

Ombudsman's Determination

Applicant	Mr T
Scheme	Aviva Staff Pension Scheme (the Scheme)
Respondents	Aviva Staff Pensions (Aviva)

Outcome

1. I do not uphold Mr T's complaint and no further action is required by Aviva.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr T has complained that the benefits he accrued in the Scheme during his employment, have been refunded back to Aviva.

Background information, including submissions from the parties

4. Mr T was a member of the Scheme between January 2005 and September 2006. Under Rule 10.3 of Scheme Rules (**Appendix 1**), as Mr T had less than 2 years' service and did not meet the qualifying requirements, he was only entitled to a refund of his contributions or a transfer. Mr T did not make any employee contributions, [so only his employer contributions would be refunded back to Aviva.
5. Aviva wrote to Mr T on 27 November 2006, advising him of his options to transfer and enclosing illustrations and transfer forms. The letter said if Mr T did not respond within three months, the employer contributions would be refunded to Aviva and he would lose his entitlement to a transfer value. The letter was correctly addressed.
6. Aviva did not receive a reply, so in May 2007, it refunded the employer contributions and Mr T lost his entitlement to a transfer.
7. Mr T has said he did not receive that letter and only become aware he had no existing benefits when he rang the Scheme in 2016.

Adjudicator's Opinion

8. Mr T'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 briefly below.
- The Pensions Schemes Act 1993 (**the Act**), and the Pensions Regulator Code (**the Code**), based on the Act, required Schemes to send a written notice to early leavers giving information on their rights to a transfer or a contribution refund. If they do not receive a reply then the default position is for schemes to refund contributions.
 - Aviva have provided evidence to show they sent a written notice to Mr T at his correct address. So they have evidenced that they followed the Act correctly and took the necessary steps before reverting to the default position of refunding contributions.
 - If Mr T did not receive the letter, it was reasonable to have expected Mr T to have enquired about the plan's position upon leaving, or have contacted the Scheme when he did not receive any annual statements or correspondence in the following years.
9. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr T provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr T for completeness.

Ombudsman's decision

10. When administering schemes, Trustees must follow the Scheme Rules and the governing legislation. The Pensions Regulator's Codes of Practice are drafted on the basis of the applicable legislation and provide a practical guide as to its application.
11. In this case, the Trustees have followed the guidance set out in the Code, and have therefore satisfied their requirements under the legislation. On this basis, I do not think that there has been any maladministration.
12. Mr T has argued that the Code is inadequate as it does not require schemes to send a second notice or chase a response, when no reply is received. Whether or not the Code is adequate is not what I must decide, it is whether Aviva have adhered to the Code. My role as an Ombudsman requires me to impartially look at a complaint and determine if the law and Scheme Rules have been applied correctly. In this circumstance Aviva have adhered to the Code and applied it correctly to Mr T's circumstances.

13. Mr T has said that the adjudicator has followed the Code to the letter, and argues that instead the spirit of the legislation and the Financial Conduct Authority's principle of 'Treating Customers Fairly' should be considered. The Treating Customers Fairly principle is not directly applicable to the Trustees, as they are not regulated by the FCA. However, ensuring members are treated fairly is at the forefront of my decision making. In that respect legislation and the Pension Regulator's Codes of Practice are also created to protect members and schemes and to ensure fair standards are applied. In this case, it ensures that members are notified of their rights and that a default position would always ensure they did not lose any money they had contributed. So, I think applying the legislation does reach a fair outcome and I would not be acting impartially or fairly to the Trustees if I upheld the complaint despite the Code being followed.
14. As was set out in the Opinion, I also have to take in to consideration Mr T's actions upon leaving employment. Mr T has said he did not receive the letter of 27 November 2007. As such it appears Mr T left the Scheme and did not have any communication regarding the benefits he had accrued or what the arrangements for administering these would be going forward. I believe it is reasonable that a member who considers they hold benefits in a Scheme, would at least make enquires about what would happen upon leaving employment if they had received no communication.
15. In Mr T's response he has provided an analogy to a dormant savings account. However, I consider this to be an entirely different circumstance for many reasons. The Scheme is governed by Rules, which the Trustees must follow upon a member leaving employment. Leaving Mr T's benefits untouched, was not an available option for the Trustees. Further the most notable difference is that Mr T did not make any contributions to the Scheme. If he had done, when no response was received, these would have been refunded.
16. Therefore, I do not uphold Mr T's complaint.

Anthony Arter

Pensions Ombudsman
19 January 2017

Appendix 1

Scheme Rules

10 Early Leavers

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10.2 Refund of contributions

A Member who leaves Service without becoming entitled to immediate benefits and who does not satisfy the qualifying requirements described in Rule 10.3 (qualifying requirements) will receive a refund of the proceeds of his or her own contributions to the Scheme (if any) less tax at such rate as applies from time to time. The Company may require the Trustee to use the balance of the Member's Retirement Account to meet any liability of the Employers to contribute to the Scheme. No other benefits will be payable to or in respect of the Member under the Scheme in respect of Service in the Money Purchase Section.

If the Member so chooses, the Trustee will provide a cash sum in accordance with Chapter 5 of Part IV of the Pension Schemes Act 1993 (early leavers: cash transfer sums and contribution refunds), instead of a refund of the Member's own contributions.

10.3 Qualifying requirements

A Member satisfies the qualifying requirements if:

- 10.3.1 the Member leaves Service with at least two years' Qualifying Service; or
- 10.3.2 a transfer payment in respect of the Member's rights under a personal pension scheme has been made to the Scheme; or
- 10.3.3 the Member is still entitled to benefits under the Scheme from a previous period of Service.

Appendix 2

Regulatory code of practice no. 4 Early leavers – reasonable periods

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The requirement to notify early leavers of their rights

9. When a member of an occupational pension scheme leaves pensionable service after three months and with less than two years' pensionable service and without vested rights to benefit under the scheme rules, they must be notified of their statutory rights to take a cash transfer sum or a contribution refund.

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- 12. Within a reasonable period of a member leaving service as above, trustees of the scheme must provide them with a written notice giving adequate information to explain: • the nature of the right acquired to a cash transfer sum or a contribution refund under the legislation¹¹;
 - the amount of both the cash transfer sum and contribution refund;
 - how and by when they may exercise the right; and
 - such other information as may be prescribed.

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Default procedure

29. Where a member does not reply to the trustees or managers to exercise the right to a cash transfer sum or contribution refund ^[21] within the reply period (or within that period as extended by the trustees or managers), the trustees or managers may, within a reasonable period from the reply date or from the end of any further period allowed by them, pay the contribution refund to the member. ^[22]

30. The Regulator would expect the trustees or managers to allow a period of one month after the reply date before paying a member a contribution refund (as an exercise of the default option).