

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

<b>Applicant</b>	Mr Ian Wood
<b>Scheme</b>	Ingersoll-Rand Holdings Ltd Retirement Pension Plan <b>(the Plan)</b>
<b>Respondents</b>	Ingersoll Rand Holdings Ltd, Ingersoll-Rand Security Technologies Limited now Allegion (UK) Limited <b>(the Company)</b> Trustees of the Ingersoll-Rand Holdings Limited Retirement Benefits Plan (1974) <b>(the Trustees)</b>

**Subject**

Mr Wood has complained that the Trustees and the Company have not adequately compensated him for the overpayment of pension contributions to the Plan.

**The Pensions Ombudsman's determination and short reasons**

The complaint should be partly upheld as Mr Wood has not received a full return of his overpaid contributions including interest.

## DETAILED DETERMINATION

### Material Facts

1. Mr Wood was a senior executive of Newman Tonks PLC and its related companies from 1 May 1997 to 15 October 2002, working mainly in the UK but for part of the time in Belgium.
2. He joined the Newman Tonks Group PLC Retirement Benefits Plan 1988 which was merged into the Ingersoll-Rand Holding Limited Retirement Benefits Plan (1974) on 1 December 2000 after Ingersoll-Rand Company had acquired Newman Tonks Group. The companies now form part of Allegion (UK) Limited.
3. Mr Wood received a copy of the 1992 edition of the Plan booklet which said he would contribute 5% of Pensionable Earnings defined as Gross Earnings less the Lower Earning Level at the previous 5 April. The booklet also said:

"One of the conditions of Inland Revenue approval is that certain maximum levels of benefit are not exceeded. If this should happen in your case, you will be notified and your benefits adjusted appropriately. In particular, for employees joining the Plan after 1st June 1989 a limit is placed on the earnings that can be pensioned and on which contributions can be paid under an approved scheme."
4. From 1998 onwards Mr Wood's Pensionable Earnings had exceeded the maximum permitted earnings on which pension could be based introduced under the Finance Act 1989 (known as the earnings cap). Mr Wood's contributions continued to be deducted at 5% of Pensionable Earnings but these were not restricted to the earnings cap.
5. Mr Wood's pension accrual rate was  $1/60^{\text{th}} \times \text{Final Pensionable Earnings} \times \text{Pensionable Service}$  and because of the earnings cap his Pensionable Earnings for pension purposes were restricted to the earnings cap each year. Pensionable Earnings are defined as "Gross Earnings at 5<sup>th</sup> April each year less the Lower Earnings Level for the year ended on that date."
6. Gross Earnings are also defined as "your total taxable earnings, including overtime, commission and bonuses for each year ending 5<sup>th</sup> April."

7. Mr Wood's leaving service statement in 2002 stated that his Final Pensionable Earnings were £97,200, the same amount as the earnings cap applicable at that time. On 12 December 2010 Mr Wood queried this restriction.
8. Towers Watson (the new scheme administrator) explained on 25 January 2011 that the Final Pensionable Earnings and earnings cap restriction was correct for pension purposes and referred to the 2003 Plan booklet. They also informed Mr Wood that he had overpaid pension contributions as these were deducted from "an uncapped gross salary amount." Towers Watson also proposed to refund these overpaid contributions to Mr Wood.
9. On 4 February 2011 Mr Wood rejected Towers Watson's proposal for a refund of the overpaid contributions and said he had appointed pension advisers to seek full compensation for this apparent maladministration. Mr Wood also questioned why Towers Watson had sent him the 2003 booklet when he had left the Company in 2002.
10. Towers Watson replied on 16 February 2011 and apologised for referring to the 2003 booklet and enclosed a 1992 booklet which Mr Wood would have received and pointed out that this also made reference to the earnings cap restriction.
11. Mr Wood replied on 30 June 2011 and complained to the Trustees that if he had been informed of the cap on contributions he would have paid the difference into a private pension scheme.
12. On 30 August 2011 Mr Wood was informed that the case would be dealt with under the Plan's Internal Dispute Resolution Procedure (**IDRP**).
13. An IDRPs first stage decision was issued on 22 November 2011 and said that the overpayment of pension deductions seemed to be a genuine error with contributions being deducted from gross earnings without taking into account the limit placed on earnings that can be pensioned. This had resulted in a contribution over-deduction of £4,300.26 and as the Plan was not entitled to these contributions they would be refunded less any deductions for tax.
14. Mr Wood invoked the second stage IDRPs in September 2012 and complained that he had not been notified when the earnings cap was applied to him and disputed the quantum of loss. He also provided a schedule of salary data and deductions based on his P60s and P45 and included his Belgian earnings, and

calculated that the overpayment of contributions was £9,857 and not £4,300.26. Mr Wood also sought compensation for financial losses.

15. On 2 October 2012 the Trustees rejected Mr Wood's complaints saying that the 1992 booklet and 2002 leaving service statement were clear that his benefits would be subject to the earnings cap. They did however say:

"Regretfully, you paid contributions for a period of time based on your remuneration without limitation to the cap. As such, the Trustees believe you are entitled to a refund of £4,300.26 which has been returned to the Company. The Company will liaise with you in relation to how repayment should be made."

16. On 14 October 2012 Mr Wood complained to the Trustees that he had not been adequately notified of the earnings cap as mentioned in the booklet and also the booklet did not clarify how much the limit was.
17. On 23 October 2012 Mr Wood asked Towers Watson and the Company to clarify why their schedule of contributions differed from his and requested that capital and income growth be added to the repayment.
18. The Company and Towers Watson replied on 14 December and provided a schedule to explain why they were proposing to repay him £4,300.26.
19. Mr Wood had contacted the Pensions Advisory Service (**TPAS**) in 2012 and sought its assistance in disputing the calculation of the amount of any repayment and asking for capital and interest growth to be added.
20. In February 2013 the Company said it had not retained the old payroll records but had worked from Towers Watson's records, and said that the maximum contribution Mr Wood should have paid was 5% of the former Inland Revenue earnings cap.
21. On 3 March 2013 Mr Wood complained to the Company and Towers Watson that they had ignored his letter of 23 October 2012 and restated his principal complaints:
- the failure of the Trustees/administrator to inform the Company and him of the application of the earnings cap;
  - any repayment to be based on his salary/deductions schedules;

- interest and capital growth to be added from dates of deduction to date of repayment;
  - loss of earning i.e. he has suffered a substantial financial loss in his remuneration package due to the pension being capped because if he had known of the earnings cap he would have re-negotiated his remuneration package.
22. On 18 March 2013 Mr Wood wrote again to the Trustees and Company, chasing for a reply to his letter of 23 October 2012 and quantified the loss on his remuneration package as approximately 30% or £3000 a year over a reasonable pension life of 16 years. Mr Wood also said he would have used the excess pension contributions he had paid to pay down his mortgage payments. Mr Wood also provided details of an interest only mortgage he had taken out in 2000 and calculated that if he had used the overpaid contributions to reduce the mortgage he would have saved approximately £20,160. Mr Wood therefore asked why the Trustees had not made any offer of compensation for the 12 years they had had the money.
23. On 22 March 2013 TPAS also wrote to the Company and said that leaving aside Mr Wood's claims for financial loss they were surprised that he had not at least received a refund of the contributions wrongly deducted and interest at a reasonable rate.
24. The Company replied to Mr Wood on 22 April 2013 and sent him a cheque for £4,880.08 made up of £4,300.26 in excess contributions and interest based on the Bank of England base rate less tax and National Insurance; the Company rejected Mr Wood's claim for additional compensation. Mr Wood banked the cheque on a "without prejudice" basis and told the Company that he did not agree the calculations, particularly for his time in Belgium.
25. On 25 July 2013 the Company and Trustees wrote jointly to Mr Wood, rejecting his complaints. They explained that the repayment made of £4,880.26 represented £4,300.26 plus interest at 3% a year on each repayment from the date of the payment to the date of repayment, as calculated by the Plan actuary, rounded up to the nearest £100 less deductions for Income Tax and National Insurance in line with HMRC guidance. The Company and Trustees had also

taken note of the comments from TPAS and enclosed a cheque for £250 for any distress and inconvenience caused.

26. Mr Wood rejected the amounts paid as not adequate for his financial loss and referred the matter to this office.

### **Summary of Mr Wood's position**

27. Mr Wood says that at the time the contributions were being paid he was not informed when his earnings exceeded the Inland Revenue cap. He assumed that he was accruing a pension based on his earnings and that the Company also had the same assumption. If he had known that the earnings cap had been exceeded he would have re-negotiated his contract and used the contributions to pay down his mortgage. He therefore does not accept that the return of the excess contributions with interest represents adequate compensation for the maladministration. He has asked where the monies were invested since 2000 and what has been the capital growth and compound interest earned on the overpaid contributions.
28. Mr Wood also says that he does not consider an interest rate of 3% gross before tax as fair when the Financial Ombudsman Service uses a rate of 8% per year simple.
29. Furthermore he says the matter would not have come to light if he had not raised the issue and he does not consider the Company's and Trustees offer of £250 in compensation as reasonable.

### **Summary of the Trustee's position**

30. Mr Wood has confirmed and acknowledged that the earnings cap applied to him and the only issue relates to the administrative mistake that occurred in the deduction and remission of his employee contributions. A refund of the incorrectly deducted pension contributions has been remitted back to him together with interest and an element of compensation. The Trustees would argue that he has been properly compensated for this mistake so far as it concerns them.
31. Mr Wood has queried the calculation of the overpaid contributions and provided his own calculations. The Trustees are unable to verify Mr Wood's calculations as the Company no longer has the payroll records and in the absence of any

payroll records have relied on the information provided by the administrators. The contributions were made by the employer and remitted initially to the Newman Tonks Plan which was then not a part of the Plan. The current administrators are unable to verify the accuracy of the inherited salary and contribution data used in the calculation but the Trustees are entitled to rely on that record as it was compiled by professional administrators.

32. The repayment was made by the Company and not the Plan and taxed in a similar way as to any payment to a former employee.

### **Summary of the Company's position**

33. Mr Wood's contention appears to be that the Trustees or the Scheme Administrator should have notified him when the earnings cap was reached, and that he has suffered a loss of earnings as a result of their failure to do so.
34. It is not clear why he believes any failure to notify has caused him to suffer a loss of earnings. He appears to believe that, if he had been notified that the cap had been reached, he would have successfully renegotiated his terms of employment with the Company to compensate. This implies that he accepts that his terms did not give him any special rights regarding the earnings cap. Nevertheless there remains the suggestion that he believes his terms of employment did give him some special rights in that regard, either by requiring the Company to pay him pension benefits outside of the Scheme or to increase his remuneration so as to offset the effects of the earnings cap and ensure he received his "full remuneration package".

Mr Wood believes this loss of earnings to have caused a shortfall in his pension of approximately 30% i.e. £3,000 per annum though he has not provided any calculations to justify this figure. There was never any agreement by the Company to provide pension benefits for Mr Wood beyond those provided by the Plan, or to somehow improve his remuneration to offset the effects of the earnings cap. There is no evidence whatsoever of any such agreement in the various appointment contracts that we have provided and there is certainly no suggestion in these of any such agreement.

35. Mr Wood says that he would have been able to successfully renegotiate improved terms to compensate for the earnings cap having been reached. It is the Company's view that if Mr Wood had asked for improved terms, the

Company would not have agreed to such a request. The earnings cap was imposed by the Inland Revenue, Mr Wood was given notice of it since he received the member booklet, and the Company's terms were still competitive. There would have been no good reason for the Company to suddenly improve Mr Wood's terms, and there is no evidence that the Company would have agreed to any such request.

36. It is also worth stating that, even if the Company would have improved his terms, there is no evidence that it would have improved them to such an extent as to fully offset the effects of the cap, as Mr Wood's complaint assumes. Accordingly the figures mentioned by Mr Wood cannot be supported.
37. Mr Wood says that he would have used the excess contributions to pay down a mortgage loan and as a result would overall have paid less by way of interest. Mr Wood has referred to a 'loss' of £20,160, though he has not provided any calculations to justify this figure.
38. The Company finds this complaint highly tenuous. It may suit Mr Wood to assert that he would have used the excess contributions to make additional mortgage repayments, but there is no evidence that he would have done so. The money could have been used for all manner of purposes, so without clear evidence of how he managed his finances there is no basis on which to conclude that he would have allocated the money to mortgage repayment in whole or in part. Indeed, given that the overpayments were very small in comparison to Mr Wood's earnings, it is conceivable that he would not have specifically allocated the money at all.

### **Conclusions**

39. Mr Wood's main argument here is that the Trustees and Company have not adequately compensated him for the over deduction of pension contributions he made in respect of earnings above the earnings cap. Mr Wood has also asked whether the error would have been picked up if he had not complained about his pension. On this latter point I would suspect that the overpayment of pension contributions may not have been picked up if Mr Wood had not complained but once the error was identified the Trustees did, with some prompting from TPAS, arrange for these overpaid contributions to be refunded.



40. A point of contention is the quantum of the excess contributions and Mr Wood has produced his own calculation of the pension contributions paid. However these are based on his P60s and P45 which do not show the amount of pension deductions made.
41. A review of the schedules provided by Mr Wood and the administrators shows that the contributions recorded by the administrators do not bear any relationship to those provided by Mr Wood. There may be several reasons for this, the definition of gross earnings does not say whether benefits in kind e.g. car and medical expenses are included in gross earnings and it is difficult to know without the payroll records whether pension contributions were automatically deducted in respect of these elements of earnings. It would however have been a requirement each year for the payroll providers to provide the administrators with a schedule of the contributions that had been deducted for each member.
42. The Pensions Ombudsman Service has also carried calculations of the contributions that would have been payable based on the records that Mr Wood has provided. After allowing for the definition of pensionable earnings in the rules of the Plan and the offset of the Lower Earnings Level we arrive at a possible overpayment of £8,917.35 which is nearer the overpayment figure calculated by Mr Wood of £9,857. This compares to the refund of contributions paid before interest by the Company of £4,300.26.
43. The Company and Trustees have said they do not have the payroll records to verify the deductions made and have relied on the records held by the administrators. The administration records have also moved between administrators.
44. I therefore find that on the balance of probabilities the earnings figures provided by Mr Wood are more accurate than the administrators' and - using these as a base - Mr Wood would have overpaid contributions of £8,917.35 to the Plan. Therefore this is the figure that should be returned to Mr Wood with interest less the contributions and interest already paid of £4,880.26.
45. I have the power to award interest but when it applies to late payment of benefits it is at the prescribed rate as set out in regulation 6 of The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 (No

- 2475). That is an average base rate across several banks. Given the variations in rates over time, I do not know whether this would be more or less than 3%.
46. Mr Wood has said that if he had been advised that he was exceeding the earnings cap he would have renegotiated his contract and has estimated that his loss in this respect is equivalent to £3,000 a year. The Company strongly deny that they would have been willing to renegotiate his contract and compensate him for the perceived loss of pension for earnings above the cap.
  47. Mr Wood did receive a copy of the 1992 booklet which would have given him notice that the earnings cap applied. Mr Wood says that the booklet specifically states that if his earnings should exceed the earnings cap he “will be notified and your benefits adjusted accordingly.” Mr Wood says that he should have been informed at the time his earnings exceeded the cap.
  48. There was no legal requirement for the Trustees to inform Mr Wood when his earnings exceeded the cap. He could have found out for himself (there is case law to the effect that an employer does not have to give an employee advice and that the giving of information is limited to information that the employee could not otherwise have known.) In effect, the Trustees did, through the booklet, undertake to notify Mr Wood and they did not do so expressly (though the benefit statements that were issued each year would show that his earnings and benefits were restricted). However, that adds very little. The contributions ought not to have been deducted, whether Mr Wood was told about the earnings cap or not.
  49. I now come to the point that Mr Wood has made regarding what he would have done with the overpaid contributions if these had not been paid to the Plan. Mr Wood says he would have used them to pay down his mortgage and has estimated that he would have paid less in interest and quoted a figure in excess of £20,000. The Company have said that the money could have been used for all manner of purposes, and given that the overpayments were very small in comparison to Mr Wood's earnings, it is conceivable that he would not have specifically allocated the money at all.
  50. On reviewing these arguments I have considered first what would have been the net effect if Mr Wood had not made these excess contributions. I have already concluded that the overpaid contributions amount to £8,917.35. This amount

was paid in over a period of approximately 3 years. If the contributions had not been paid to the Plan Mr Wood would have had to pay tax of 40% on this amount so the net additional income he would have received is about £5,350 and the additional monthly income would have been just over £148 a month. I do not consider that on the balance of probabilities and given Mr Wood's earnings at the time that this additional income would have been sufficient for him to alter the amount of the interest only mortgage he took out.

51. The Company, following the intervention of TPAS have returned £4,300.26 in overpaid contributions to Mr Wood and added interest at the rate of 3% a year on each repayment from the date of the payment to the date of repayment, as calculated by the Plan actuary, rounded up to the nearest £100 less deductions for Income Tax and National Insurance in line with HMRC guidance. For consistency I direct that at least the same basis for calculating interest on the balance of contributions to be refunded should be used.
52. In addition the Company have paid Mr Wood £250 for any distress and inconvenience that he may have suffered. Payments for distress and inconvenience are not intended to be penal and it has not increased Mr Wood's distress that the matter would not have come to light without his taking it up. Although Mr Wood may feel that this offer of £250 is low, it is in line with any awards that I may make for compensation and I do not find there are any grounds for a higher level of compensation.

### **Directions**

53. Within 28 days the Company are to pay Mr Wood the balance of the refund of contributions amounting to £8,917.35 in total. To that balance they are to add the higher of (a) interest at 3% a year on each periodic contribution from the date of deduction from pay to the date of repayment and (b) simple interest at the rate for the time being payable by the reference banks on each periodic contribution from the date of deduction from pay to the date of repayment.

**Tony King**  
Pensions Ombudsman

26 February 2015