

Ombudsman's Determination

Applicant	Mr N
Scheme	British Airways Retirement Plan (the Scheme)
Respondent	British Airways (BA)

Complaint Summary

Mr N's complaint is that BA refused to keep a record of his Fixed Protection 2014 (**FP14**), certificate and that he was not provided with adequate notice of his re-enrolment into the Scheme by BA or with adequate information about his right to opt-out and the process for doing so. As a result of his membership of the Scheme Mr N's FP14 has been invalidated.

Summary of the Ombudsman's Determination and reasons

The complaint should not be upheld against BA as Mr N's situation is not as a result of any maladministration on its part.

Detailed Determination

Material facts

1. Mr N is employed by BA and he was a member of the New Airways Pension Scheme (**NAPS**). NAPS is a final salary scheme introduced in 1984. Mr N's membership of NAPS was administered by way of a salary sacrifice scheme called SmartPension. In 2013 he opted-out of NAPS and transferred his benefits to an arrangement with Scottish Widows.
2. As the value of the fund with Scottish Widows exceeded the Lifetime Allowance (**LTA**) Mr N applied for fixed protection.
3. The British Airways Retirement Plan (the Scheme) is a defined contribution scheme introduced in 2003. At the time that the course of events giving rise to this complaint began, Mr N had never previously been a member of the Scheme.
4. On 1 November 2013, Mr N was sent a FP14 certificate. Mr N said he made a call to BA about it retaining a copy of this but he was told that it had no means of keeping a record where he was no longer in the pension scheme.
5. With effect from April 2015, an exception was introduced into the automatic enrolment regime providing that employers were not required to re-enrol staff with fixed protection. Accordingly, thereafter Mr N fell within the class of staff who BA could 'choose to re-enrol'.
6. On 9 January 2015, BA recorded its decision that it would not apply the exemption "due to practical issues in application."
7. In October 2015, Mr N was diagnosed with prostate cancer.
8. Towards the end of 2015, BA was required to assess its workforce for re-enrolment.
9. On 21 December 2015, BA published a note on its intranet informing staff that it would re-enrol those with fixed protection.
10. The relevant guidance on re-enrolment on The Pensions Regulator's website, directed at employers, states the following:

"On your re-enrolment date, you'll need to assess certain staff to work out if you need to put them back into your pension scheme.

You must assess staff who have:

- asked to leave (opted out of) your pension scheme
- left (ceased active membership of) your pension scheme after the end of the opt-out period
- stayed in your pension scheme – but chosen to reduce the level of pension contributions to below the minimum level

In addition to the staff that you must re-enrol, you can choose to re-enrol any staff member who is:

- aged between 22 up to State Pension Age
- and earns over £10,000 a year, or £833 a month, or £192 a week
- and who:
- left your automatic enrolment (qualifying) pension scheme in the 12 months leading up to your re-enrolment date
- was paid a winding up lump sum in the 12 months before your re-enrolment date, then left your employment and was later re-employed by you
- has given notice or been given notice of the end of their employment
- has primary, enhanced or fixed protection from tax charges on their pension savings
- holds the office of director with the employer
- is a partner in a Limited Liability Partnership which is the employer, and is not treated for income tax purposes as falling within HMRC's 'salaried member' rules"

11. Mr N says that in January 2016, he recalled there would be an upcoming auto-enrolment event as there had been one in 2013.
12. He consequently contacted Willis Towers Watson (**WTW**), the Scheme Administrator to ask about how to opt out. He says it did not have any information on how to opt out and instead suggested that he contact BA. Mr N says it did however highlight that he only had until 31 January 2016 to opt out.
13. Mr N says he then contacted BA People Services and was told that he needed to obtain a form from the BA intranet and send it in by 31 January 2016.
14. In light of the understanding he took from these calls, Mr N accessed the BA website and downloaded a Lifestyle Event Opt Out Form. This form included the following statements:

"I confirm that I have had a significant change to my working hours and no longer wish to be included in SmartPension.

I confirm that I have read and understood the SmartPension booklet dated December 2007 and that I will no longer pay National Insurance Contributions at a reduced rate. I understand that I WILL NOT be automatically re-enrolled in SmartPension at the next renewal."
15. SmartPension refers to an arrangement where employees can make contributions into a pension scheme through salary sacrifice.

16. On 27 January 2016, Mr N signed the Lifestyle Event Opt-Out Form. He says he sent it to the BA address cited on the form. BA says it never received it.
17. On 28 January 2016, BA issued a letter (**Letter 1**) to the staff it had auto-enrolled into the Scheme. This letter constituted the enrolment information required by Regulation 9 of the Automatic Enrolment Regulations. BA produced a letter addressed to Mr N.
18. This explained BA's obligation to re-enrol certain employees every three years and who it affected. On page 1, it said in bold in a box:

"As you are currently not in a qualifying BA pension scheme and have previously opted out of a qualifying BA pension scheme more than 12 months ago we are enrolling you into a pension scheme – the British Airways Retirement Plan (BARP) on 1 January 2016 (your automatic re-enrolment date)."

19. Immediately underneath this text box, under the bold heading '**What does this mean for you?**' the letter then set out how the Scheme worked.
20. On page 2 it explained SmartPension:

"SmartPension

When you join BARP you will automatically be enrolled in SmartPension...you can remain a member of BARP without participating in SmartPension if you wish. To opt out of SmartPension, you should confirm your wish to opt out of SmartPension in writing to pay services."

21. On page 3 it explained the process for opting out of the Scheme:

"Opting out

You can choose to opt out of BARP if you want to, but you will be automatically re-enrolled into a qualifying pension scheme at a later date (usually at least every three years).

To opt out, you need to complete and submit the opt-out form on the BARP website, which can be accessed through Reward@BA."

If your completed opt-out form is received between 28 January 2016 and 27 February 2016, you will be removed from the pension scheme. Any payments you have already made will be refunded through payroll, and you will be treated as if you were never an active member of BARP on this occasion."

22. On 4 February 2016, WTW sent a letter (**Letter 2**) to the staff BA had re-enrolled, along with a guide entitled "British Airways Retirement Plan – Your Guide" (**the Guide**). In Letter 2, it was stated:

"If you do not wish to be a member of the Plan, for example because you have protected existing pension savings from the lifetime allowance...you must

complete the opt out notification on the BARP website within 1 month of joining BARP. This means you will be treated as though you never joined BARP on this occasion.”

23. On page 2 of the Guide, the following was stated:

“Important: If you have built up significant pension benefits and previously elected Fixed or Enhanced Protection to reduce any Lifetime Allowance charges, you will need to take steps to make sure that you do not start building up pension benefits in BARP if you do not want to invalidate your protection.

Please see the Reward@BA pages of the BA intranet for more information.”

24. In late June 2016, Mr N realised that pension deductions were being taken from his salary. He says he subsequently contacted BA about this.

25. On 19 July 2016, Mr N says he completed and sent a second Lifestyle Event Opt Out Form to BA. His intention was to opt out of the Scheme. However as this was not an effective auto-enrolment opt out, he remained a member accruing benefits as a result of which he lost his fixed protection.

26. On 22 July 2016, a Managing Director of the British Airline Pilots' Association (**BALPA**) suggested that Mr N compose a letter to Her Majesty's Revenue & Customs (**HMRC**) explaining that his FP14 had been lost due to being auto-enrolled.

27. On 29 July 2016, BA emailed Mr N suggesting that he detail the full circumstances that led to his auto-enrolment.

28. On 30 July 2016, Mr N emailed BA with a summary of the situation. He said: -

- He left NAPS in 2013 and the funds were now with Scottish Widows and managed by Brewin Dolphin.
- As the value of his fund exceeded the LTA, he took out maximum protection which was to the value of £1.5m.
- The protection for lifetime allowance has the condition that he was not allowed to contribute to any further pension plan.
- In October 2015, he was diagnosed with cancer and began a series of tests and appointments to investigate treatment options. These were ongoing and he was currently waiting for an operation.
- He completed and sent an opt out form but had been totally consumed by cancer investigations and an upcoming knee operation that he did not follow up on whether this had been received. He was off work from January to June 2016.
- He did not notice salary deductions were being made until June 2016 when he began to gather tax information in order to do his annual return.

- He had spoken to WTW; it had said that it was unable to cancel his pension. It said his protection had been lost and that an appeal to HMRC was the only way forward.
 - He was aware that the problem was of his own making in not following through on the opt out process. He had looked for a copy of the opt out letter but could not find one.
29. On 1 August 2016, BA replied saying it was working with its advisors to find out what could be done in relation to his protection. It said Pay Services had received a SmartPensions opt out form for Mr N, which would be actioned but this was not the correct form to opt out of BARP completely, and instead, was for opting out of salary sacrifice. It said that if he wished to opt out entirely, he should follow the instructions in the letter which he received in January 2016.
30. On 2 August 2016, Mr N responded to BA saying:
- “I’m afraid I’m now thoroughly confused. Firstly, I’m not aware of having received any letter about pensions and secondly the opt out form you have referred to is the only form I can find on ESS and the only one I’ve ever been directed to by BA managers.”
31. On 31 August 2016, Mr N sent a letter to HMRC outlining his situation.
32. On 11 October 2016, HMRC replied saying that the loss of LTA protection was a statutory condition, with the exception that one could opt out within 30 days of being automatically enrolled. It said that the legislation at paragraph 12, Schedule 36 of the Finance Act 2004, which governed the rules regarding enhanced and fixed protection, did not offer a discretionary option of reasonable excuse that members could rely upon in an event where they lost their LTA protection.
33. On 21 October 2016, Mr N responded to HMRC saying: -
- He had completed a Lifestyle Event Opt-out Form in order to not be automatically enrolled into SmartPension at the next renewal. Further, his employer was aware that that he had asked for the correct form to stop him being automatically enrolled at the next renewal.
 - He was unaware that the form had been ignored and that he had been enrolled into the Scheme.
 - He did not realise that he was making contributions into the Scheme as his payslips were not sent physically or by email but were held on a website. He did not access the website until June 2016 due to his ill health.
34. On the same date, Mr N wrote to The Pensions Advisory Service (**TPAS**) saying that he had completed an opt out form which was not processed. Although he took action as soon as he discovered the error, he has been told by BA that it was unable to cancel the existing pension account.

35. On 29 November 2016, HMRC sent a letter to Mr N asking a series of questions, most of which requested supporting documentation for the circumstances which Mr N had outlined.
36. On 16 December 2016, Mr N responded to HMRC with the information requested.
37. On 3 February 2017, HMRC sent Mr N a letter saying it had carefully assessed his case and the difficult circumstances involved, but it could not be considered that he fell within the exception provided by the relevant legislation, in which he could retain his LTA protection whilst being a member of the scheme.
38. On 11 May 2017, TPAS sent a formal complaint letter to BA on Mr N's behalf including four grounds of complaint:
 - BA failed to provide him with adequate notice of his reenrolment in accordance with Regulation 2 and paragraphs 1-15 and 24 of Schedule 2 of the 2010 Auto-enrolment Regulations.
 - BA failed to provide him with adequate information about his right to opt out and the process for doing so.
 - BA failed to tell him that the opt-out notice he completed was inadequate and to give him a further two weeks in order to make a valid opt out (as required by regulation 9(7) of the 2010 Regulations.
 - Mr N should not have had to follow this up himself, as the duties on the employer were set out clearly in the legislation.
39. On 27 June 2017, BA responded saying that Mr N had been provided with adequate notice of his re-enrolment into BARP and it had acted in accordance with legislation.
40. Mr N subsequently referred his complaint to this Office.

Summary of Mr N's position

41. He was undergoing stressful and worrying diagnostics between December 2017 and April 2018.
42. He walked into a 'perfect storm' and feels the re-enrolment process was a form of entrapment because the process was unnecessarily vague.
43. BA should have told staff about auto-enrolment in the months before enrolling them including accurate and detailed information about how to opt out, rather than 29 days after enrolment had taken place.
44. During his phone calls with WTW and BA he made it clear that he was not allowed to contribute to any pension plan. Both told him incorrectly that the opt out had to be completed before 31 January 2016.

45. BA could have trained their staff better in the processes and dates and relayed correct information to WTW before they sent their letter, but the staff he talked to clearly did not have a clue what to do at the time he phoned.
46. He completed a Lifestyle Event Opt Out form, which transpired to be the incorrect form, and posted this to BA using a first class stamp. The form was downloaded from the BA pensions website and set out what it was expected to achieve. He did not follow up on whether this was received due to his circumstances at the time and as he was not sure (at the point he sent it) whether it was relevant.
47. BA did not direct him to the correct form. Further, BA's website and the Lifestyle Event Opt Out form did not make the opt out process clear. Specifically, BA told him incorrectly that the form was on the BA intranet when the correct procedure was entirely online. No-one told him that he needed to log in to BARP to find the right form. At the time he was unaware that he was even a member of BARP so he had no cause to look further than the form which he found when he followed the directions given to him. He did not know that he had been re-enrolled at that point.
48. He believed that the Lifestyle Event Opt Out form he completed in January 2016 was received by BA then lost by it. BA therefore failed in its duties to: point out that he had completed the wrong form or inform him of the correct procedure and extend the opt out deadline by a further two weeks.
49. He did not receive Letter 1 or Letter 2.
50. BA claimed that it sent instructions on how to opt out in a letter of 28 January 2016. This letter would therefore have arrived two days after he had acted on information obtained directly from BA on how to opt out.
51. Having now read Letter 1, he considered it was insufficiently worded to have made him realise that he had followed the incorrect procedure. For example, it stated that he had been automatically enrolled into SmartPension – he had completed a form opting out of SmartPension. Further, Letter 1 said he would find the opt out form on the BA HR intranet site, this was where he found the Lifestyle Event Opt Out Form he completed. In contrast, Letter 1 suggested that if he wanted to opt out of the salary sacrifice arrangement, he would only have to email the Pay Services Team.
52. It was clear from BA's reply of 27 June 2017 that many other BA employees were misled by BA's poorly worded letter with regard to how to opt out.
53. He wished for the arrangement to be unwound so that he could be treated as if he never joined, to allow FP14 to be retained.
54. BA had stated that it would have been administratively burdensome to keep records of all employees who had told it they had some form of tax protection. He disagreed; there was a mass of personal and individual information kept by BA on its employees, so the recording of fixed protection would have been very simple to achieve.

55. BA had said that it supported him in the auto-enrolment/opt out process, but proper support would have involved providing him with the correct method of opting out on 27 January 2016.
56. BA was wrong in its belief that auto-enrolment staff had been briefed and specifically told that the opt out process was via the BARP website.
57. BA's answers to The Pensions Ombudsman's investigation reinforced what he was told by it, which is that it would be too expensive to keep records of staff that had opted out of NAPS.
58. He had in place a 'Fixed Protection' for his pension which had been lost entirely due to the actions of a third party. This effectively meant that no protection had been afforded to him.
59. Enrolling in a pension was not an action he carried out but one that was made on his behalf. The protection should operate satisfactorily for him even if he had been totally incapacitated. Even BA's misinformation and lost documents should not endanger the protection.
60. The legislation, BA and WTW had failed to provide any protection. If there was protection, it should not allow a third party to destroy it without his specific instructions.
61. By opting out of applying an exemption for his class of staff, BA deliberately chose to put his fixed protection at risk and should be responsible for the subsequent fallout. The "practical issues in application" put forward by BA for this was a red herring. There were many legally enforced protections that BA monitored without any difficulty and it had a huge amount of information about all its employees that it monitored and legally complied with on a regular basis without any practical issues.
62. In terms of BA having to assess him on his re-enrolment date, it enrolled him 29 days before bothering to tell him that it had done so and gave him incorrect information when he asked for it, two days before writing a letter informing him of a fait accompli. There was no wonder that he found himself in the position he was in.
63. Incorrect dates were given to him by both BA and WTW; BA was wrong in its assertion that WTW would not have responded this way. The form he was directed to was photographed and later uploaded to Google Drive on 4 February 2016 (he had provided a screenshot proving this) so he disputed BA's assertion that it did not receive this. Further, losing it should be its problem, not his.
64. BA should have notified him of his re-enrolment on his re-enrolment date, not 29 days later. In any case, he had already opted out following the instructions of Pay Services. BA lost the letter.
65. It had been insinuated that he did not send the document opting out in January 2016. If this was the case, then he would maintain that BA also did not send him its

documents using a satisfactory form of secure delivery. He regularly received documents for another retired BA staff member living in his village.

66. BA's contact centre had said it did not keep notes of phone conversations. This was unlikely, BA records virtually everything.
67. BA said it was reasonable to re-enrol an employee who had told it that they had fixed protection and that it deemed opting-out to be an employee responsibility. This contradicted the guidance on The Pensions Regulator's website directed at employers.
68. BA's position on re-enrolment did not address employees who were incapacitated during the relevant period.
69. In terms of the information BA and WTW said it sent to him in January and February 2016, knowing that he was ill, adequate support should have been given to him, but was not.
70. Overall, no attempt was made by BA to protect his fixed protection and no contingencies had been put in place for employees who were incapacitated during the re-enrolment period.

Summary of BA's position

71. Mr N said that he had not been provided with adequate notice of his re-enrolment into BARP. However, Letter 1, sent to his home address on 28 January 2016, included information on his membership. He also would have received Letter 2 and the Guide, sent by WTW on 4 February to his home address. Hence, the provision of information was compliant with auto-enrolment legislation.
72. It was not able to provide evidence of the address which the auto-enrolment letters were sent to but could confirm the address it held for Mr N since 2003.
73. On page 3 of Letter 1, it was stated that members can opt out between 28 January 2016 and 27 February 2016 through the BARP website. There was a specific paragraph about Fixed Protection and the risk of losing this if members did not opt out by the deadline.
74. Letter 2, which Mr N would have received from WTW, also advised how to opt out.
75. Pay Services had no record of receiving Mr N's SmartPension opt out form in January 2016. During the re-enrolment period, Pay Services did have a process where they contacted the member and checked that they were actually trying to opt out of BARP. However, as no such form was received, this check could not be carried out in Mr N's case.
76. It did receive a SmartPension opt out form on 22 July 2016 which was processed. Once BA was made aware of Mr N's situation, steps were taken to assist him through the correct opt out process and in drafting a letter to HMRC.

77. It had checked its files and asked the employee centre but there was no record of Mr N contacting it in 2013 in relation to his FP14 certificate.
78. In terms of Mr N's call to BA around 27 January 2016 in relation to how to opt out, the BA contact centre had confirmed that it did not keep notes of phone conversations. WTW had also confirmed that it had no record of a call in January 2016. The first contact it had from Mr N was on 7 July 2016.
79. In terms of the process for opting out, members would have needed to access the form via the BARP website. The opt out screen was present on the home page to make it easy for members to identify. Upon entering the BARP website, members would have seen tiles which had certain popular options (including opt out) and a menu bar at the top. Someone wanting to opt out could either select the relevant tile or from the menu bar select "I want to update my Plan Status/Opt out" - either route would take them to the opt out screens which they would then follow through.
80. Further, Mr N would not have needed separate BARP log in details in January 2016, he would have been able to log on using single sign on from the BA intranet. He would have only needed his employee credentials that are used to sign in to the BA systems.
81. It had acted in line with auto-enrolment legislation.
82. It considers it reasonable to re-enrol an employee who has told it that they have fixed protection and deems it appropriate for opting-out to be an employee responsibility. For this reason, it sends clear communications notifying colleagues that they are going to be enrolled/ re-enrolled, and which explain the process for opting-out.
83. The law does not require it to not re-enrol an employee who has told it that they have fixed protection. Although the law changed to make enrolment of these jobholders discretionary, it was a discretion and not a prohibition.
84. As an employer of circa 40,000 colleagues, it would be administratively burdensome to keep records of all employees who had told BA that they have fixed protection or other forms of tax protection, and for BA to assess, each time it came to auto-enrol or re-enrol a particular jobholder, what are reasonable grounds to believe the jobholder has tax protection, and whether or not to re-enrol them. It appreciated that there was a risk of enrolling or re-enrolling colleagues with tax protections, however, this risk could be readily resolved by the colleague opting-out within the opt-out window.
85. It considers its responsibilities to be as follows: (i) to comply with auto-enrolment legislation; (ii) to provide clear communications to colleagues; and (iii) to enable employees to make their own decisions.
86. It met these responsibilities and satisfied its duty of care to all employees by providing clear communications and detailed information to all jobholders, including information that is specifically for the attention of employees who have fixed protection.

87. An employee must take responsibility for their individual circumstances as they are best placed to do so. It appreciates this means that it needs to provide employees with clear and accurate information enabling them to take the appropriate action, and believes it does this. It is highlighted through internal communication channels when the re-enrolment date is coming up and employees are sent communications from the pension scheme informing them that they are going to be enrolled/re-enrolled, and explaining how they can opt out.
88. It had fully supported Mr N during this process and had taken all actions possible to assist him in seeking to retain his fixed protection, for example by helping him prepare the letter that he sent to the HMRC appeals panel in August/September 2016.
89. In terms of the telephone call which Mr N said took place between him and WTW where it apparently said it did not know how to opt out and to ask BA, it did not believe that WTW would have responded in this manner. WTW would have been aware of the opt out process via the BARP website that it ran. Further, the People Services team were briefed ahead of the auto-enrolment, which included being told that the opt out process was via the BARP website.
90. Mr N had also said that an employee of BA had said BA considered it too expensive for BA to keep records of staff that had opted out of NAPS. It strongly disputed that such a reason would have been given; the reasons are as detailed above.
91. There was no evidence that the fixed protection certificate was sent to it.

Conclusions

92. The overall situation which Mr N finds himself in is one with which I sympathise. It is clear that during the time that Letter 1, Letter 2 and the Guide were sent, he was undergoing a difficult time in his personal life due to matters concerning his health. It may also be that circumstances such as missing post, have not been helpful to Mr N's situation. However I do not consider that I can provide him with the remedy which he seeks for the following reasons.
93. I am satisfied that BA complied with the auto-enrolment regulations and that being so, there are no grounds on which I can reverse Mr N's enrolment. It is not mandatory for employers to enrol employees who have fixed protection, neither does it contradict the law or the Regulator's guidance if they do so. An employer has a discretion whether to re-enrol such employees. Guidance on The Pension Regulator's website reflects that discretion, explaining that employers can "choose to re-enrol" any staff member that has primary, enhanced or fixed protection from tax charges on their pension savings. I find it extremely difficult to foresee a situation where an employee who has opted out because they have fixed protection is likely to benefit from being re-enrolled because it is a condition of their retaining their FP that they do not contribute to a pension scheme. It is somewhat surprising then, that there is no suggestion in the guidance that employers should take note of when an employee has fixed (or any other) protection and remove them from the re-enrolment exercise

altogether, but there is none. I conclude that in deciding to enrol employees in Mr N's situation, BA were acting compatibly with the law and Regulatory guidance.

94. Mr N knew he was at risk of being re-enrolled in January 2016. He was not misled by BA into thinking that, because they knew about his fixed protection, they therefore would not enrol him. Mr N was sufficiently well informed to understand the impending problem but despite trying, he could not find a way to avert it.
95. Mr N maintains that BA failed to explain the opt out process to him in advance of his being auto-enrolled. However, I find that the communications which BA issued to its enrolled employees complied with the Regulations and I cannot see any reason to hold BA to a higher standard.
96. Mr N considers that BA failed to direct him to the correct on-line opt out form when he made a phone enquiry in January 2016 and says the information which they did give him at that point was misleading.
97. To uphold a complaint of this nature I have to have evidence that there was a clear and unequivocal statement upon which the complainant relied to his detriment. In this case no record exists of the January call. There is therefore no way of ascertaining exactly what Mr N asked or what the answer was. Mr N has himself observed that the people he spoke to at the time did not appear to understand the process he was asking about. There was also the complication that for entirely understandable reasons he did not know he was looking for the BARP opt out process and could not himself have communicated this. There is insufficient evidence from which I can conclude that Mr N was told to use the wrong form.
98. BA says it undertook an exercise whereby upon receiving a Lifestyle Event Opt Out form during the reenrolment window, it checked with members what their intentions were to ascertain whether they were trying to opt out of Scheme membership as well. BA plainly foresaw scope for confusion arising out of the two parallel processes and tried to do something to remedy it. However, I accept that BA could only address this issue if it had actually received a Lifestyle Event Opt Out form and in this case they have no record of receiving it. There is unfortunately no evidence of what happened to the form which Mr N says he posted in January. It was not sent in a trackable manner and it is impossible to ascertain whether it was delivered to BA or not. There is no evidence from which I can conclude it was most likely received but lost by BA. I cannot therefore find any administrative error arising out of a failure to respond to it.
99. I turn now to the communications which were sent to Mr N to explain his re-enrolment and right to opt out. I appreciate there was potential for confusion between BARP and SmartPension and have therefore looked closely at whether these concepts were sufficiently well differentiated in the explanations given by BA. I am satisfied that the content of letters 1 and 2 told employees in Mr N's situation that they had been enrolled into BARP and also into SmartPensions in two distinct sections, that they explained the difference between those two things and that there were two different opt out processes which staff needed to consider separately. I consider that had Mr N

received and read letters 1 and 2, the information they contained was sufficient to make him aware that he was enrolled in BARP and set out the steps he would need to follow to opt out again.

100. Mr N says that because the first letter would have arrived two days after he had sent an opt out form he would not have realised he needed to opt out again. I do not think this argument can succeed because letter 1 is clear on its face, explaining the difference between BARP and SmartPension and the opt out process for each.
101. I appreciate that Mr N does not recall receiving these letters but BA can demonstrate that it holds the correct address for Mr N and I consider it more likely than not that the letters were sent, and either did not arrive or for understandable reasons, were overlooked.
102. Whilst I have regard to the difficult personal circumstances forming the background of this complaint, I am not able to find that BA made any legal or administrative error that caused Mr N to fail to opt out. I therefore cannot provide the remedy he needs to retain his fixed protection. His only remedy in these circumstances lies through an appeal of HMRC's decision.
103. Therefore, I do not uphold Mr N's complaint.

Karen Johnston

Deputy Pensions Ombudsman
3 December 2019