

Ombudsman's Determination

Applicant	Mr H
Scheme	Kellogg Brown & Root (UK) Pension Plan (the KBR Plan)
Respondents	The Trustees of Kellogg Brown & Root (UK) Pension Plan (the Trustees) Mercer Limited (Mercer) Kellogg Brown & Root Ltd (KBR)

Outcome

1. Mr H's complaint against the Trustees, Mercer and KBR is partly upheld, but there is a part of the complaint I do not agree with. To put matters right for the part that is upheld, KBR should pay Mr H £500 compensation in recognition of the significant distress and inconvenience which he has experienced in having to deal with this matter.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr H complains that the Trustees, Mercer and KBR are using an incorrect pensionable service of 22 years 2 months to calculate the retirement benefits available to him from the KBR Plan. He contends that his two periods of service, accrued from 7 November 1977 to 27 January 1979, and from 1 January 1983 to 9 January 1987, totalling 5 years 3 months, should also be pensionable.

Background information, including submissions from the parties

4. Mr H joined the Halliburton Ltd/KBR group of companies on 7 November 1977. He worked for them until he was made redundant on 2 August 2015.
5. His full employment history with Halliburton Ltd/KBR is as follows:
 - 07/11/77 to 27/01/79 – employed by Halliburton Ltd in Iran
 - 28/01/79 to 31/12/82 – employed by Halliburton Ltd in Bahrain, Oman and Qatar

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- 01/01/83 to 09/01/87 – employed by Halliburton Ltd in Qatar and Professional Resources Ltd (**PRL**)*, an employing entity for Halliburton Ltd, in Bahrain

*Mr H originally agreed, in written correspondence with the Trustees, that he had been employed by PRL but he now no longer accepts this view.

- 10/01/87 to 31/08/88 – employed by Halliburton Ltd in the UK
 - 01/09/88 to 02/08/15 – employed by KBR in the UK and Portugal
6. Mr H received a letter dated 24 September 1977 from Halliburton Ltd offering him an “Agreement of Employment” for a one year term as an Assistant Accountant (relevant paragraphs are reproduced in the Appendix). There was no reference in the letter to pension scheme membership for this employment.
 7. According to his Halliburton employment record (**the Record**), this contract was followed by a further three fixed term Halliburton contracts dated 28 January 1979, 19 August 1981 and 30 August 1983. The Record does not show that Mr H was employed by PRL.
 8. Mr H contends that work references written by his managers at Halliburton Ltd between November 1986 and January 1987 (relevant paragraphs shown in the Appendix), provide further evidence that he was employed by Halliburton Ltd and not PRL between 1 January 1983 and 9 January 1987.
 9. Mr H was originally a member of the Halliburton UK Pension Plan (**Halliburton Plan**). According to the records of Halliburton Ltd/KBR, Mr H’s pensionable service in the Halliburton Plan commenced on 28 January 1979.
 10. Mr H joined the Professional Resources Ltd Profit Sharing and Savings Plan (**the PRL Plan**), when he completed a Form of Election on 20 December 1982 and returned it to the International Profit Sharing Committee (**the Committee**) of PRL.
 11. Mr H ticked the relevant boxes on the Form of Election to show that:
 - he wished to participate in the PRL Plan;
 - he gave written notice of acceptance of the PRL Plan;
 - he agreed to be bound by the provisions of the PRL Plan;
 - he did not wish to authorise employee contributions to the PRL Plan from his eligible earnings at this time; and
 - he understood that he may commence such contributions in the future by giving 30 days advance notice to the Committee
 12. He also completed another form for the Committee on 20 December 1982 in order to nominate his wife as his designated beneficiary in the PRL Plan.

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13. According to an internal KBR memo to Mr H dated 14 November 1990, following receipt of a transfer value cheque, his two periods of pensionable service for 28 January 1979 to 31 December 1982 and 9 January 1987 to 31 August 1988 had been linked and this would be reflected on his future benefit statements (further details may be found in the Appendix).
14. In May 1991, PRL asked Mr H whether he had the opportunity yet to check his employment date with KBR. Mr H replied in an e-mail dated 6 June 1991 that:

“Employment date with Brown and Root is 1 Sept 1988. Up to that I was on the Halliburton services UK payroll and before that I was on an overseas Third Country National (TCN) contract. No break in service since I joined on 7 Nov 1977. Does this change my profit sharing...?”
15. PRL informed Mr H on 10 June 1991 that:

“This will not change your Profit Sharing. You received a Profit Sharing allocation from PRL for your base pay up until the time you transferred to the UK.”
16. In May 1998, Mr H asked Halliburton Ltd to check:
 - the start date of his pensionable service in the Halliburton Plan because he had previously been told that it would be 7 November 1977; and
 - his potential pensionable service because he calculated that it should be 37 years 6 months and not 33 years 5 months as shown on previous annual statements
17. In July 1998, Halliburton Ltd replied that:

“The Pensions Administrators have confirmed that your pensionable service commenced on 28 January 1979 therefore giving you a potential service of 37 years and 6 months.

I have also checked your personnel file and you have been given a continuous Company service date of 7 November 1977 and a pensionable service date of 28 January 1979 which was when you went on a full overseas contract with Halliburton and eligible for pension benefits.”
18. In his e-mail dated 3 July 1998 to Halliburton Ltd, Mr H said that he would presume that the Halliburton Plan “administrators will now correct my pension statement.”
19. In August 1998, Mr H confirmed to Halliburton Ltd that he would be “happy to accept” that his pensionable service start date in the Halliburton Plan was 29 January 1979.
20. Following a corporate and pensions demerger of the Halliburton Ltd/KBR group of companies in 2003, Mr H’s pension benefits in the Halliburton Plan were transferred to the KBR Plan.

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21. The KBR Plan was closed to future accrual on 31 March 2005.
22. Having been diagnosed with advance lung cancer, Mr H decided to request in 2015 a transfer of his pension rights in the KBR Plan to a personal pension so that he could use some of the transfer funds to pay for cancer treatments not available on the NHS.
23. When he received details of the transfer value, he discovered that the Trustees/Mercer had not taken into account 5 years' pensionable service in their calculations (for the period 1 January 1982 to 31 December 1986).
24. After examining the internal KBR memo dated 14 November 1990 which Mr H had retained, the Trustees agreed to reduce his period of non-pensionable service in the KBR Plan to four years.
25. Mr H was unhappy with this decision but his appeal was not upheld by the Trustees at both stages of the KBR Plan's Internal Dispute Resolution Procedure (**IDRP**).
26. The Trustees and KBR says that:
 - they accept that their member records for Mr H are poor and that they have had to rely on information supplied by Mr H in order to deal with this dispute;
 - there is no evidence however to corroborate Mr H's assertion that his pensionable service in the KBR Plan should start from 7 November 1977;
 - his Agreement of Employment back in 1977 was with an overseas company;
 - at that time, overseas employees were ineligible to join a UK pension scheme;
 - PRL had its own pension plan, the PRL Plan, to provide benefits for its employees;
 - PRL was primarily set up in order for Halliburton Ltd/KBR to cap social insurance contributions for its US employees;
 - it was decided at the time that non US employees would also be included in the PRL Plan to provide alternative and not additional to benefits available from their domestic pension schemes;
 - the PRL Plan was administered by Halliburton Ltd in the US and they do not hold any documentation on its benefits;
 - Mr H only joined the profit sharing component of the PRL Plan and received around £25K from it in July 2007;
 - on becoming an employee of PRL, Mr H chose not to pay employee contributions into the pension element of the PRL Plan when his membership in the Plan ceased;
 - they informed Mr H in 1998 by mistake that he had potentially 37 years 6 months pensionable service in the Halliburton Plan;
 - it is unlikely that Mr H's break in pensionable service was created at random;
 - the benefits team at Halliburton Ltd say that their policy was to use PRL to employ expatriates and the PRL Plan to provide benefits for expatriates in place of and not in addition to domestic pension benefits;

- they can only assume that when PRL was established in 1983, expatriates at the time were taken out of their domestic arrangements and offered membership of the PRL Plan;
- in accordance with HMRC regulations in force at the time, overseas employees could remain in their domestic pension schemes but only for a specific period of time and with its express approval;
- it was therefore not impossible for expatriates to remain covered by the KBR Plan but there were administrative hurdles and presumably, the existing pension arrangements were not convenient and so an international pension plan was established by Halliburton Ltd/KBR;
- the information shown on the slides used in a presentation on PRL suggest that as HMRC requirements subsequently eased expatriates were allowed to remain in their “home country” pension arrangements, and the purpose of the PRL Scheme had consequently changed;
- whilst there may not be a complete paper trail to verify the explanation of events described above in detail, it does seem to offer a coherent and logical explanation which supports the pensionable service break for Mr H shown in their records; and
- any compensation payable to Mr H for the distress and inconvenience which he has suffered dealing with this dispute should be paid by KBR and not the Trustees because it has mainly been caused by KBR’s poor record keeping of Mr H’s pensionable service in the KBR Plan.

27. Mercer says that:

- the dispute arises purely as a result of Mr H’s employment with Halliburton Ltd/KBR and centres on what is/what is not deemed pensionable service in the KBR Plan;
- as administrators of the KBR Plan, it is reliant on the data provided by Halliburton Ltd/KBR and consequently consider that this matter is between Mr H and his former employers;
- the five year pensionable service break (subsequently corrected to four) has been on Mr H’s record for over 30 years; and
- it has no details as to why it was added but it has been taken into account in all calculations previously provided

28. Mr H says that:

- at no stage was he made aware that by participating in the profit sharing element of the PRL Plan he would no longer be an active member of the Plan;
- there is no evidence to suggest that he was not a member of the KBR Plan during the periods of service in dispute;
- he was not offered a contract with PRL showing that he has been excluded from the KBR Plan and had to join the PRL Plan in order to continue accruing pension benefits;

- throughout his employment with Halliburton Ltd/KBR, the terms and conditions relating to pension issues were always those of the KBR Plan;
- he can accept that the period from 7 November 1977 to 27 January 1978 might have been treated as a non-pensionable trial period;
- however, it could be argued that since he had an agreement with Halliburton Ltd, a UK company, this period of service should also be classed as pensionable;
- the Form of Election shows that he wished to only participate in the profit sharing element of the PRL Plan;
- if there were any major changes to his contract of employment such as joining PRL, these should have appeared on the Record;
- similarly, if there were any significant changes in pension arrangements, it is reasonable to expect that he should have been notified of them;
- this did not happen and he naturally assumed that his membership in the KBR Plan continued;
- there is no reason why his membership in the KBR Plan should have been adversely affected just because he was performing the same role for a different entity within the same group of companies;
- companies regularly change payroll entities for accounting/administrative purposes and in his view, PRL was such an entity because Halliburton Ltd had concerns about social insurance payments for its overseas employees;
- as an accountant /financial manager with Halliburton Ltd/KBR, he was “aware of the benefits of being included in any pension scheme that was offered” and “understood the implications of including/excluding himself from any pension plan on offer”; and
- he would have authorised employee contributions to the PRL Plan if Halliburton Ltd/KBR had made it clear to him prior to joining the PRL Plan in January 1983 that by doing so his active membership in the KBR Plan would cease.

Adjudicator’s Opinion

29. Mr H’s complaint was considered by one of our Adjudicators who concluded that further action was required by the Trustees. The Adjudicator’s findings are summarised briefly below:-

- One of the options available for international pension provision is the so called “international plan” which will often be set up in an offshore location for the benefit of “third country nationals”.
- A “third country national” is technically a citizen of one country A who is employed in a second country B by a multinational corporation based in a third country C. The establishment of special international plans can be in the principal home country of the employees. More frequently, however such plans are established in an offshore site which offers tax advantages. Plans set up in this way are outside

the jurisdiction of the domestic tax authorities. American corporations such as Halliburton Ltd/ KBR tended to choose Bermuda as the overseas site for such plans.

- The main beneficiaries of an offshore plan are therefore likely to be “third country nationals” and nationals of the home country of the employer concerned who are working in one or more other countries who do not wish to join a local pension plan and who do not remain in the home scheme of their employer.
 - The PRL Plan is such an “international plan”.
 - The evidence suggests that Mr H was a “third country national” who joined the PRL Plan whilst he was employed by PRL. In May 1991, Mr H notified PRL that he “was on an overseas Third Country National contract” with them. He also signed a Form of Election for the PRL Plan on 20 December 1982 and by doing so, he confirmed to the Committee that he wished to participate in the PRL Plan and agreed to be bound by its provisions. Although he did not authorise payment of employee contributions to the Plan from his eligible earnings on joining, it remained open for him to do so in the future after giving 30 days advance notice to the Committee.
 - Mr H’s active membership in the KBR Plan ceased whilst he was an employee of PRL because it is highly improbable that he would have been allowed to accrue benefits in two pension schemes for the same period of pensionable service. It is regrettable if this was not made clear to Mr H by Halliburton Ltd/KBR at the time but there is no clear evidence to substantiate such an allegation. Mr H’s assertion that his period of service with PRL from 1 January 1983 to 9 January 1987 should be pensionable in the KBR Plan cannot therefore be upheld.
 - Mr H asserts that his service with Halliburton Ltd from 7 November 1977 to 27 January 1979 should also be pensionable, but there is no evidence which corroborates such an assertion. If Mr H was entitled to join the Halliburton Plan from 7 November 1977, the “Agreement of Employment” should have provided some information about his eligibility to join the pension scheme after completing a specified period of service and that membership should be subject to the provisions governing the scheme from time to time as summarised in the scheme booklet. This is not the case for Mr H.
 - However, the discovery that his pension was to be significantly less than he expected will have caused Mr H significant distress and inconvenience which warranted a compensation payment of £750.
30. Mr H did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr H provided his further comments which do not change the outcome. I generally agree with the Adjudicator’s Opinion and I will therefore only respond to the key points made by Mr H for completeness.

Ombudsman's decision

31. Mr H is adamant that he remained an active member of the KBR Plan whilst participating in the profit sharing element of the PRL Plan from 1 January 1983 to 9 January 1987. He considers that PRL was established merely as a payroll entity for accounting/administrative purposes for its overseas employees and he had therefore remained an employee of Halliburton Ltd/KBR group of companies during this period.
32. The evidence is clear however that when Mr H contacted PRL in June 1991 by e-mail he admitted that he had an "overseas Third Country National contract" prior to working for Halliburton Ltd in the UK and subsequently joining KBR on 1 September 1988.
33. In my opinion, Halliburton Ltd/KBR technically classified Mr H as a "Third Country National" during the period in question because he was a UK citizen employed by Halliburton Ltd/KBR in Bahrain. The company is a multinational corporation based in the USA and it had established a special international plan, the PRL Plan in Bermuda, offering tax advantages for the benefit of "Third Country Nationals" and US employees working overseas, who did not wish to join a local pension plan or remain in their home scheme. If it had been the intention of Halliburton Ltd/KBR for Mr H to remain an active member of the KBR Plan, there would not have been a need for the company to offer him an "overseas Third Country National contract".
34. I am therefore satisfied that Mr H's active membership in the KBR Plan ceased when he joined the PRL Plan because it is improbable that he would have been allowed to accrue benefits in two pension schemes for the same period of pensionable service. Whilst a member of the PRL Plan, in order to accrue additional pension benefits, Mr H would have had to participate in the savings element of the PRL Plan as the option to remain in the KBR Plan was no longer available to him.
35. It is regrettable if this was not made clear to Mr H at the time, but I have not seen any convincing evidence to substantiate this allegation. Consequently I cannot accept Mr H's contention that his period of service from 1 January 1983 to 9 January 1987 should be pensionable in the KBR Plan.
36. Maintaining membership records, including records of salaries and service on which benefits are based, is essential for good scheme administration. In practice, trustees can delegate the day-to-day responsibility of administering the scheme but the ultimate responsibility for ensuring that the duties are carried out, nevertheless, remain with the trustees. I accept the view expressed by the Trustees and Mercer that they relied on KBR to provide them with accurate details of Mr H's pensionable service history and KBR's failure to do so was maladministration on its part.
37. Although I do not consider that Mr H has suffered any actual financial loss as a consequence of the maladministration identified, I agree with the Adjudicator's view that the discovery of his pension being significantly less than what he was expecting would have caused Mr H significant distress and inconvenience. My awards in

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relation to distress and inconvenience are modest, the normal award being £500. It is only in exceptional cases where there are other aggravating factors that I will award a higher sum as it is not intended to punish the respondent. In my opinion, the mistakes made by KBR have caused Mr H distress and inconvenience to a degree which warrants such compensation to be awarded.

38. Therefore, I partly uphold Mr H's complaint.

Directions

39. To put matters right KBR will, within 14 days of the date of this determination pay Mr H £500 for the significant non-financial injustice which he has suffered.

Anthony Arter

Pensions Ombudsman
8 September 2017

Appendix

Letter dated 24 September 1977 from Halliburton Ltd to Mr H

We have pleasure in offering you a position as an Assistant Accountant...

This is a single status position and your salary will be \$900 (US Dollars) per month. Accommodation and food will be provided whilst working in any of the Southern Gulf Locations, but at the Company's option an allowance for food will be given at the rate of \$250 per month.

The Agreement of Employment is for a term of one year. A return Economy Class Air Fare Ticket to Athens from your Location will be provided at the end of the 6 months for a 14 day leave period. If, however, at the end of the initial 6 months period it is apparent to you and to the Company that your future does not lie with Halliburton, an Economy Class Single Air Fare Ticket to London, England will be provided. Should your potential and ability at the end of a year be such that both you and the Company desire a further agreement, an Economy Class Return Air Fare Ticket to London...will be issued for a vacation period of 30 days.

As you progress in your career with Halliburton you will periodically be considered for an increase in salary on a merit basis...

Reference dated 9 November 1986 from Halliburton Ltd

...Mr H was employed by Halliburton Ltd Qatar from January 1983 to June 1985.

Mr H was transferred to our Bahrain accounting and data processing centre in June 1985 to fill a vacancy which arose there at that time.

Reference dated 8 December 1986 from Halliburton Ltd

During the period from December 1979 to February 1983 Mr H was employed by Halliburton Ltd, Muscat, Oman.

He was transferred to Halliburton Ltd, Qatar in February 1983 to broaden his experience after having worked in Oman for over three years.

Reference dated 21 December 1986 from Halliburton Ltd

Mr H, Accountant...has worked directly and indirectly for me for three years...

Reference dated 3 January 1987 from Halliburton Ltd

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Mr H has been employed by Halliburton Ltd throughout the Middle East Region from November 1977 to January 1987. He has worked in Iran, Bahrain, Oman, and Qatar. He returned to work in the Division Office in Bahrain in July 1985 where he has been employed to date.

It has been decided that he should be transferred to Halliburton Audit Group in London to broaden his already extensive experience...

Noble Lowndes' Memo to KBR dated 10 November 1990

Retirement Benefits Plan – Mr H

I refer to previous correspondence and would advise that Bain Clarkson have now forwarded a cheque for £12,431 in settlement of the transfer value available.

I have amended our records to reflect his service under the Halliburton scheme as 28.1.79 to 31.12.82 and 9.1.87 to 31.8.88

This would be reflected on his benefit statement.

Office Memo from Ms G Taylor, Employee Benefits Administrator at KBR to Mr H dated 14 November 1990

I refer to previous correspondence and am pleased to advise that we have received a cheque in settlement of the transfer value available. This will give you linked service – 28 January 1979 to 31 December 1982 and 9 January 1987 to 31 August 1988.

This will be reflected on your benefit statement due to be issued in January 1991.

Information about PRL as shown on slides used in a presentation in 2001

- PRL is an employing entity for Halliburton and is a Bermuda registered Company
- PRL is a Global Company established in 1983 to employ personnel who are assigned overseas and who do not come from a "Home Country".
- The Company has adopted a "Home Country" approach for assigning employees abroad, meaning that where legal, tax and "Home Country" pension rules permit, employees should maintain the employment relationship with the "Home Country" whilst abroad and retain their "Home Country" benefits.
- Five countries have been identified as recognised Home Countries for employees on Expat assignments.
- Employees must be non US citizens, be engaged on international assignments, be working outside the Home Country and be deemed ineligible to remain within the employment of the Home Country in order to qualify.

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- If an individual is already employed by a recognised Home Country and is then assigned to work overseas, then the employee will be employee by the “Home Country” and will continue to be offered all Health and Welfare and Retirement plans appropriate to that Home Country e.g. UK employee working overseas will remain in the UK pension scheme and UK BUPA.
 - If the individual is already employed by the Country through a Country which is not a recognised Home Country and is then assigned to work overseas, then the employee will be employed by PRL and will be offered PRL Health and Welfare and the PRL Retirement and Savings Plan, e.g. Dutch employee working overseas will have to leave the Dutch H&W and pension plan and join the PRL H&W and R&S plan.
-