Ombudsman's Determination

Applicant	Mr I
Scheme	Parker Hannifin Pension and Death Benefit Plan (**the Plan**)
Respondents	Parker Hannifin Pension Trustees Ltd (**the Trustee**) Prudential

Outcome

1. I do not uphold Mr I's complaint and no further action is required by the Trustee or Prudential.

Complaint summary

2. Mr I's complaint against the Trustee is that it refunded his pension contributions, without his knowledge and against his wishes, after he left employment with Parker Hannifin (**the Employer**). He maintains that the Trustee should reverse the refund and reinstate his benefits in the Plan. He also asks that it reimburse him for the stress he has suffered, the time he has spent on this matter and for the investment losses he has incurred.

3. Mr I's complaint against Prudential is that he never received a letter from it dated 13 February 2017 (**the Options Letter**).

Background information, including submissions from the parties

4. On 1 January 2015, following a TUPE transfer of his employment from Parker Procal, Mr I commenced working for the Employer. Between 1 January 2015 and 31 March 2015 the Employer paid contributions into a Group Pension Plan (**GPP**) with Standard Life.

5. On 9 February 2015, the Trustee wrote to Mr I informing him that he was eligible to join the Plan, advising that it operated on an automatic enrolment basis and said:

> "If you do not wish to be a member of the Pension Plan you must request an opt out form, from the Pensions Department and return (sic) completed before the Deadline Date below."

6. From 1 April 2015 Mr I commenced a new employment contract and became a member of the Plan. From this date, Mr I became a deferred member of GPP with Standard Life and the new employment contract and the Rules of the Plan took precedence.

7. On 31 January 2017, Mr I left the Employer, after 22 months membership in the Plan.

8. On 13 February 2017, Prudential, the administrator of the Plan, sent Mr I the Options Letter enclosing a Leavers Options form and quote, which stated a transfer value of £8,945.73. The Leavers Options form said that, as Mr I had left the Plan, he had the following options available:-

   - If Mr I was over 55 years of age (or earlier if he became incapacitated), with the Trustee's consent, he could opt for immediate payment of his benefits.

   - He could transfer his benefits to a UK registered pension scheme.

   - He could transfer his benefits to a qualifying recognised overseas pension scheme.

9. The Options Letter explained that:-

   - If Mr I decided to transfer his benefits from the Plan to another pension provider, Prudential would need him to complete and return his transfer form and the receiving scheme form or policy declaration.

   - If Mr I did not choose to transfer his benefits within three months of the date of its letter, the Trustee could refund his contributions and make arrangements to pay him a Short Service Refund (**the Refund**).

   - Mr I's contributions were paid under a salary sacrifice arrangement and so were wholly paid by the Employer.

10. On 28 July 2017, the Trustee wrote to Mr I regarding the Refund and said:-

   - According to its records, Mr I had left the Employer on 31 January 2017.

   - As he had been a member of the Plan for less than two years, he could have transferred his benefits to either a UK registered pension scheme or a qualified recognised overseas pension scheme.

   - Prudential had sent Mr I the Options Letter when he left the Employer which included details of how to proceed with a transfer.

   - Mr I had not requested to transfer his benefits within the allocated timescale. So, the transfer option was no longer available to him and the Trustee would pay him the Refund.

   - The gross value of the Refund was £3,745.92 and the net value would be paid into his bank account on 25 August 2017.

- Once the Trustee had paid the Refund, it would be fully discharged of all liability in respect of the benefits payable to Mr I under the Plan.

11. On 25 August 2017, the Trustee sent Mr I a payslip for the Refund. The payslip stated a net amount of £2,663.58, after the normal PAYE deductions.

12. On 26 March 2018, Mr I wrote to Prudential and complained about the Refund. He asked Prudential to explain the circumstances under which it had paid the Refund in August 2017. He mentioned that short service refunds had been abolished from 1 October 2015. He asked Prudential to resolve the matter as he believed its actions were contrary to the legislation.

13. On 2 May 2018, Mr I wrote to the Trustee and referred to its letter of 28 July 2017. He explained that:-

- He was not aware of the Refund and he had never authorised it.
- He was not eligible for the Refund as he had joined the Parker Procal pension scheme (**the former scheme**) on 5 March 2012. He believed that his membership in the former scheme had transferred to the Plan in 2015, so his membership had continued.
- He did not want the Refund so had asked Prudential to reverse it.
- He asked for an award from Prudential for the distress he had suffered and the complications the Refund had added to his tax calculations.
- If his contributions had remained in the Plan, he would have accrued more funds with which to provide a pension at retirement.
- He understood that the Trustee had received £9,364.79 from Prudential but had only returned a gross amount of £3,745,92 to him.

14. On 30 May 2018, the Trustee responded to Mr I. It said that as he had not opted out of joining the Plan, it had automatically enrolled him into the Plan from 1 April 2015. It added that:-

- Any active membership in the former scheme, administered by Standard Life, had ended on 1 April 2015.
- According to the Trust Deed and Rules of the Plan (**the Rules**), if the member completed two years' qualifying service upon leaving pensionable service, they would be entitled to Short Service Benefits. If the member had not completed two years' pensionable service they had two options:-
    - Receive a refund of a proportion of their retirement account that related to their ordinary and voluntary contributions, but not the Employer contributions.
    - Transfer their benefits to another pension scheme.

- If the member did not ask to transfer within three months, the Trustee would pay an automatic refund.
- Prudential had sent Mr I the Options Letter on 13 February 2017, after he had left the Employer.
- As Mr I did not respond, the Trustee wrote to Mr I on 28 July 2017, and informed him that it would pay the Refund into his bank account on 25 August 2017.
- Mr I had less than two years' pensionable service, so it was not possible to leave the funds within the Plan. As he had not responded regarding a transfer out, the Trustee automatically paid the Refund to him.

15. On 17 July 2018, Mr I wrote to the Trustee and asked it to consider his complaint under stage two of its Internal Dispute Resolution Procedure (**stage two IDRP**). In summary Mr I said:-

- He had not received the Options Letter.
- At the time the Trustee paid the Refund, he was unemployed and in receipt of State benefits, so it caused complications.
- The Trustee had misused its position and refunded his contributions without informing him.
- He had lost out on his pension entitlement from the Plan.
- The Trustee should replenish all his benefits with interest.
- The Trustee should pay him an award for the distress that he had suffered.

16. The Trustee agreed to consider Mr I's complaint directly, and issued its decision on 14 August 2018, not upholding his complaint. The Trustee repeated what the Rules stipulated in his case, and explained:-

- Mr I's only options after he left the Employer were the Refund or to transfer out to another pension provider. It was not possible to leave the funds in the Plan because he had less than two years' pensionable service in the Plan.
- As he did not ask to transfer out, it paid the Refund automatically.
- It could not prove nor disprove that Mr I had received the Options Letter. However, it was satisfied that Prudential had sent it to his correct address.
- Mr I had received the Trustee's letter of 28 July 2017 but he did not get in contact until 2 May 2018 to complain about the Refund. So, the Trustee considered that Mr I was aware that it would pay the Refund on 25 August 2017.
- Mr I did not contact the Trustee to try and stop the Refund or to explain that he had not received the Options Letter.

- It was content that it had followed the correct processes and adhered to the Rules.
- Its decision was final and Mr I's complaint could not be reconsidered.

17. Mr I was not satisfied with the Trustee's stage two IDRP response. So, on 17 November 2018, he wrote to the Trustee and asked it to reconsider his complaint. Mr I reiterated his IDRP complaint of 17 July 2018 and said that the Refund was illegal.

18. On 14 December 2018, the Trustee responded to Mr I's letter and said that its decision remained the same. It reiterated its response of 14 August 2018.

Adjudicator's Opinion

19. Mr I's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee or Prudential. The Adjudicator's findings are summarised below:-

    - The Plan is a salary sacrifice arrangement whereby the employee agrees to exchange part of their salary before tax in return for a non-cash benefit. In Mr I's case, this was a pension contribution. The Rules state that, if the member has not completed two years' pensionable service when they leave the Plan, then these salary sacrifice contributions would be refunded unless the member opts to transfer out their pension benefits within a specified timeframe.
    - Mr I was not entitled to preserved benefits in the Plan because at the time he left the Plan, he had not completed two years' qualifying service. Other than the Refund, the only option that was available to Mr I was to transfer his entitlement under the Plan to another registered pension arrangement. This option had to be elected within the period notified by Prudential, in this case within three months of receiving the Options Letter.
    - The Trustee's records showed that Prudential wrote to Mr I on 13 February 2017 to set out his options. The letter specified the date by which he needed to respond and explained the consequences if he did not respond. Mr I did not respond and, as a result, he lost the entitlement to transfer his benefits under the Plan. So, he was only entitled to the Refund of £3,745.92. The Refund was a proportion of Mr I's retirement account that related to his ordinary and voluntary contributions, but not the Employer contributions. In the Adjudicator's opinion, the Trustee and Prudential had followed the Rules and were correct to pay the Refund.
    - Mr I said that he did not receive the Options Letter. He argued that the Trustee paid the Refund without his knowledge and against his wishes. The Trustee provided evidence that Prudential had sent the Options Letter to Mr I at the address it held for him. It could not be held accountable for Mr I not having received the Options Letter. But even if it were the case that the Options Letter

was not delivered to Mr I, he clearly received the letter of 28 July 2017 and so could have contacted the Trustee and/or Prudential at that time, to say he did not want the Refund.

- Mr I contended that the Trustee should reverse the Refund and reinstate his benefits in the Plan. Mr I did not complete two years' pensionable service and so his benefits could not be reinstated into the Plan.

- Mr I said that he should be reimbursed because the matter impacted his finances, in particular his state benefits. In addition, he had lost out on a pension from the Plan, suffered stress and spent considerable time sorting the matter out. The Adjudicator had no doubt that the matter has caused Mr I distress and inconvenience. However, the Adjudicator had not identified that this was because of any maladministration by the Trustee or Prudential. So, an award for non-financial injustice was not appropriate. Consequently, the Adjudicator's opinion was that this complaint should not be upheld.

20. Mr I did not accept the Adjudicator's Opinion. In response, in summary, he said:-

- He believes that the Employer was being unfair even when paying him redundancy payment.

- According to the Plan booklet, stage one of the IDRP should be dealt with by Prudential and stage two by the Trustee.

- The Trustee and Prudential "did act outside the law in this case" because they had a responsibility to let him know that he was about to lose his pension.

- The Trustee assumed he knew the Rules, but the Rules were confirmed to him after he left employment.

- He never received the Options Letter, as a result, he has been in "complete darkness" when losing his pension.

- He referred to the payslip showing his refund which he believes shows a discrepancy of £943.82.

- The Adjudicator's Opinion is based on false assumptions. He believes the Refund was fraudulent. The letter of 28 July 2017 looked like a photocopy and fraud.

- He disputes the fact that he is entitled to the Refund. The Rules do not state that the Refund must be enforced on him.

- His employment with Parker Procal lasted five years.

20. The Trustee provided copies of Mr I's contract of employment and a letter dated 17 November 2014, advising of the transfer of employment. Relevant extracts from this letter and the information provided are set out in the Appendix.

21. As Mr I did not accept the Adjudicator's Opinion, his complaint was referred to me for consideration. I agree with the Adjudicator's Opinion and note the additional points raised by Mr I.

Ombudsman's decision

22. The option for Mr I to receive a refund of contributions was permitted under the Rules, so there was no maladministration by the Trustee or Prudential in this regard. The Rules state that, if the member had not completed two years' pensionable service at the time they left the Plan, the salary sacrifice contributions would be refunded unless the member opted to transfer out his benefits within a specified timeframe. The member was not entitled to preserve their benefits in the Plan.

23. Mr I argues that he never received the Options Letter and that the Trustee paid him the Refund against his wishes. The Trustee has provided evidence that Prudential had sent the Options Letter to Mr I at the address it held for him. The Trustee cannot be held responsible for Mr I not having received the Options Letter. As the previous correspondence was sent to the same address, on the balance of probability, it is more likely than not that it was safely delivered to Mr I. Regarding Mr I's argument that the letter of 28 July 2017 is fraudulent, I have not been provided any evidence from Mr I to prove this.

24. Mr I argues that he had continuous employment that lasted five years so he should be entitled to his pension and not receive the Refund. I note Mr I's employment transferred under TUPE. Contractual rights relating to old age, invalidity or survivor's benefits under occupational pension schemes do not transfer under TUPE. This is known as TUPE's 'pensions exception'. This means that any terms and conditions of employment relating to such rights which applied immediately before a TUPE transfer no longer apply once the TUPE transfer has taken place.

25. However, as Mr I was a member of a GPP with Standard Life the Employer was obliged to continue paying contributions to this scheme if this was a condition of his employment contract. So, on the understanding that Mr I had a contractual commitment that he should have contributions paid into the GPP up until 31 March 2015, the Employer met its TUPE obligations.

26. The length of time for which an individual has been continuously employed is important because there are some rights which they only acquire after a particular period of continuous employment, and this is recognised in Mr I's contract of employment that commenced on 1 April 2015 (the **Contract**). However, these additional rights are not related to pensions and "continuous service" is not the same as "qualifying service".

27. Section 4 of the Contract confirms that Mr I's appointment took effect from 1 April 2015, but for the purpose of determining continuous employment, his date of commencement was 5 March 2012.

28. In respect of his pension entitlement section 10 of the Contract reads as follows:

> "Membership of the Company money purchase Pension Scheme (the Parker Plan) is voluntary, and it is assumed that you will wish to become a member and will contribute to a minimum of 3%. Unless you advise us to the contrary, pension contributions will commence from April 2015."

29. So, the Contract makes it clear that Mr I would be transferred into the Plan unless he advised that he did not want to join the Plan.

30. Section 27 "Previous Agreements" states that the agreement takes effect in substitution of all previous agreements and terms and conditions, such previous agreements and terms and conditions shall be terminated by mutual consent with effect from the date of issue of this statement.

31. I note that Mr I signed the contract, on 28 April 2015, which contained the words that he agreed to accept the terms and conditions as set out above, as his contract of employment.

32. I find that section 27 makes it clear that the Employer is cleared of any obligations in respect of the TUPE transfer as Mr I has terminated any previous agreement with consent. He also signed to confirm that he accepted the new terms and conditions. On that basis, Mr I is not eligible to have continuous five years of employment.

33. Mr I raised issues with the Employer regarding the discrepancy in redundancy payment and the length of service. These are employment issues, so I have not addressed them.

34. I find that the Trustee has acted appropriately and in accordance with the Rules when it refunded him his contributions.

35. I do not uphold Mr I's complaint.

Anthony Arter

Pensions Ombudsman
26 January 2022

Appendix

36. Letter dated 17 November 2014

> "I am writing to inform you that the business of Kittiwake Procal Limited… will be transferred to Parker Hannifin Limited effective from 1st January 2015.
>
> The terms and conditions of your employment will remain unchanged, save that your employer from that date will be Parker Hannifin Limited. Your continuity of employment (for statutory purposes) is unaffected."

37. Statement of main terms and conditions of employment dated 1 April 2015

> "4. **DATE OF COMMENCEMENT**
>
> Your appointment will take effect from 1st April 2015.
>
> For the purpose of determining continuous employment, your date of commencement is 5th March 2012.
>
> …
>
> 10. **PENSION AND LIFE INSURANCE**
>
> Membership of the Company money purchase Pension Scheme (the Parker Plan) is voluntary and it is assumed that you will wish to become a member and will contribute to a minimum of 3%. Unless you advise us to the contrary, pension contributions will commence from April 2015. Full details of the scheme, and your ongoing eligibility can be obtained from the enclosed leaflet and the following website…Please contact your local HR Department if you cannot access the site.
>
> The Parker Plan provides members with life assurance cover of 4 times your annual salary in the event of your death. If you decide to opt out or not join the Company Pension Scheme this life assurance cover ceases. Employees will only be eligible for this scheme if they are under 70 years of age.
>
> …
>
> 27. **PREVIOUS AGREEMENT**
>
> This agreement takes affect in substitution of all previous agreements and terms and conditions. Such previous agreements and terms and conditions shall be terminated by mutual consent with effect from the date of issue of this statement."