

Ombudsman's Determination

Applicant	Mr M
Scheme	Direct Line Group Personal Pension Plan (the Plan)
Respondent	Fidelity International Ltd (FIL)

Outcome

1. I do not uphold Mr M's complaint and no further action is required by FIL.

Complaint summary

2. Mr M's complaint is that FIL has refused to refund contributions he made into the Plan following his automatic enrolment. Mr M says that had he been made properly aware that he was being enrolled in the Plan, he would have opted out from the outset.

Background information, including submissions from the parties

3. Mr M was auto-enrolled into the Plan on 18 October 2017. His Employer deducted monthly contributions from his salary with effect from October 2017.
4. FIL, the Administrator, sent Mr M a welcome pack (**the Pack**), dated 25 October 2017, which confirmed his enrolment date. Besides the provision of other plan information, the Pack stated that:-

"How can I leave my pension plan?"

You can leave or 'opt out' at any time...

- If you opt out of the Direct Line Group Personal Pension Plan on or before the 28 November 2017 then you will no longer be treated as a member of the pension plan and your employer will refund any contributions paid to you.
- If you opt out after the 28 November 2017 then your contributions will remain invested in the plan until you decide to retire....
- Due to legislation, you may be re-enrolled into the pension plan automatically at a later date..."

5. The Pack also contained:-

- A Contributions Explained leaflet.
 - A Key Features Document.
 - Policy Conditions.
 - Policy Schedule.
 - Expression of wish form.
6. A password and details of FIL's online service, PlanViewer, were also sent so that Mr M could track the Plan's progress.
 7. FIL sent Mr M an annual benefit statement in September 2018, which showed the progress of the Plan to date.
 8. Contributions ceased when Mr M opted out of the Plan during a telephone call to FIL on 19 July 2019.
 9. Mr M requested a refund of his contributions and raised a complaint when he was told a refund could not be paid.
 10. FIL responded to Mr M on 24 July 2019, stating that:-
 - Mr M's Employer had auto-enrolled him into the Plan as it was legally required to do.
 - Mr M acknowledged that he had received the Pack sent in October 2017.
 - Because he had not opted out by the regulatory opt out deadline of 28 November 2017, a refund of contributions was not permitted under auto-enrolment legislation.
 11. Further correspondence ensued between the parties, and FIL maintained that it would not be possible for Mr M to receive a refund.

Adjudicator's Opinion

12. Mr M's complaint was considered by one of our Adjudicators, who concluded that no further action was required by FIL. The Adjudicator's findings are summarised below:-
 - The Adjudicator was of the opinion that Mr M was given sufficient information and in good time, affording him the opportunity to opt out of the Plan before the regulatory deadline of 28 November 2017. Mr M had not opted out before the regulatory deadline and therefore, under the prevailing legislation, FIL could not now refund his contributions.
 - The Adjudicator noted that Mr M made a sizeable monthly contribution to the Plan after he joined in October 2017. She was of the view that it was reasonable to have expected him to query this much earlier than the summer of 2019. He

needed to take action by 28 November 2017 but did not contact FIL until 19 July 2019.

- While Mr M had now opted out, he would face re-enrolment at his next re-enrolment date unless he took steps to opt out again at the appropriate time.

13. In response to the Adjudicator's Opinion, Mr M said:-

- The matter was one of his word against that of FIL and his Employer.
- He agreed that he should have known, if he had paid more attention.
- If he had known the law on pensions, he would have known what was expected, but he did not know, because his employer did not inform him of the correct process.
- It was easy for people who work in the field of pensions to make assumptions and to know the law on pensions, and easy [for such people] to understand the terms and conditions. People like him, however, had never been involved in pensions and had been taught nothing about the subject. This was why he had not understood about the requirements of the Plan.
- He said that, during his training period, he and a group of new staff attended a pensions meeting with the Employer, but Mr M had asked no questions at that meeting because he was new.
- He did not recall being told anything about being able to opt out and believed he had been told at this meeting that membership of and contribution to the Plan was mandatory.
- He did not know who FIL was and thought its letters were irrelevant junk mail which he did not open. In a second submission, however, he said FIL had never sent him the Pack, and that had he received it, he would have contacted FIL to establish who they were and would then have chosen to opt out.

14. Mr M did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr M provided his further comments as set out in paragraph 13 above, which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the points made by Mr M for completeness.

Ombudsman's decision

15. With regard to the information provided to Mr M and when, he has stated that he attended a group meeting at which the Employer explained about the Plan. Mr M says he was told that membership was mandatory and that he asked no questions at the meeting. However, I have seen no evidence that Mr M was informed that membership of the Plan was mandatory.

16. The purpose of the Pack sent to him by FIL was to ensure all the salient information was available to Mr M and that anything he might have misunderstood or not heard during the meeting would be set out in writing for his information.
17. The Employer delegated administration of auto-enrolment to FIL. This means FIL had the responsibility of ensuring the enrolment process was correctly carried out, including informing Mr M of the statutory opt-out provisions and other terms and conditions applicable to the Plan.
18. The information contained in the Pack provided by FIL was intended for Mr M to make sure he was fully informed before the deadline for opting out. Having reviewed the Pack, I agree with the Adjudicator that Mr M was provided with sufficient information in a clear format to enable him to opt out by the deadline. However, I have seen no evidence that Mr M took any action before July 2019.
19. FIL's telephone number and website information were contained in the Pack so that Mr M could clarify any particular points if he needed more information. He was also given access to his account online so he could check his Plan's progress.
20. I do not expect Mr M to be an expert on pensions but I consider that he was given sufficient opportunity to query information about the Plan and was offered various alternative ways to do so. Consequently, I am of the view that Mr M had the opportunity to have learned of the correct position with regard to the opt-out in time to exercise his choice.
21. Having reviewed the papers, I note that Mr M agreed with FIL that he had received the Pack, so he had the opportunity to read it. Accordingly, I do not accept his assertion that either he did not receive it, or he mistook it for junk mail and for that reason did not read it.
22. The Occupational and Personal Pension Schemes (Auto Enrolment) Regulations 2010, state that an active member who wishes to opt out must do so by giving their employer a valid opt-out notice within a period of one month beginning with the later of -
 - (a) "The date on which the jobholder became an active member of the scheme in accordance with regulation 6(1), or
 - (b) The date on which the jobholder was given the enrolment information."
23. Mr M did not give such a notice to his Employer within the specified period of time. Under prevailing statute and regulations, he is no longer entitled to a refund of contributions, although he can transfer to an alternative provider, should he wish to do so.

CAS-35261-J8P8

24. I do not uphold Mr M's complaint.

Anthony Arter

Pensions Ombudsman
19 February 2020