

Ombudsman's Determination

Applicant	Mr N
Scheme	NOW: Pensions (the Scheme)
Respondents	NOW: Pensions Trust (the Trustee)

Outcome

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

Complaint summary

2. Mr N has complained that he was opted into the Scheme in error. He considers that the compensation being offered by the Trustee is insufficient and an award of £500 would be more appropriate given the distress and inconvenience he has suffered.

Background information, including submissions from the parties

3. On 11 December 2015, Mr N was automatically enrolled (**auto-enrolled**) into the Scheme by his employer (**the Employer**). Now: Pensions Ltd (**the Scheme administrator**) issued Mr N with an enrolment notice by email to confirm this.
4. Shortly afterwards, Mr N requested that the Employer opt him out of the Scheme.
5. On 23 December 2015, the Employer incorrectly updated its system to change Mr N's auto-enrolment commencement date. This meant that Mr N was not opted out of the Scheme as he had requested, rather the enrolment start date was changed. The Scheme administrator issued Mr N with a new enrolment notice by email.
6. On 30 December 2015, Mr N was successfully opted out of the Scheme. The Scheme administrator sent Mr N an email to confirm this.
7. On 12 January 2016, the Employer erroneously re-enrolled Mr N into the Scheme. The Scheme administrator issued Mr N with an enrolment notice via email and employee contributions were deducted from his salary.
8. On 31 May 2018, Mr N complained to the Scheme administrator that he had wrongly been enrolled in the Scheme and so had accrued retirement benefits in the Scheme.

9. On 7 August 2018, the Scheme administrator responded to Mr N's complaint and explained that:-
 - It had not received contributions in relation to Mr N's auto-enrolment from the Employer.
 - It had reported the Employer to the Pensions Regulator for failure to pay employee contributions in a timely manner.
 - Once it has received the contributions from the Employer, it would be able to provide a response to the complaint including a retirement benefit calculation.
10. On 12 February 2019, the Trustee responded under stage one of its Internal Dispute Resolution Procedure (**IDRP**). The Trustee said:-
 - Mr N's fund value varied because when contributions are due to be invested, units are purchased for investment purposes to the value of the contribution. Unit prices vary day to day, therefore different amounts are purchased.
 - The Scheme is designed for long-term investment which means the varying unit prices can cause the fund to go up as well as down. In addition to this, administration charges are taken each month and annually. Therefore, the fund value is not likely to match the original contributions; it could be higher or lower.
 - The Trustee asked Mr N for his desired outcome for the complaint.
11. On 1 March 2019, the Scheme administrator provided a further response under stage one of its IDR. It emphasised the points made by the Trustee and explained that Mr N's employer had enrolled him into the Scheme.
12. On 14 March 2019, Mr N requested that the decision be reconsidered under stage two of the IDR.
13. On 16 May 2019, the Trustee provided its stage two IDR response. It said:-
 - The Scheme administrator received and processed Mr N's opt-out request on 30 December 2015.
 - The Employer then enrolled Mr N back into the Scheme on 12 January 2016 which overwrites any previous opt-out.
 - The Scheme administrator relies on data received from employers and on reviewing the second enrolment in January 2016, it agrees that it should not have been sent this information.
 - The Trustee offered Mr N a refund of his employee contributions totalling £172.33. Alternatively, as he was over 55, Mr N could choose a Small Lump Sum Payment (**SLSP**) of the total contributions invested which amounted to £344.66, less tax.

- The Trustee was unable to offer an additional sum for interest as it was the Employers' responsibility to ensure that the information provided was accurate. However, it had performed a unit adjustment to the fund which added £60.76 to the value.
 - The Trustee offered Mr N £100 for any distress and inconvenience caused.
14. On 15 June 2019, Mr N responded to the Trustee. He did not accept the offer of £100 as he felt that £500 was more in line with my guidance for distress and inconvenience.
 15. On 17 June 2019, the Trustee responded to Mr N. The Trustee said it had acted correctly in processing the data supplied by the Employer so it would not increase its offer of compensation. The Trustee offered a refund of employee contributions, a SLSP or a transfer to another provider.
 16. On 26 June 2019, Mr N responded to the Trustee. He felt that the auto-enrolment process was inadequate, and the conduct of the Trustee had fallen short of what can reasonably be expected. Mr N said that the Employer overturned his specific opt-out instructions and followed a course of action which he did not authorise them to take.
 17. On 2 July 2019, the Trustee responded to Mr N and confirmed its response under stage two of the IDRP.
 18. Mr N said that the Trustee owes him a duty of care which he is being denied. The Trustee have performed a "legally binding action" without his express consent and the offer of compensation is not in line with my guidance on such matters.

Adjudicator's Opinion

19. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator's findings are summarised below: -
 - Under the Pensions Act 2008, every employer in the UK must put certain staff into a workplace pension scheme and contribute towards it. The Scheme administrator said it is notified of enrolment dates by the Employer. The Employer will enter the enrolment date on its payroll system, and this information is shared with the Scheme administrator. Pension contributions are then deducted accordingly.
 - Once enrolled into the Scheme, a member has one month from the enrolment date to opt-out of the Scheme and receive a refund of their contributions.
 - Mr N was sent enrolment notifications on 11 December and 23 December 2015, and was successfully opted out of the Scheme on 20 December 2015.

- Mr N was sent a further enrolment notification on 12 January 2016, but did not request a further opt-out of the Scheme. The Scheme administrator has confirmed that deductions were taken from Mr N's salary each month from January 2016.
- Mr N asserts that the Trustee was aware of his intention to opt-out of the Scheme, but the Adjudicator found no evidence to suggest that the re-enrolment was a consequence of an error by the Scheme administrator or the Trustee. Rather, the Scheme administrator has acted on an instruction from the Employer in line with auto-enrolment principles.
- Mr N points to his communications with the Scheme administrator as evidence that it was responsible for the re-enrolment, but the Adjudicator felt that this was incorrect. The Scheme administrator acts on instruction from the Employer and in this case, the Employer wrongly notified the Scheme administrator of Mr N's enrolment date on three occasions.
- The Adjudicator's view was that it was not the role of the Scheme administrator to ensure that the information supplied by the Employer is correct. The Scheme administrator had acted on the instruction given by the Employer and so its action or inaction did not amount to maladministration.

20. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr N.

21. Mr N has said:-

- The behaviour of the Scheme administrator falls under some elements of the description of 'maladministration'.
- He does not believe he was sent an enrolment notice by the Scheme administrator following his re-enrolment on 12 January 2016 and if he had received this, he would have taken action.
- The Scheme administrator failed to recognise that he was enrolled, opted out and re-enrolled into the Scheme within "an unusually short space of time".
- The Scheme administrator failed to respond appropriately to a complaint email sent by him on 31 May 2018. It was only after his persistence in raising a complaint under stage two of the IDRP that the Trustee accepted "culpability".
- The Pensions Ombudsman guidance for non-financial injustice and the decision made in case number PO-13267 should be considered in this matter.

Ombudsman's decision

22. Mr N has complained that he was incorrectly opted into the Scheme in error in January 2016, and said that the level of compensation offered by the Trustee is insufficient.
23. Mr N references case PO-13267 which I previously determined. He considers the facts in that case should be taken into consideration in reaching a decision about his complaint. In PO-13267 the complaint was in relation to the incorrect and inconsistent valuation of the applicant's pension fund which does not have any relevance to the facts of Mr N's individual case or circumstances.
24. Mr N has specifically complained about the actions of the Scheme administrator and the Trustee. Mr N said that he did not receive the enrolment notice sent on 12 January 2016, and so was not notified of his enrolment into the Scheme. While this may, or may not, be the case, I would have expected Mr N to at least have noticed that contributions were being deducted from his salary each month which would have alerted him to the issue. The question here is not whether a notice was sent by the Trustee, or received by Mr N, but whether the Trustee was responsible for erroneously re-enrolling Mr N into the Scheme which would amount to maladministration.
25. There is no dispute that Mr N was opted into the Scheme in error in January 2016. However, I have found no evidence that this was because of the actions of the Scheme administrator or the Trustee. The Scheme administrator acted on instruction from the Employer, and the Trustee has correctly provided Mr N with the options available to him. I do not consider that there has been any maladministration on the part of the Scheme administrator or the Trustee in relation to Mr N's enrolment into the Scheme.
26. An award for non-financial injustice can only be considered where maladministration has been identified and so it follows that this will not apply to this complaint. It remains open to Mr N to accept the existing offer of redress from the Trustee if he so wishes.
27. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman

27 November 2020