

23. The Pensions Office responded on 11 February 2016 to say that as Professor M was already aged over 65 and had more than 40 years' service in the Scheme there would be no additional enhancement available under the Rules in relation to the Death in Service spouse's pension. Ill health early retirement would also no longer be relevant.

24. Also on 8 February 2016, Professor M separately emailed USS regarding a pension sharing order (**PSO**) in favour of his ex-wife. In this email he said:

    "I am aware that I can make no further pension contribution after March 2016. Presumably the capital equivalent value of my pension will then stabilise. I know it is possible that it will rise subsequently according to CPI or 2.5%. As you know, I enjoy standard and enhanced protection since A day. It will be helpful for the court proceedings if we know the minimum PSO that would need to be transferred into my ex-wife's name to avoid breaching my life time allowance (LTA). I think you provided me with a calculation on this a year ago and I believe that the figure is close to £95,000.

    I would be immensely grateful if you would urgently let me know the minimum PSO that would need to be split in favour of my ex-wife assuming that I take the maximum allowable tax-free lump from my USS pension when I am finally allowed to retire (which would have to be after the pension split occurs)."

[1] Ombudsman's note - Professor M did not elect to take EOO

25. Following the email from Professor M, USS issued the Quotation to him based on an assumed retirement date of 31 March 2016. The Quotation showed that the benefits Professor M had accrued prior to reaching NRA would be increased between April 2015 and March 2016 by an LRF of 1.055 resulting in standard benefits of the following amounts:

   - a gross annual pension of £132,145.68; and
   - a pre-tax lump sum of £396,437.04.

26. A footnote to the Quotation said:

   "The figures shown above are provisional and are subject to verification of the service, salary and Index of Retail Price figures, which may have been assumed for the purpose of this calculation…"

27. The covering letter to the Quotation said:

   "Please note that the figures provided are provisional and reflect current scheme rules, legislation and factors which are all subject to the possibility of future alteration.

   Your actual retirement benefits will be calculated in accordance with the scheme rules, legislation and factors in force at the date of your retirement."

28. On 9 March 2016, Professor M emailed the Employer to ask for confirmation that his last contribution to the Scheme would be the one due that month. He said:

   "Under no circumstances should I make a further contribution to my USS pension after 31 March 2016."

29. On 10 March 2016, the Employer confirmed that no contributions would be made after March 2016.

30. Professor M was therefore treated as having withdrawn from the Scheme on 31 March 2016, but he did not take his benefits at that time. Consequently, he became a deferred member of the Scheme from 31 March 2016.

31. On 26 January 2017, the Employer requested a "retirement from deferred" quotation based on a proposed retirement date of 31 January 2017. USS issued a quotation on 27 January 2017, stating that Professor M's standard benefits would be:

   - a gross annual pension of £118,072.68; and
   - a pre-tax lump sum of £354,217.98.

32. Professor M queried why the benefits were so much lower than shown in the Quotation. USS responded on 28 February 2017, explaining that the difference in figures was because:

   - the pensionable salary used in the final calculation was lower;

- Professor M was no longer entitled to an LRF uplift as he was not an active member of the Scheme; and
- a pension debit deduction had been made in accordance with the PSO.

33. USS explained that the Rules did not provide for payment of an LRF as Professor M had chosen to withdraw from the Scheme. It said that there was no breach of any legal requirement in this regard and that there was no general duty on USS to have actively informed Professor M that an LRF would cease to be payable if he withdrew, particularly where the Trustee had no prior knowledge of his intention to withdraw.

34. Professor M says his withdrawal from the Scheme formed part of his tax-planning arrangements. Withdrawal ensured that he did not lose protection in respect of the lifetime allowance tax charge which he enjoyed under Schedule 36 to the Finance Act 2004. He says that his decision also relied on the figures in the Quotation.

35. Under the Rules, withdrawal from the Scheme and thereby becoming a deferred member had the consequence that the LRF enhancement, to which he would otherwise have been entitled if he had continued in active membership after his NRA, was lost.

36. Professor M took his benefits from the Scheme on 31 January 2017; in accordance with the Rules, an LRF was not applied.

37. On 17 July 2018, Professor M raised a complaint through stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**). He said:-

    - At no time was he advised by USS that withdrawing from the Scheme would seriously affect the value of his pension through the loss of the LRF. In his view, USS had a duty of care to advise him that this would be a consequence of withdrawing.
    - USS had demanded contributions from him and his employer, presumably in part to fund the LRF. The Scheme had also benefited from not having to pay his pension in the interim. Presumably the LRF was in recognition of the benefit to the Scheme in delaying pension payments.
    - His decision to withdraw from the Scheme in March 2016, was based on the possibility that his pension assets would breach the lifetime allowance and also on the Quotation which included an LRF that substantially influenced the pension he would receive and the tax-free lump sum.
    - He should be entitled to rely on the Quotation.
    - He should have been told by USS that withdrawing from the Scheme would have such financial consequences.

38. On 30 November 2018, USS responded to say it did not uphold Professor M's complaint. It made the following points:-

    - It had to pay benefits in accordance with the Rules.

- [Rule 10] sets out the benefits payable to an active member and gave the Trustee the power to apply an LRF. At the time the Quotation was issued Professor M was an active member and the Trustee was correct to include an LRF.

- When Professor M withdrew from the Scheme, in accordance with Rule 36.3, he became entitled to preserved benefits under Rule 14 and ceased to be entitled to benefits under Rule 10. Rule 36.3 states that where the withdrawal takes place after NRA, benefits come into payment on the earlier of the day on which the member ceases eligible employment or the day they attain age 75, as if their NRA were attained on that day.

- Professor M's benefits were therefore payable under Rule 14, as if he had reached his NRA on the date he left employment. There is no provision under the Rules for an LRF to be applied in these circumstances.

- It did not dispute that Professor M was unaware of the consequences of withdrawing from the Scheme. However, the Quotation was calculated correctly based on Professor M's circumstances at the date it was issued to him and he could have relied on it had he chosen to retire from active status.

- USS was unaware of Professor M's decision to leave the Scheme until after he had already elected to withdraw.

- While the Quotation did not state that an LRF would cease to apply if Professor M withdrew from the Scheme, there was nothing in the scheme literature, or in any communication he received from USS to the effect that he would be entitled to an LRF in the event he withdrew from the Scheme prior to retirement.

- Had Professor M questioned whether there would be any implications as a result of withdrawing from the Scheme, USS would have informed him that an LRF would cease to apply.

- It noted his comments that he considered that part of his contributions paid towards the LRF, but there was no legislative requirement for the Rules to include an LRF in his case.

- It concluded that USS had not led him to believe that he would be entitled to an LRF if he withdrew and retired from deferred status or breached any duty owed to him. His benefits had been calculated correctly.

39. On 17 December 2018, Professor M appealed against USS' decision under stage two of the IDRP. Having taken advice (**the advice**) he revised his appeal on 4 January 2019.

40. The points made in his initial appeal were essentially the same as those raised at stage one of the IDRP. In summary he said:-

- His decision to withdraw from the Scheme was based on clear advice from his Employer as continued contributions to the Scheme would cause him to breach the lifetime allowance.
- The Employer and USS were aware that he was both withdrawing from the Scheme and contemplating retirement and return.
- Immediately following receipt of the Quotation he had indicated his decision to withdraw from the Scheme. The principal reason that he withdrew was the Quotation.
- USS should have told him that withdrawing from the Scheme would result in the loss of the LRF.
- USS had demanded contributions from him and his employer, presumably to partly fund the LRF. The Scheme had also benefited from not having to pay his pension in the interim.
- He should be entitled to rely on the Quotation.

41. Following receipt of the advice, Professor M added further points to his appeal. In summary he said:-

- Changes to the benefit structure of the Scheme on 31 March 2016 were of central importance to him when considering his pension options during 2015 and early 2016. During this period he was actively weighing up his options from April 2016, namely whether to retire or continue in employment. This was because:
    - he had reached NRA but continued to pay contributions as an active member;
    - he was in the throes of a divorce and his wife was seeking a PSO; and
    - he was advised not to make contributions after 31 March 2016 as they would have breached his enhanced and primary protection.
- He had decided not to retire, partly on advice from the BMA, quoting a guidance note produced by USS, which said that in the event of him electing for EOO he would still be entitled to ‘late retirement increases’ up to the date of the election.
- Other guides on USS’ website included a ‘Guide to your Options once you have left USS’ which stated in Section 8 that a member’s pension was increased between the date of leaving and pension coming into payment, and a ‘Retirement Factsheet’ which stated that, in late retirement, provided the member continued to contribute to the Scheme the benefits built up would increase each year in line with inflation. Benefits built up after NRA would also be increased by 5% per month.

- His email dated 8 February 2016 advised USS of his decision to withdraw from the Scheme on 31 March 2016 but not take his pension benefits until a later, uncertain date.
- The Quotation received in return had applied an LRF for the 11 months following his NRA to the benefits before his NRA but not in respect of the service after NRA.

42. Professor M said, in summary, his complaint was that:

- USS had misinterpreted the Rules and thus misapplied them in failing to apply the LFR and/or statutory revaluations in respect of both benefits earned before and after his NRA;
- USS was estopped from denying that his pension benefits upon retirement were to be calculated on that basis;
- USS was in breach of a duty of care owed to him in respect of the calculation of his retirement benefits, causing him loss equal to the amount he would have received had the LFR been applied to his pension benefits; and
- USS was liable to compensate him in the same respect for maladministration.

43. USS responded to the appeal on 4 February 2019, rejecting Professor M's complaint. Its comments are set out in paragraphs 44 to 48 below.

44. In relation to the Quotation it said:-

- The Rules had been applied correctly.
- USS did not breach any duty towards Professor M in respect of informing him that an LRF would not be applied if he withdrew from the Scheme.
- The fact that an LRF is not payable in his circumstances is a benefit design issue. USS' duty was to apply the Rules correctly, which it has done.

45. In relation to the alleged misinterpretation of the Rules it said:-

- Rule 36.3 states:

  "A member to whom sub-rule 36.1 does not apply may give not less than 28 days' written notice to the employer and the trustee company to cease to be a member with effect from the end of the month in which the notice expires. The individual shall then be entitled:

  36.3.1 To benefits under rule 14 (Preserved benefits) or sub-rule 16.3.1 (Early leavers without preserved benefits). If the withdrawal takes effect at or after the day when he or she attains normal pension age, benefits under rule 14 (Preserved benefits) or sub-rule 16.3.1(Early leavers without preserved benefits) shall come into payment on the day following the earlier of the day on which he

or she ceases eligible employment or the day he or she attains age 75, as if his or her normal pension age were attained on that day.

36.3.2 To rejoin the scheme in accordance with sub-rule 5.13."

- It was uncontested that Professor M had preserved benefits and that, having given relevant notice and being past his NRA, was due benefits under Rule 14.
- Rule 14.1 states that in relation to the pension payable:

  "Those benefits shall be reduced by the amount of any corresponding benefit which is concurrently payable under any of rule 8 (Benefits at normal pension age), 10 (Late retirement)…"

- Professor M asserts that this paragraph means that the better of all benefits payable under these rules must be applied, that is that the benefits payable are to be the better of those benefits prescribed in Rule 14 and those set out in rule 10 (Late retirement).
- Rule 10.5 applies where a member attains NRA and continues in service. That Rule provides for an LRF on benefit accrued up to NRA which becomes payable to a member from their date of retirement.
- Professor M was no longer classed as a member as he had exercised his right to cease to be a member under Rule 36.3. By so doing, he was expressly prescribed benefits payable under Rule 14 and not to receive benefits under Rule 10.
- The terms of Rule 36.3 are clear and do not envisage the member having any other benefits payable under the Scheme.

46. In relation to estoppel it said:-

- To be able to establish estoppel there must have been a clear promise to Professor M that he was entitled to benefits which include an LRF.
- Professor M had admitted that there was no clear statement to this effect and that he had to make an inference from what had been said.

47. In relation to the alleged breach of duty of care it said:-

- It appeared that what Professor M was claiming was an extension of USS' duty of care, more onerous than USS stating something incorrectly. It was being suggested that USS had to consider Professor M's individual circumstances and ensure all available information had been provided.
- It would need to consider all of the potential factors that may be relevant to Professor M and then consider what information may be needed. In a scheme with hundreds of thousands of members this duty would simply be impossible to satisfy.

- The Courts had not yet extended such a duty of care to the trustees of an occupational pension scheme and it is USS' view that no such duty is recognised under the laws of equity.

48. In relation to using maladministration as an additional basis for trying to impose liability on USS:-

- In so far as there had been maladministration arising from a misstatement, Professor M would have to establish a change of position defence.
- To do so there would have to be a clear statement on which Professor M relied and, as had been established with regard to estoppel, there was no such clear statement.
- There was no reasonable basis for imposing additional liability on USS using maladministration.

Summary of Professor M's position

Interpretation of the Rules

49. USS, on the proper interpretation of the Rules, miscalculated his pension.

50. Alternatively, if the Rules were interpreted properly USS was nevertheless at fault in applying the Rules in the way it did as he withdrew from the Scheme in reliance on various assurances and the Quotation to the effect that an LRF would continue to apply.

51. He believes it is unfair that the NHS Pension Scheme has accepted that consultants facing the same situation concluded that the LRF should not be withdrawn under these circumstances.

52. When interpreting pension deeds, the correct approach to be applied is that recently set out by the Supreme Court in Barnardo's v Buckinghamshire [2018] UKSC 55, at [13]-[18], and the cases therein referred to. In essence, 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". It does so by focussing on the meaning of the relevant words. That meaning has to be assessed in the light of: (i) the natural and ordinary meaning of the clause; (ii) any other relevant provisions of the document; (iii) the overall purpose of the clause and the document; (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.

53. Further, the Supreme Court recognised that pension deeds exist primarily for the benefit of non-parties, that is the employees upon whom pension rights are conferred, and thus the need to avoid undue technicality and to have regard to the practical consequences of any construction, thus allowing a purposive (rather than an overly literal) construction where appropriate, and to give reasonable and practical effect to the scheme.

54. The Court also emphasised that it is relevant to questions of construction that pension deeds are drafted to comply with tax rules so as to preserve the considerable benefits which the UK tax regime confers on such schemes.

55. Given the length and complexity of such deeds, the court is always alive to the possibility that the draftsman has made a mistake. Indeed, the less clear the wording (or the worse the drafting), the more ready the court can properly be to depart from their natural meaning.

56. Professor M was a pre-2011 member who attained normal retirement age under the Rules in April 2015. Rule 8 deals with benefits at normal pension age and provides that such a member:

> "shall from the day after the date of retirement be entitled to a pension for life at the annual rate of [years pensionable service divided by 80, multiplied by pensionable salary] and a lump sum of 3 times that annual pension."

57. However, that provision only applies to a member who attained normal pension age but "to whom Rule 10 does not apply".

58. Rule 10 deals with Late Retirement. Rule 10.1 gave Professor M the choice between ceasing to pay and continuing to pay contributions until retirement or cessation of service. He chose the latter. For those purposes, Rule 10.5 applies "where normal pension age is attained after 30 November 2006 and service continues thereafter". It thus applies to Professor M in place of Rule 8.

59. Rule 10.5 provides that where it applies "the member shall be entitled to receive the following benefits from the day after the date of retirement", that is to say:

> (1) By Rule 10.5.1: "in respect of pensionable service accrued or credited before normal pension age [a standard pension] increased by such amount as **[USS] may decide on actuarial advice**" (emphasis added); and
>
> (2) By Rule 10.5.2: "in respect of pensionable service accrued or credited after normal pension age [a standard pension]".

60. The emphasised words above are the LRF. The purposes of an increased standard pension are obvious and clear, namely both:-

    1. To protect a member who retires late against the effects of inflation in respect of his accrued pension benefits between normal pension age and the date of his eventual retirement and that would otherwise be payable if his pension had been taken at normal pension age.

    and

    2. To reflect the fact that a member had not taken his pension at normal pension age, but that the USS Scheme had benefitted both from not having to pay out a pension immediately and continuing to receive contributions after normal pension age.

It can be seen that the Quotation is in accordance with Rule 10.5 – that the pension was increased.

61. As noted above, Professor M did not continue pensionable service for all of the period between his normal pension age in 2015 and the date of his eventual retirement in 2017, as indeed is envisaged in Rule 10.1.2. He did so for 11 months until 31 March 2016 when he ceased to be a member (and thus ceased service).

62. In the event of cessation of service, Rule 14 would normally apply. This Rule is concerned with "Preserved Benefits". Rule 14.1 provides that "A member who on ceasing service has qualifying service shall be entitled to preserved benefits of [a standard pension]." Crucially, however, it goes on to provide that "Those benefits shall be reduced by the amount of any corresponding benefit which is concurrently payable under any of rules … 10 (Late Retirement) … in respect of the same pensionable service."

63. In other words, the benefits payable under Rule 10 are expressly preserved by incorporation into the pension calculated in Rule 14, and in so far as they exceed the amount of a pension payable under Rule 14.1, that is what becomes payable. Or to put it another way, the member ceasing service gets the better of the standard and increased standard benefits under Rules 10 and 14.

64. Rule 14.2 provides that deferred pensions are payable at the same time as "long stop benefits", which are defined as benefits which fall to be paid if a member remained in service until and retired on attaining normal pension age. In other words, the pension under Rule 14.1 becomes payable at normal pension age. This provision is included to ensure that the preserved benefits are those payable in accordance with the "preservation requirements", which are those payable in order to comply with the Pension Schemes Act 1993.

65. Clearly an increased standard pension under Rule 10.5 must become payable after normal pension age if retirement is later. This is catered for by Rule 36, which deals with the process of withdrawals. Rule 36.1 does not apply to Professor M because he did not give notice within three months of becoming an eligible employee. Instead, by Rule 36.3 Professor M was allowed to give not less than 28 days' written notice to his employer and USS to cease to be a member with effect from the end of the month in which the notice expires. He did so, with notice ending on 31 March 2016.

66. Rule 36.3.1 then provides that the ceasing member "shall then be entitled to benefits under [Rule 14]…" because the pension he is entitled to is, by definition, a preserved pension.

67. It does however expressly provide for the event of "withdrawal [taking] effect at or after the date he or she attains normal pension age", namely that "benefits under [Rule 14] shall come into payment on the day following the earlier of the day on which he or she ceases eligible employment on the day he or she attains age 75 …".

68. An “eligible employee” is defined by Rule 5.1 as including an “employee of an institution participating in the scheme who is employed by a university or university college in an academic, research or related post …”. It thus applied to Professor M until the date of his retirement in 2017. Accordingly, it provides an analogous provision to Rule 14.2, namely that benefits which are payable after normal pension age are paid then (that is late retirement) but with a long stop of age 75.

69. The issue in this dispute arises because of the wording at the end of Rule 36.3.1, namely “as if his or her normal pension age were attained on that day”. It is in reliance on those words that USS, in its decision under stage one of the IDRP, concluded that:

    (1) Professor M’s benefits become payable under Rule 14 “as if [he] had reached [his] normal pension age on the date [he] left eligible employment”; and

    (2) That he “ceased to be entitled to benefits under Rule [10]”.

70. That is an overly literal interpretation and is lacking in some basic common sense. Rule 36.3.1 does not create such a fiction for the purposes of calculating his pension, namely, to turn Professor M’s age on 31 January 2017 to his age as at 17 April 2015, that is to treat him as younger. Or to put it another way, what Rule 36.3.1 is not doing is either change what “normal pension age” means, or otherwise to ignore and forget about the period between 17 April 2015 and 31 January 2017.

71. It is submitted that Rule 36.3.1 cannot do that. Professor M accrued pension benefits on the basis that either he would get a standard pension if he retired at normal pension age or, if he so chose, he would get either a reduced standard pension if he ceased service before then or (crucially) he would enjoy an increased standard benefit if he ceased service late. That is clearly provided for in Rule 10, to which Rule 14 expressly incorporates. Rule 36.3.1 would be repugnant to those accrued benefits if interpreted in the way USS contends for, as a matter of construction, either that contention cannot stand or else the provision to that effect (because it comes later in the document) is ignored.

72. It is for that reason that USS’ differing position in its decision in stage two of the IDRP is also wrong. It asserts that Rule 10 would only apply in so far as Professor M was a “member” of the USS Scheme, and he was not a member by definition because he ceased by giving notice.

73. This contention does not bear close scrutiny. The point is that Professor M was and remained a member continuing his contributions during the 11 months after normal pension age, and during his service up to that point and in particular those 11 months he accrued pursuant to Rule 10.5 the benefits (payable from retirement) to an increased standard pension thereunder. The Rules cannot and do not retrospectively remove those accrued benefits when the calculation was arrived at and it is not right or fair for USS now to seek to re-interpret the Rules otherwise.

74. It is acknowledged that Rule 10.2 makes reference to Rule 10.5 applying where retirement occurs while in membership (such that Rule 8 would not apply). However it

does not say it "only" so applies or does not apply in the circumstances of the present case. Rule 10.5 itself is silent on that eventuality, but within that silence fits to Professor M's circumstances, that is his circumstances are not excluded. Or to put it another way, if the intention was that increased standard pension benefits would accrue under Rule 10.5 in respect of service after normal pension age, but would be retrospectively cut down if there was a cessation event before retirement (without the return of contributions), that is an eventuality which one would expect to be expressly spelt out in detail in Rule 10.5. Its absence in Rule 10 is strongly indicative that the pension in 10.5 was not intended to cease to apply in that case.

75. It is thus not sufficient to simply point to the formula in Rule 14 without regard to the "concurrent" benefits which have accrued under Rule 10 which are incorporated into Rule 14. Of course, Rule 36.3.1 does not itself expressly recognise Rule 10 (and the other Rules to which Rule 14 incorporates). However, the important point is that Rule 36.3.1 does not cut down the express reference in Rule 14 to Rule 10, which it is submitted it would need to do if it were to be effective as USS contends. It might at best be characterised as bad drafting, which is not a reason to find an overly literal interpretation lacking in common sense. If necessary, it would be a reason to read Rule 10 into Rule 36.3.1.

76. Indeed, it is submitted that there is no logical reason (or commercial common sense) why Rule 36.3.1 would apply in the circumstances of this case as USS contends that it does, that is, to remove the LRF where a member continues pensionable service after normal pension age but before retirement ceases to be a member. The purpose of the LRF remains in those circumstances, and there appears to be no financial detriment to the assets of the scheme which would justify its removal (and no such justification has been offered by USS). In other words, USS' interpretation is an arbitrary one.

77. Instead, it is submitted that Rule 36.3.1 is in truth a mere mechanical provision concerned with notice and the date of payment, rather than a substantive one concerned with the way pensions are calculated. In particular, the last sentence of 36.3.1 is, on its true construction, a recognition merely that benefits will be payable after normal pension age in circumstances where withdrawal is given after normal pension age but before cessation of eligible employment (and thus overtaking Rule 14.2). Rule 36.3.1 does not say the pension is "payable" or otherwise to be calculated, as if the member had retired at normal pension age.

78. In so far as it does provide a fiction, namely that the member's late retirement date shall be treated as if it were normal pension age, it is doing so for the same purposes as Rule 14.2, namely, to keep the Scheme within the "preservation requirements" of non-discrimination. In particular, it is probably provided to cater for s83(1)(a) Pension Schemes Act 1993, which provides statutory revaluations of deferred pensions only for the period between the member leaving the scheme and reaching normal pension age. In other words, the last sentence of Rule 36.3.1 was designed to allow an enhancement to statutory revaluations by allowing them up to the date of eventual retirement after

normal pension age, but not 75. That reference to age 75 is the clue, because that is the limit for payment of benefits for tax purposes in any case.

79. The fallacy in USS' position can also be seen from the fact that if Professor M's pension was to be calculated as if his normal pension age were attained on the date he ceased eligible employment, then Rule 14 would not actually be applicable at all. A member who attains normal pension age becomes entitled to a pension under Rule 8 if he then retires. However, Rule 8.1 is expressly disapplied where the member retires late under Rule 10. Its construction thus actually leads to inconsistency, circulatory and ambiguity.

80. Further, USS has not even re-calculated Professor M's pension as if his normal pension age were attained on the date he ceased eligible employment, because it has not in fact completely ignored as pensionable service the 11 months after his normal pension age. All it has done is arbitrarily omit the LRF.

81. Accordingly, there is no warrant for saying that the proper construction of the Rules requires that Professor M's pension is to be calculated as if he had attained normal pension age on 31 January 2017, and thus that Rule 10 is to be ignored. There is no logical reason for the same, and USS' contention runs counter to what would be required to give reasonable and practical effect to the Scheme. The purposive construction set out above does achieve that, and it is submitted is plainly the correct one.

Reliance on the Quotation

82. The USS, in its stage 1 reply of 30 November 2018, states that:

    > "Whilst the quote did not state that an LRF would cease to apply if you withdrew from the scheme, there was nothing in USS' literature, or in any communication you received from the Trustee, which stated that you would be entitled to an LRF in the event that you withdrew from the scheme prior to your retirement".

    Professor M argues USS is relying on a supposed omission when in fact he did specifically query with it the benefit of an EOO over an ordinary opt out.

83. It is clear from the first sentence of the reply above that USS is aware that Professor M is subject to the LRF and yet emphasis is placed on the life cover afforded through the EOO. This reply completely contradicts USS' assertion made in its stage two IDRP response. For USS to suggest that the fact that the above reply never told Professor M that he would be entitled to retain the enhancement means that it has done its duty not to mislead is absurd. Professor M quite reasonably understood that the EOO only affected the life assurance aspects of the scheme and provided no other benefit.

84. When Professor M retired on 31 January 2017 he did not receive the benefits which had previously been estimated to him (including the 11 months of LRF) but instead was provided with considerably reduced benefits. An explanation given for this was that as Professor M had been opted out of the scheme between April 2016 and retirement he

ceased to qualify for the enhancement, albeit that he had already contributed for 11 months beyond age 65 before opting out.

85. In denying Professor M the enhancement USS has relied on the following Rules (it is noted that, in error, USS' correspondence quotes rules which relate to the new 2016 scheme).

86. Rule 10 governs the LRF and rule 10.5 provides:

10.5 *Attaining normal pension age after 30 November 2006*

Where normal pension age is attained after 30 November 2006 and service continues thereafter, the member shall be entitled to receive the following benefits from the day after the date of retirement:

Rules 10.5.1 and 10.5.2 detail the calculation which involves an enhancement to service accrued prior to normal pension age.

Normal pension age is defined on pages 23 and 24 of the Rules and in Professor M's case is age 65.

Service is defined on page 36 of the Rules and can be read as ongoing employment with the University.

Member is defined on page 20 of the Rules:

"Member" means:

(a) an eligible employee who is a member of the scheme in accordance with rule 5 (Terms of entry); or

(b) an individual who immediately before the effective date was a member of the scheme by virtue of its rules then in force, who would have remained so on the effective date had those rules not been superseded,

and who has in either case not withdrawn under rule 36 (Withdrawal from membership) in respect of all eligible employments, and "Membership" has a corresponding meaning.

87. While Professor M did opt out under rule 36.3 he understood, further to specific enquiries made, that his accrued benefits prior to opting out (including the LRF enhancement) would not be affected.

88. The Late Retirement Rule 10.1 applies to Professor M as he was a member who was in service immediately before NRA and it advises that he could either:

10.1.1 elect to cease to pay contributions at that age; or

10.1.2 continue to pay contributions until the earlier of retirement and cessation of service.

89. He chose to continue to pay contributions as per 10.1.2 and is therefore subject to the late retirement enhancement application. However, no specific provision seems to have been made within Rule 10 for the scenario where an opt out occurs after normal pension age followed by retirement at a later stage. We can only infer that 10.1.2 continues to render such an individual eligible. It may be of relevance to note that the NHS Pension Scheme (2008) section has recently conceded that the Late Retirement Factor continues to apply to those who remain in NHS employment but have opted out of pension scheme membership and are now paying benefits accordingly.

90. Professor M paid contributions for 11 months after attaining age 65 on the basis that deferring his pension would result in an enhancement. Had Professor M known that the late retirement factor would not apply further to retirement, having opted out, he would simply have chosen either to access his benefits as at 31 March 2016 or to have used the Enhanced Opt Out and paid 2.5% towards scheme membership between April 2016 and January 2017.

91. Professor M is therefore proposing the following options to restore him to the position he would have been in had he not been misadvised:-

- For USS to agree that the Rules do not fully and correctly cater for Professor M's position and that he is entitled to a late enhancement factor based on the 11 months during which he deferred accessing his benefits whilst contributing to the scheme.

- Failing the above that Professor M is permitted to pay the 2.5% contribution required to have affected an EOO and remain entitled to the benefits quoted.

- USS to agree that Professor M is entitled to have the LRF applied to his accrued benefits for the period from his normal retirement date on 17 April 2015 up to and including when he opted out of active membership in the Scheme on 31 March 2016.

92. Failing the above, Professor M should be permitted to pay the required contributions in order to benefit from the EOO so that he may remain eligible for the benefits that were quoted in the Quotation.

93. If neither of the above options are acceptable, Professor M should be permitted to access his benefits from the Scheme retrospectively, with effect from 1 April 2016.

94. There is no doubt that Professor M undertook diligent and careful planning in the lead up to his retirement. He asked all of the required questions of the USS in order to be able to rely on the estimate received. The USS should not be permitted to rely on acts of omission in order not to have to restore Professor M to the position he would have been in had they responded to his queries correctly.

Summary of USS' position

Analysis of the Rules

95. Professor M opted out of Service with effect from 31 March 2016 in accordance with Rule 36.3. As a consequence, and pursuant to Rule 36.3.1, he was entitled to:

    "benefits under Rule 14 (Preserved Benefits) or sub-Rule 16.3.1 (Early leavers without preserved benefits)."

96. In the circumstances, Professor M was therefore entitled to Preserved Benefits under Rule 14. This is a clear and unambiguous term, prescribing that if a member opts out under Rule 36.3 then the member is entitled to preserved benefits or early leavers without preserved benefits. There is no reference to any other benefits, just one of those two options.

97. Rule 36.3.1 goes on to prescribe that:

    "if the withdrawal [of membership] takes effect at or after the day when [the Member] attains normal pension age, benefits under Rule 14… shall come into payment on the day following the day [they] cease Eligible Employment or [they] attain age 75."

    Eligible Employment has the meaning provided in Rule 5.1 and can be summarised as meaning in the employment of a participating employer within the Scheme. This wording therefore envisages the situation of the Member in that he has elected to leave Membership of the Scheme (pursuant to Rule 36.3) after his NRA but he has not elected to retire at this time and so, instead, becomes a deferred member of the Scheme. As a consequence, Professor M became entitled to preserved benefits payable in accordance with Rule 14, when he chose to retire.

98. Rule 14 sets out the benefits that are payable to a Member when they cease Service. Service is defined as:

    "a period of employment as an eligible employee which entitles a member to benefits under the rules on or after retirement."

    The wording "entitles a member to benefits under the Rules" differentiates 'Service' from 'Eligible Employment' in that a person who is not in Service 'under the Rules' (that is because they have opted out of Service pursuant to Rule 36) can still be in Eligible Employment (as was the case with Professor M in effect from 31 March 2016) but they will no longer be in a period of employment that entitles them to the accrual of benefits.

99. Rule 14.1 goes on to provide that any benefits payable under Rule 14:

    "shall be reduced by the amount of any corresponding benefit which is concurrently payable under rules 8 (Benefits at normal pension age), 10 (Late Retirement), 11

(Early Retirement at the instance of the Employer), 12 (Member's early retirement) and 13 (Early pensions on incapacity) in respect of the same Pensionable Service."

Rule 14 does envisage concurrent benefits being payable to preserved benefits (those required under the statutory requirements of the Pension Schemes Act 1993 and the Occupational Pension Schemes (Preservation of Benefit) Regulations 1991) ("preservation requirements"). In certain circumstances, a Member may be concurrently entitled to late retirement benefits pursuant to Rule 10 and benefits under Rule 14. However, in the case of Professor M this is not the position by virtue of the prescribed drafting of the Rule 36.3.

100. Rule 10.1 (Late Retirement) provides that a Member who was in Service immediately before NRA may either elect to stop paying contributions at that age or continue to pay contributions until they either retire or leave Service. This provision was therefore applicable to Professor M in that he reached his NRA on 17 April 2015 and, at that point, continued to pay contributions to the Scheme, thereby continuing his Membership.

101. Rule 10.2 sets out the scope of the late retirement rule in respect of Pre-2011 Members. It provides that sub-rules 10.3 to 10.7 (which set out the benefit entitlements payable to a late retiree) are payable to Members who remain in Service after NRA, which Professor M satisfies, and retire while in Membership, which Professor M does not satisfy.

102. Membership is defined as having a corresponding meaning to Member and a Member means an "eligible employee" who… has not withdrawn from membership in accordance with Rule 36. As Professor M opted out of Membership pursuant to Rule 36 on 31 March 2016 it follows that he cannot have retired from Membership of the Scheme on 31 January 2017, rather he retired from deferred status. Consequently, Professor M does not qualify for the late retirement benefits set out in Rules 10.3– 10.7 (and it is Rule 10.5 which provides the LRF).

103. Sub-rule 10.8 does not apply to Professor M because he did not flexibly retire (that is he did not elect to draw some pension benefits at the same time as continuing in Service).

104. The election of Professor M to opt out of Service on 31 March 2016 meant he was no longer a 'Member' who was in 'Service' after this point. As a consequence, Professor M was only entitled to benefits in accordance with Rule 14 (Preserved Benefits), upon his retirement on 31 January 2017.

105. This analysis is a simple, literal and logical interpretation of the Rules, and needs no implied interpretation as the terms of the Rules are clear and unambiguous and reflect the terms of the overriding preservation requirements. There is no need to deflect from the natural interpretation and any attempt to do otherwise would presume a meaning by the reader which is in no way reflected in the drafting.

106. This analysis has previously been presented to the Pensions Ombudsman on similar facts (complaint PO-23357) and the Pensions Ombudsman has supported this position in his earlier Determination dated 29 July 2019.

Addressing Professor M's complaint

107. Professor M has complained that USS incorrectly interpreted the Rules and, as a consequence, misapplied them to his situation. Further, and in the alternative, he argues the Rules are so unclear as to require a purposive interpretation that moves beyond the absurdities created by a literal interpretation put forward on behalf of USS in the stage two IDRP response.

108. Professor M's interpretation of the Rules diverges from USS' interpretation of the Rules. USS has identified the following submissions by Professor M as being the key issues that form the substance of the complaint. These are summarised below.

109. Professor M says:

    "The benefits payable under Rule 10 are expressly preserved by incorporation into the pension calculated in Rule 14, and in so far as they exceed the amount of a pension payable under Rule 14, that is what becomes payable. Or to put it another way, the member ceasing service gets the better of the standard and increased standard benefits under Rules 10 and 14."

    This interpretation is incorrect. The wording Professor M refers to under sub-rule 14.1.2 states "[preserved] benefits shall be reduced by the amount of any corresponding benefit which is concurrently payable under rules 8… [and rule] 10."

110. This wording does not operate as an underpin, as Professor M suggests, so that a member receives the better of benefits provided under Rule 14 and the other rules referred to therein, rather it operates to prevent a member enjoying a double recovery of benefits under Rule 14 (preserved benefits) and any other benefits that may otherwise be payable in respect of the same pensionable service (such as under Rule 10).

111. Professor M is not entitled to a late retirement pension under Rule 10 and is only entitled to preserved benefits under Rule 14. For this reason, Professor M's assertion that an enhanced pension is payable pursuant to Rule 10.2 is also incorrect.

112. Professor M then argues:

    "Rule 14.2 [Date of payment] provides that deferred pensions are payable at the same time as "long stop benefits", which are defined at page 19 of the 2009 Deed as benefits which fall to be paid if a member remained in service until and retired on attaining normal pension age. In other words, the pension under Rule 14.1 becomes payable at normal pension age."

    Rule 14.2 does state that deferred members are entitled to have their preserved benefits put into payment on the same terms as long service benefits. The purpose of

this sub-rule is to confirm that deferred members are entitled to take their preserved benefits at the same time as active members, be that at minimum pension age, normal pension age or such other later date after Normal Pension Age when the Member chooses to retire.

113. If Professor M's interpretation were to be followed, deferred members would have no option to continue working after NRA nor to defer taking their preserved benefits after NRA. This is clearly incorrect.

114. He then says

"The issue in dispute arises because of the wording at the end of Rule 36.3.1… namely, "as if his or her normal pension age were attained on that day." It is in reliance on those words… that USS concluded that [Professor M's] benefits become payable under Rule 14… and, that he ceased to be entitled to benefits under Rule 10."

The issue in dispute arises from a natural interpretation of the Rules, and the election to terminate Membership by Professor M under Rule 36.3.

115. Professor M asserts that USS, in its IDRP stage one response, has extrapolated that he is to be treated as having a normal retirement date of the date he left eligible employment (that is 31 January 2017), rather than his actual Normal Pension Age of 17 April 2015.

116. The wording of the IDRP stage one response tried to explain Professor M's entitlement to benefits under the Rules (that is that his preserved benefits will be put into payment in the usual way once he elects to retire, as if he had retired on his Normal Pension Date). This explanation was not provided for the purpose of debating the proper construction of the Rules as is now being proposed. For this reason, USS does not consider it necessary to address the analysis on this point in further detail.

117. In relation to the statement that Rule 10 would only apply in so far as Professor M was a "Member" and that he was not a member by definition because he ceased by giving notice, USS agrees that this is its position.

118. Professor M says:

"The point is that [Professor M] was and remained a member continuing his contributions during the 11 months after normal pension age, and during his service up to that point and in particular those 11 months he accrued pursuant to Rule 10.5 the benefits (payable from retirement) to an increased standard pension thereunder. The USS Rules cannot and do not retrospectively remove those accrued benefits when he ceased to be a member on withdrawal. Indeed, that is how the 16 February 2016 calculation was arrived at… and it is not right or fair for USS now to seek to re-interpret the Rules otherwise."

Professor M remained a Member of the Scheme until he elected to opt out of service pursuant to Rule 36.3, with effect from 31 March 2016 with the 11 months of additional

accrued service after his Normal Pension Age being included within his benefit entitlements and revalued accordingly.

119. While the additional 11 months of service have been included in Professor M's benefits, Professor M does not qualify for the LRF to be applied to those benefits pursuant to Rule 10.5 as Professor M asserts. As set out in paragraph 4.3 of USS' response (see paragraph 101 above, Professor M does not qualify for the benefits provided for in Rule 10 (and detailed in Rules 10.3 – 10.7) because Rule 10.2 makes clear that these benefits are only payable to Members who:

- remain in Service after Normal Pension Age, which Professor M satisfies; and
- "retire while in Membership", which Professor M does not satisfy.

120. Professor M goes on to propose that the wording of Rule 10.2 is not exhaustive in that it should not be read as excluding members who do not retire from Membership from its remit. Professor M also reasons that Rule 10.5 is also silent to this effect and, therefore, Professor M's circumstances should be construed as fitting within the ambit of Rule 10, thereby adopting a purposive as opposed a literal interpretation of the Rules.

121. USS strongly disagrees. Assessing the wording of Rule 10.2 against the test set out by the Supreme Court in *Barnardo's v Buckinghamshire* [2018] UKSC55, it is clear that the natural and ordinary meaning of Rule 10.2, when read in conjunction with Rules 14 and 36, provides that only members who retire late from active membership of the Scheme are entitled to the late retirement factor set out in Rule 10.5. This was clearly the intention of the draftsman when the Rules were drafted in 2009 and it reflects a commonsense practice.

122. To read Professor M's particular facts (or indeed his subjective intentions) into the remit of this Rule is to frustrate the natural interpretation of the Rules. There is no ambiguity in the wording of the Rules which would support the position being proposed by him.

123. Further, one of the overall purposes of Rule 14, as Professor M acknowledges, is that preserved benefits are adequately protected against inflation and are therefore revalued. Professor M's benefits, including those accrued after NRA, are revalued pursuant to Rule 14 and in compliance with the preservation requirements.

124. USS is therefore unable to increase Professor M's benefits by the LRF envisioned in the Quotation. To do otherwise would mean that USS would act in breach of trust.

125. Professor M submits that USS failed to advise him that he would lose the LRF if he opted out of active membership in the Scheme and in those circumstances should be permitted to rely on the Quotation.

126. Professor M's submission is premised on the assumption that USS has a duty of care to Professor M to inform him about all the consequences that may arise in respect of decisions made about Scheme benefits. It also suggests that USS is required to pre-

empt Professor M's decision making and to consider each and every eventuality that may arise from this. USS does not agree and particularly it is of the view that:

- it is not under any duty to provide advice to Professor M;
- it provided all information required of it as a trustee of an occupational pension scheme; and
- it is not responsible for the decisions Scheme members make with regard to their benefits in the Scheme.

127. USS is aware that the Courts have been reluctant to impose a general duty of care on trustees and employers to advise members about their pension rights, or alert them to potentially detrimental decisions. Trustees and employers must avoid making any suggestion which may constitute "financial advice" if they are not authorised to do so by the FCA rules.

128. The decision in *Scally v Southern Health and Social Services Board* [1992] (**Scally**), is commonly referred to as the applicable precedent to complaints of the nature of Professor M's complaint. The House of Lords held that the employer has a duty to take reasonable steps to inform an employee of a contractual term in order for them to take advantage of it where all of the following conditions apply:

- the terms of the contract have not been negotiated with the individual;
- the particular term in question makes available a valuable right contingent upon the individual taking action to avail himself of it; and
- the employee cannot, in all the circumstances, reasonably be expected to be aware of the term unless it is drawn to his attention.

129. Scally, and subsequent case law, provides this duty on employers, but no such duty applies to trustees of occupational pension schemes.

130. It is of note that statute prescribes the information that has to be disclosed by trustees of occupational pension schemes (ref: The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013), and there is no suggestion that USS has breached such disclosure regulations

131. Further, it is notable that the Pensions Ombudsman's recent combined decisions in matters PO-7038, PO-7035, PO-7036, PO-7037, PO-11989, PO-11998 and PO-12029 (concerning the Police Pension Scheme) confirmed that employers are not duty bound to draw members' attention to unfavourable tax consequences arising from benefit options the members are entitled to take.

132. As mentioned, there is no case law to suggest that trustees of occupational pension schemes have a similar duty to that of employers as prescribed under Scally. Scally therefore does not apply to Professor M's complaint. Notwithstanding, it is notable that:

- there was no valuable right that Professor M was to avail himself of, he was making a decision to leave the Scheme and therefore the duty to consider relevant factors must be with him and his financial advisers;

- there is no contractual relationship between USS and Professor M; and

- if there was such a duty as envisaged by the complaint then USS, practically, would simply be unable to comply with it. With hundreds of thousands of members, it could not consider the personal circumstances of each member and warn them of all of their options and the implications of each from a tax perspective.

133. In making his submission, Professor M highlights two documents in particular which influenced his decision to cease contributing to the Scheme:

- the Quotation (which Professor M emphasises was the principal reason for his decision to withdraw from the Scheme); and

- the EOO Form.

134. The letter provided with the Quotation states “Your actual benefits will be calculated in accordance with the scheme rules, legislation and the factors in force at the date of your retirement”.

135. The LRF was included in the Quotation because it was based on Professor M retiring from active status. Further, retirement quotations are just estimates of benefits and as confirmed by the Pension Ombudsman’s decision in PO-23357, Professor M cannot rely on the Quotation as a guarantee that LRFs would still apply on becoming a deferred member of the Scheme.

136. Professor M cites *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964], in submitting that USS should have known or ought to have known that he would rely on the Quotation. However, that case relates to a duty of care that is owed in cases of negligent misstatement. There is no suggestion that the Quotation was drafted negligently and that case has no application to Professor M’s complaint.

137. Professor M refers to the EOO Form and submits that had he known that the LRF would cease to apply on giving notice of his withdrawal from the Scheme, he would have elected to take advantage of the EOO in order to remain entitled to the benefits that had been quoted in the Quotation. He submits that the EOO Form clearly states that he would retain any LRF enhancement achieved up to the date of opting out.

138. However, under the Scheme, retirement from deferred status does not include LRFs, regardless of whether the opt out is taken on a normal or enhanced basis. The difference between the two, is that an election under the EOO allows a member to cease further pension accrual but pay a mandatory contribution of 2.5% salary in order to retain death in service and incapacity benefits. As such, Professor M would not have been entitled to have a LRF applied to his benefits when withdrawing from active status, even if he had taken advantage of the EOO.

139. Nothing in the literature described above stated or implied that Professor M would be entitled to an LRF in the event that he withdrew from the Scheme. He submits that USS should not be permitted to rely on acts of omission in order to avoid having to restore him to the position he would have been in had they responded to his queries correctly. USS accepts that the literature did not specifically address Professor M's situation, however as confirmed by the Pension Ombudsman's decision in PO-23357, it is not reasonable, nor is there any obligation under any legislation or the Scheme rules, for USS to provide specific information to members on every retirement scenario.

140. Professor M submits that he undertook diligent and careful planning in the lead up to his retirement and asked all of the required questions of USS in order to be able to rely on the Quotation. USS refutes this. While from the information that has been submitted by Professor M it appears that he raised questions both of the Employer and the BMA in respect of his benefits under the Scheme, these questions and the subsequent withdrawal from active membership of the Scheme were motivated as a result of the impact of continued membership on the lifetime allowance limits. USS was unaware that Professor M was considering withdrawing from the Scheme at the time the Quotation was issued and, in fact, did not know about this until after Professor M had elected to withdraw.

141. There is no change to the position, as stated in the Pension Ombudsman's decision in PO-23357, that there is an obligation on members to take ownership of their own financial decisions and to raise questions relating to their specific circumstances. Professor M would have needed to raise a specific query of the Trustee in order to have been alerted to a possible loss of LRFs on deferment.

142. In summary, USS does not consider that Professor M's complaint should be upheld for the following reasons:

- LRFs were contained in the Quotation because it was based on Professor M continuing as an active member of the Scheme until retirement;
- Professor M was motivated to withdraw from active membership as a result of information he had received about the impact of continued accrual under the Scheme on the lifetime allowance limits that applied to him;
- Professor M ceased to be eligible to have an LRF applied to his accrued benefits when he ceased to be a member of the Scheme by electing to withdraw from membership of the Scheme. This position under the Rules was confirmed in the Pensions Ombudsman's decision in PO-23357; and
- USS did not become aware of Professor M's intention to withdraw from the Scheme until it received notification on 31 March 2016 that he had already withdrawn from service with effect from that date.

143. It is regretted that Professor M lost the benefit of the LRF by withdrawing as an active member of the Scheme, however USS is not under any obligation under any legislation,

Scheme rule or trust law to provide specific information to members on every retirement scenario.

Professor M's request to put the matter right

144. USS recognises Professor M's frustration and appreciates that there has been a reduction to the benefits he expected; however, it is bound to pay members the benefits that are due and payable to them in accordance with the Rules of the Scheme. For this reason, USS cannot accommodate Professor M's request to pay him the benefit uplifts he has requested as he is not entitled to these benefits under the Rules.

145. Professor M has requested that he be offered the opportunity to make the necessary contributions to retain the LRF for the period from 31 March 2016, until his retirement on 31 January 2017.

146. Only an active member of the Scheme can make contributions to the Scheme. In order for Professor M to be an eligible employee (and therefore entitled to re-join the Scheme as a member) he would need to be employed by a participating employer (that is a university institution). Professor M is no longer employed by a participating employer and consequently, he is not eligible to re-join the Scheme.

147. Alternatively, Professor M has requested that he be allowed to access his benefits retrospectively with effect from 1 April 2016, in which case a LRF would apply in respect of the period from 17 April 2015 up to and including 31 March 2016.

148. There is no power under the Rules for USS to permit a member who has withdrawn from the Scheme and who has become a deferred member, to retrospectively access their benefits with effect from an earlier date.

149. USS is therefore unable to permit Professor M to access his benefits from the Scheme retrospectively, with effect from 1 April 2016. To do otherwise would mean that it would act in breach of trust.

150. Further, USS can only pay benefits if a member retires, which would have required Professor M to have ceased service on 1 April 2016, which he did not do.

Further comments by Professor M

151. It is evident that the rules on the subject of the application of the LRF to those who work beyond their NRA but do not retire from active service remain unclear. The Pensions Ombudsman's decision in PO-23357 has helped to illustrate this as it revolves around the same rules. In that case the claimant noted that:

> "Throughout the ensuing correspondence that I and my financial adviser have had with the USS they have not been able to demonstrate that sufficient information was provided about the treatment of late retirement increases where an opt out was taken. In fact, as far as we can tell no such information was available at the time."

152. In this case the claimant's financial adviser specifically asked USS about the circumstance of retirement from a deferred membership position but no response was

received. Professor M believes that this is likely to have been because there was no clarity as to the intention of the Rules on this or to the actual meaning of the Rules themselves in this regard.

153. Case PO-23357 refers also to the literature produced on the EOO which, it appears, erroneously advised that this facility would enable any LRF earned prior to opt out to still apply. A factsheet was produced to this effect as well as a letter to members confirming the same. For a time there was clearly an understanding, albeit alleged to be incorrect now, that the LRF would continue to apply if the EOO was used.

154. In that case as well as this USS contends that it owes no duty of care to members and that the Rules simply do not allow for the LRF to be payable to those not retiring from active pensionable membership. However, Professor M believes that the lack of clarity in the Rules is the cause of this problem. In PO-23357 even a fully qualified financial adviser was unable to understand the Rules with respect to the application or otherwise of the LRF. Under these circumstances, how could USS expect Professor M to understand what even a professional IFA could not. USS owed Professor M a duty of care to advise him on whether or not the LRF would be applied in his case.

Conclusions

155. USS says that at the time of Professor M's cessation of membership (31 March 2016) the 2016 Rules governed the Scheme. I disagree. Rule 2 of the 2016 Rules states:

> "2.2 These rules apply to and in respect of all persons who are or become active members at any time on or after 1 April 2016 and to all persons claiming through such active members, and, subject to the following provisions of this rule 2, come into force on that date to the exclusion of all rules and other provisions relating to the scheme prior to that date.
>
> 2.3 Benefits payable to or in respect of any former member who does not have any service on or after 1 April 2016 shall be governed by the previous rules in force (or treated as having been in force) at the date when the former member last left service (as then defined for the purposes of the scheme).
>
> …
>
> 2.5 Except where expressly provided elsewhere in these rules, these rules shall not apply to the calculation of the benefits payable to or in respect of a member by reference to a date before 1 April 2016 on which that person was treated under the rules of the scheme then in force as having ceased service or retired."

I therefore consider that it is the previous Rules which apply to Professor M's complaint as he ceased to be an active member prior to 1 April 2016.

156. Professor M has complained that USS has misinterpreted the Rules in deciding that he is not entitled to an LRF following his decision to opt out of the Scheme. Alternatively he argues that the Rules are so drafted that they cannot be interpreted fairly. In

determining this aspect of his complaint I have considered the Rules only insofar as they relate to his specific complaint about the application of LRFs.

157. Professor M has also separately complained that USS breached its duty of care to him in failing to explain that the late retirement enhancement would be lost were he to withdraw from the Scheme.

158. The Ombudsman's basic principle for misinformation cases is that, in the absence of any additional legal claim, a scheme is not bound to follow incorrect information, for example retirement quotes, transfer values or early retirement quotes. A member is only entitled to receive the benefits provided for under the scheme rules, and which are those based on correct information accurately reflecting the scheme rules.

159. Professor M asserts that he has suffered a financial loss because of his reliance on the misinformation that he says was given by USS in the Quotation.

160. However, in my view, in calculating and awarding Scheme benefits to Professor M, USS has correctly applied the Rules. Therefore, central to determining this part of the complaint is the question of whether USS was under any obligation, as part of the Quotation, to draw Professor M's attention to the effects of his withdrawal from the Scheme on LRF enhancement which would otherwise have been payable to him had he retired from active membership on 31 March 2016.

161. As to this, USS has contended that it was under no "… obligation under any legislation, Scheme rule or trust law to provide specific information to members on every retirement scenario."

162. While USS has not specifically mentioned the law of tort (and specifically, the tort of negligent misstatement) in its list of matters giving rise to obligations, it does mention in its response to the Ombudsman the negligence case of *Hedley Byrne v. Heller* [1964] AC 465. USS says:

> "The Complainant cites *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] in submitting that the Trustee should have known or ought to have known that the Complainant would rely on the Quotation. However, that case relates to a duty of care that is owed in cases of negligent misstatement. There is no suggestion that the Quotation was drafted negligently and that case has no application to the Complaint"

163. In my view, USS' statement fails to properly characterise the complaint. It also fails to examine whether, in the context of Professor M's inquiries of USS, the Quotation, while strictly accurate as to the figures it contained, misled Professor M in the way the figures were presented or omitted to draw his attention to important assumptions upon which the figures were based.

164. In negligent misstatement cases, parties in a close relationship, where one party (perhaps with special skill and knowledge) assumes responsibility towards the other party, may find that the law will impose a duty on the first party to ensure that information it gives to the other party is accurate and reliable. Where the information is

inaccurate or unreliable in some material respect, the party assuming a responsibility towards the other party will be in breach of that duty. If the breach causes financial loss to the party who has reasonably relied on the information to their detriment, and that loss is reasonably foreseeable as a consequence of the breach, then the loss is recoverable in damages.

165. From the evidence available, it appears that Professor M had made USS aware in an email dated 8 February 2016 that he intended to "…make no further pension contribution after March 2016…" and referred in the same email to the point at which "…I am finally allowed to retire…".

166. In that email, Professor M also referred to the protections he enjoyed relating to the lifetime allowance. In my view, the information provided by Professor M in that email was sufficient, when viewed in the context of the special knowledge and skill possessed by USS, to alert the USS to the possibility that Professor M was seriously considering withdrawing from the Scheme without actually retiring from employment.

167. In that light, there is an argument that, in supplying the Quotation, USS was under a duty of care to explain to Professor M how the late retirement enhancement would be affected should he withdraw from the Scheme without actually retiring from employment.

168. USS submits that this formulation of trustee duties goes beyond settled law and, even if it did not, that the Trustee did not breach such a duty. It says that to find a breach of duty by the Trustee in this case is particularly unwarranted given Professor M sought specific advice from the BMA, including the application of the LRF, but at no time sought to verify that information with the Trustee.

169. I do not find that in supplying the Quotation, USS was under a duty of care or assumed a duty of care to Professor M to ensure that he understood how the late retirement enhancement would be affected should he withdraw from the Scheme without actually retiring from employment. The Quotation was provided pursuant to statutory obligation for the purposes of Professor M's divorce proceedings to enable a pension sharing order to be considered. USS had a duty to ensure the Quotation complied with the terms of the legislation.

170. It would not be right to make a finding that, in complying with its statutory duty to provide the Quotation for these purposes, USS was assuming a separate duty to Professor M based on a reasonable expectation that he would rely on the Quotation for a different purpose, namely, to decide whether to withdraw from active membership. I also do not consider that it could be considered reasonable for Professor M to rely on the Quotation for that purpose. Even if USS was aware that Professor M was considering withdrawing, it had no choice but to provide the Quotation since this was required by legislation. Therefore, it cannot be right to find a voluntary assumption of duty by USS to Professor M to ensure the Quotation met his needs in relation to his decision to withdraw which was not the reason for which it was provided.

171. USS argues that Professor M's complaint should fail on causation.

172. As regards this point, the essential question for me to consider is whether the Quotation “caused” Professor M to decide to defer his benefits rather than to retire on 31 March 2016 and if so whether any financial loss he may have suffered as a result was reasonably foreseeable by USS in supplying the Quotation.

173. To answer this question, it is helpful to consider the counterfactual, in other words, if the Quotation had fully explained the Scheme’s rules around the LRF, would Professor M have chosen to retire on 31 March 2016? USS says that, even if the Quotation had fully explained the Scheme’s rules around LRF, Professor M would still have had to seek financial advice about whether to retire on 31 March 2016, the time to do so was short and the issues influencing his decision were complex. Therefore, as a matter of fact, he still may not have retired on 31 March 2016, even if the Quotation fully explained the Scheme’s rules on LRF.

174. Professor M contends that he would have followed advice and retired but can supply little evidence to support that contention other than his word. The question has to be answered on the balance of probabilities. Certainly, the factors influencing his decision to cease accrual on 31 March 2016 were very powerful and that, in an ideal situation, he would have done so in the way which was most financially advantageous to himself.

175. The question of the extent to which the BMA advised Prof M is important. It might mean that USS, in providing the Quotation, did not, as a matter of law, cause Professor M’s losses because he mainly relied on the advice he was receiving from the BMA rather than the Quotation.

176. I have considered the advice that the BMA provided to Professor M in its email dated 24 September 2015. This showed that its understanding of Professor M’s query related to the “pros and cons of retiring and returning to work in April 2016.” The only reference to LRF in the advice related to the option of EOO after age 65 which said that members would keep the LRF which applied up to the date of election [to opt out] but that no further allowance for late retirement would be added. As Professor M was not considering EOO, it would not be unreasonable to have expected him to seek to confirm his belief that advice still applied if he were to leave the Scheme in April 2016.

177. BMA pointed out that it was not registered with the Financial Conduct Authority to enable its advisers to give independent financial advice. It suggested that if Professor M required this type of advice he should contact either the BMA’s accredited partner, BMA Services or engage a regulated Independent Financial Adviser. There is no evidence that Professor M chose to do either.

178. Having regard to the above, I find that, because he was seeking advice from BMA and was concerned about losing enhanced protection, provision of the Quotation without additional explanations on the late retirement factor was not the main basis of his decision to withdraw while remaining in service and did not cause his loss.

Specifically, I do not find, on the balance of probability, that, but for the provision of the Quotation, he would have retired when he withdrew from the Scheme.

179. Even if USS did have a duty of care to Professor M in providing the Quotation to ensure he had the right information for his decision to withdraw while remaining in service, and even if he did, in fact, rely on the Quotation in taking that decision and would not have remained in service had the Quotation included explanations on the late retirement factor, I also find that any loss he may have suffered as a result of withdrawing while remaining employed was not reasonably foreseeable by USS in providing the Quotation.

180. However, the primary basis of my decision, is that, in providing the Quotation, USS did not have and did not assume a duty of care to Professor M in relation to his decision to withdraw from the Scheme. USS did not have a duty to anticipate the information he might require for his decisions. Any alternative finding could imply a duty to advise and it is settled law that trustees do not have a duty to advise and indeed are not permitted to do so if not authorised by the FCA.

181. I consider that the information provided to Professor M in the Quotation did not cause him a financial loss. The cause of his loss (if there is one), was his decision to withdraw from the Scheme to avoid the adverse tax consequences associated with membership of the Scheme post 31 March 2016. On the balance of probabilities, I find that, even had Professor M been aware of the impact of withdrawal on the enhancement, he would have made the same decision to withdraw from the Scheme.

182. It is accepted that Professor M did opt out under rule 36.3. He says that he understood, further to specific enquiries made, that his accrued benefits prior to opting out (including the late retirement enhancement) would not be affected. However, I have seen no evidence of such a specific enquiry being raised and answered by USS.

183. I find that the information which USS provided in the Quotation accurately described the entitlement to the LRF given Professor M's circumstances at the time, which is that he was an active member of the Scheme.

Estoppel

184. Estoppel is a legal principle which provides that, if a party causes another party, either by statement or action, to believe that a particular set of facts or circumstances is true, they should not be allowed to draw back from the statement or action if it would be unjust or unconscionable for them to do so. The requirements for an estoppel defence are similar to those for a change of position, including the need to have acted in good faith. In addition, a claimant must be able to demonstrate that they relied to their detriment either:

    (i) on a clear and unequivocal statement (representation); or

    (ii) on a mutual assumption of facts or the law (convention); and

that it was reasonable for them to have done so.

185. In the case of *Steria v Hutchinson* [2006] 64 PBLR, Neuberger LJ said:

> *"When it comes to estoppel by representation or promissory estoppel, it seems to me very unlikely that a claimant would be able to satisfy the test of unconscionability unless he could also satisfy the three classic requirements. They are (a) a clear representation or promise made by the defendant upon which it is reasonably foreseeable that the claimant will act, (b) an act on the part of the claimant which was reasonably taken in reliance upon the representation or promise, and (c) after the act has been taken, the claimant being able to show that he will suffer detriment if the defendant is not held to the representation or promise."* Even this formulation is relatively broad brush, and it should be emphasised that there are many qualifications or refinements which can be made to it.

186. With regard to estoppel by convention, in *Commissioner for Her Majesty's Revenue and Customs v Benchdollar Limited and Others* [2009] EWHC 1310 (Ch), the judge said (at paragraph 52):

> "… the principles applicable to the assertion of an estoppel by convention arising out of non-contractual dealings … are as follows:
>
> i) It is not enough that the common assumptions upon which the estoppel is based is merely understood by the parties in the same way. It must be expressly shared between them.
>
> ii) The expression of the common assumption by the party alleged to be estopped must be such that he may properly be said to have assumed some element of responsibility for it, in the sense of conveying to the other party an understanding that he expected the other party to rely upon it.
>
> iii) The person alleging the estoppel must in fact have relied upon the common assumption, to a sufficient extent, rather than merely upon his own independent view of the matter.
>
> iv) That reliance must have occurred in connection with some subsequent mutual dealing between the parties.
>
> v) Some detriment must thereby have been suffered by the person alleging the estoppel or benefit thereby have been conferred upon the person alleged to be estopped, sufficient to make it unjust or unconscionable for the latter to assert the true legal (or factual) position."

187. For Professor M to successfully claim estoppel there would, among other things) have to be a finding that there was a clear and unequivocal statement on the part of USS to the effect that Professor M's pension would benefit from an LRF after he withdrew from the Scheme. I have seen no evidence of such a statement, nor do I see that there was any assumption to this effect expressly shared between USS and Professor M.

Reliance on the Quotation

188. The evidence shows that Professor M decided to opt out of the USS as early as 4 September 2015, when he wrote to his Employer to confirm that he wished to cease all pension contributions to the Scheme after 31 March 2016.

189. It is clear, therefore, that he did not base his decision in reliance on the Quotation, which was issued more than five months later.

190. I appreciate that Professor M may not have been aware of the consequences when he stopped paying contributions and opted out of the Scheme, but he ought to have fully advised himself of the Rules and what would happen if he became a deferred member of the Scheme before he made his decision.

191. The evidence shows that his main objective in withdrawing from the Scheme was to protect his enhanced and primary protection. Furthermore, the exchanges between Professor M and the employer also show that the completion of a number of projects in which he was involved was a factor in his decision to defer his retirement until January 2017.

192. Consequently, I find that Professor M would still have opted out of active membership of the Scheme had figures without the LRF been provided prior to him withdrawing from active membership of the Scheme.

Case reference PO-23357

193. USS has referred to the previous case, reference PO-23357. As a matter of first principles, the Ombudsman approaches each complaint on its own facts and determines each complaint on its individual merits. While he has regard to the substance of past Determinations, these do not bind him.

194. In terms of the similarities between this case and PO-23357, it is true that the Determination in PO-23357 concerned the operation of the LRF and the application of the LRF to deferred benefits in the Scheme. It is also true that the Determination in that case reflected the Ombudsman's view that there was no maladministration in the Trustee choosing not to provide information about the effect of opting out of the Scheme on the LRF. However, there is a difference in the facts and merits of the current complaint. This is because, in PO-23357, Professor I, through his independent financial adviser (IFA), made specific written inquiry of the Trustee about the effect of deferment on the LRF but failed to receive any response.

195. Two conclusions emerge from that fact. The first is that Professor I in PO-23357 was not relying solely on USS for information about his pension entitlements. The second, and distinguishing, conclusion is that Professor I, in PO-23357, was aware that there was a reason to clarify the impact on the LRF of opting out of the Scheme but failed to follow up the query which had been raised about it. In Professor M's case, there is no suggestion that he was aware of any possible impact. In the circumstances, and unlike

the position in PO-23357, there cannot be any criticism of Professor M for failing to press USS for more information about his entitlement to the LRF.

Advice to withdraw

196. I note that Professor M indicates that he received advice relating to the impact of his continued membership in the Scheme would have on his primary and enhanced protection. It appears he had been advised that in order to avoid invalidating his enhanced protection certificate he would have to withdraw from the Scheme on 31 March 2016 before the new DC arrangement took effect.

197. I have seen no evidence of any advice to the effect that Professor M could withdraw from the Scheme and retain entitlement to the LRF enhancement.

198. There is a question of the role which the Employer played in creating any misunderstanding on the part of Professor M, as to his true entitlement under the Scheme. He has not named the Employer as a respondent and I have therefore concentrated my investigation on the complaints in the terms made by Professor M.

199. In summary I find that this complaint is not upheld as I am not persuaded that had Professor M known that withdrawing from the Scheme in March 2016 would have led to the loss of LRF, he would have made a different decision. There is no doubt that it would have been prudent for Professor M to have enquired or advised himself as to the consequences of withdrawing from the Scheme and becoming a deferred member before making that decision.

200. USS has correctly interpreted the Rules in not applying the LRF once Professor M became a deferred member. He did not retire as an active member and was not contributing to the Scheme at the point of his retirement.

201. I do not uphold the complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman

19 September 2024

Appendix

Relevant extracts from the Rules

10. LATE RETIREMENT

10.1 **Member contribution election at normal pension age**

A member who was in service immediately before normal pension age may either:

10.1.1 elect to cease to pay contributions at that age; or

10.1.2 continue to pay contributions until the earlier of retirement and cessation of service.

10.2 **Applicability of the following provisions**

Sub-rules 10.2 to 10.7 apply to a member who remains in service after normal pension age and retires while in membership as a pre-2011 member. Rule 8 (Benefits at normal pension age) does not apply to such a member.

…

10.5 **Attaining normal pension age after 30 November 2006**

Where normal pension age is attained after 30 November 2006 and service continues thereafter, the member shall be entitled to receive the following benefits from the day after the date of retirement:

10.5.1 in respect of pensionable service accrued or credited before normal pension age:

a pension for life at the annual rate of:

$$\frac{\text{The number of years of that pensionable service}}{80} \times \text{(pensionable salary at normal pension age)}$$

and

a lump sum of 3 times that annual pension,

increased by such amount as the trustee company may decide on actuarial advice; and

10.5.2 in respect of pensionable service accrued or credited after normal pension age:

a pension for life at the annual rate of:

$$\frac{\text{The number of years of that pensionable service}}{80} \times \text{pensionable salary}$$

and

a lump sum of 3 times that annual pension.

36. WITHDRAWAL FROM MEMBERSHIP

36.3 A member to whom sub-rule 36.1 does not apply may give not less than 28 days' written notice to the employer and the trustee company to cease to be a member with effect from the end of the month in which the notice expires. The individual shall then be entitled:

36.3.1 To benefits under rule 14 (Preserved benefits) or sub-rule 16.3.1 (Early leavers without preserved benefits). If the withdrawal takes effect at or after the day when he or she attains normal pension age, benefits under rule 14 (Preserved benefits) or sub-rule 16.3.1 (Early leavers without preserved benefits) shall come into payment on the day following the earlier of the day on which he or she ceases eligible employment or the day he or she attains age 75, as if his or her normal pension age were attained on that day.

36.3.2 To rejoin the scheme in accordance with sub-rule 5.13.