

Ombudsman's Determination

Applicant	Mr S
Scheme	WM Morrisons section of the Aviva Master Trust (the Trust)
Respondents	Trustee of the Aviva Master Trust (the Trustee); Aviva

Outcome

1. I do not uphold Mr S' complaint and no further action is required by Aviva.

Complaint summary

2. Mr S has complained that Aviva automatically enrolled him into the Trust. Mr S has said:-
 - He was enrolled into the Trust without his knowledge.
 - Aviva sent the enrolment notification to a company website.
 - He is seeking £250 in compensation for the distress and inconvenience caused.

Background information, including submissions from the parties

3. On 1 November 2004, Mr S commenced employment with WM Morrisons (**the Employer**).
4. On 12 April 2019, Mr S was sent an email from Aviva (**the Enrolment Email**). Aviva explained that his Employer would automatically enrol him into the Trust with effect from 8 April 2019. Aviva included guidance on how he could opt out of the Trust. It said that he needed to notify his intention to opt out between 10 April 2019 and 9 May 2019.
5. On 13 May 2019, Aviva wrote to Mr S and explained that a pension had been set up.
6. On 20 May 2019, Mr S called Aviva and said that he had not been made aware of the opt-out period before he was auto-enrolled into the Trust.

7. On 28 May 2019, Mr S wrote to Aviva and asked it to investigate the issue.
8. On 18 June 2019, Aviva wrote to Mr S and said that the Employer confirmed he was eligible to join the Trust. It explained that it sent an email to his work email address, in April 2019, confirming his enrolment. This email also included instructions on how to opt out.
9. On 25 October 2019, Aviva wrote to Mr S to confirm contributions had ceased.
10. On 10 January 2020, Aviva wrote to Mr S in response to his complaint. Aviva reiterated that the Enrolment Email contained instructions on how Mr S could have opted out. However, Mr S failed to do this prior to the deadline.
11. Mr S referred the case to The Pensions Ombudsman (**TPO**) on 13 February 2020.
12. On 19 July 2022, Aviva said that the Enrolment Email was sent to the email address the Employer provided when it notified Aviva of the new joiners.

Adjudicator's Opinion

13. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by Aviva. The Adjudicator's findings are summarised below:-
 - The Adjudicator stated that Aviva was not at fault as it provided clear information to Mr S of how to opt out. While it is unfortunate that Mr S did not use his work email address, Aviva acted appropriately in sending the Enrolment Email to the email address provided by the Employer. He did not consider that Aviva adopted misleading tactics and was satisfied it acted in good faith.
 - Aviva confirmed that no contributions were ever actually paid into the Trust. Therefore, the adjudicator was unable to conclude that Mr S had suffered a financial loss. While he did not doubt Mr S found the process of opting-out frustrating, he was not satisfied that the Ombudsman would consider this inconvenience significant enough to warrant an award.
 - The Adjudicator stated that distress and inconvenience can only be awarded where the Ombudsman has found maladministration. Aviva sent the Enrolment Email, which contained details of how Mr S could opt out, to the address provided by the Employer. The Adjudicator was satisfied that no maladministration had occurred, and the complaint should not be upheld.
14. Mr S did not accept the Adjudicator's Opinion and provided his further comments, which do not change the outcome. As well as reiterating points that he had made previously, Mr S said:-
 - He has never said that he does not use the company email address, which in fact is a company website. He uses the company email every month to access his digital pay slip.

- Aviva sent the Enrolment Email to the company website and not an email address. He said this would have been obvious to Aviva as soon as they accessed the site. It is a complex site with multiple folders.
- The fact that Aviva could access his personal earnings history and personal details is a breach of the Data Protection Act. Aviva has a duty of care under the Data Protection Act to ensure they do not access people's private and confidential details.
- He has questioned whether he has the option to make a complaint against the Employer for breaching the Data Protection Act. This is due to them leaking his personal details by giving Aviva his private and confidential email and accessing his private details.

15. I note the additional points raised by Mr S, but I agree with the Adjudicator's Opinion.

Ombudsman's decision

16. Mr S has stated that Aviva sent the Enrolment Email to a company website and not an email address. However, Aviva has said that the Employer provided it with the email address as part of the information submitted for new joiners. Aviva has also sent us a copy of the Enrolment Email and this shows it was sent to the address provided by the Employer.
17. The Enrolment Email contained instructions if Mr S wished to opt-out of the scheme. The Pensions Regulator lists an email as a valid way of providing information, so I am satisfied Aviva acted correctly. I find that Aviva provided Mr S with enrolment information in a timely fashion and in a valid format.
18. I understand Mr S' frustration that he did not locate this email. However, I do not consider that Aviva acted inappropriately in sending the Enrolment Email to the email address provided by the Employer.
19. I have seen no evidence to suggest that Aviva breached the Data Protection Act. Aviva sent the Enrolment Email to the address provided by the Employer.
20. I am unable to comment on whether Mr S should make a complaint against the Employer. The complaint that was brought to my Office was made against Aviva, my findings are limited to actions taken by Aviva.
21. In conclusion, I find that no maladministration has occurred in relation to Aviva's handling of the enrolment process.

CAS-48041-Q1K0

22. I do not uphold the complaint.

Anthony Arter

Pensions Ombudsman

09 September 2022