

Ombudsman's Determination

Applicant	Mr H
Scheme	NEST (the Scheme)
Respondent	NEST

Outcome

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

Complaint summary

3. Mr H has complained that NEST failed to provide information about the restrictions on his ability to opt-out of the Scheme when he was auto-enrolled in July 2013. He subsequently missed the opt-out deadline, and only found out recently that he was unable to transfer his pension to another provider until age 55.
4. Mr H has also complained about NEST's delay in dealing with his complaint under its Internal Dispute Resolution Procedure (**IDRP**), following his request in January 2016.

Background information, including submissions from the parties

5. On 24 July 2013, Mr H was auto-enrolled into the Scheme, and NEST sent out a welcome pack, detailing the terms of the Scheme including information on the deadline to opt-out.
6. On 26 July 2013, Mr H called NEST as he had not yet received his welcome pack. NEST informed Mr H that this had been sent to him around 24 July 2013, and he should receive it shortly. It advised him to call back the following week if the welcome pack had still not arrived, so that a replacement could be provided. Mr H advised NEST that he intended to opt-out of the Scheme, and was given information on the ways in which to do this, and provided with his NEST ID number to enable him to begin the process. Mr H was told during this phone call that the deadline to opt-out was 25 August 2013, after which it would no longer be possible.

7. On 10 July 2014, Mr H says he received the welcome pack from NEST. He contacted NEST to advise it of this, and raise an issue with the incorrect name associated with his enrolment.
8. On 18 December 2015, Mr H called NEST to enquire about transferring-out of the Scheme. He was told that it was not possible for him to transfer, as legislation prevented such action until age 55. On 8 January 2016 this information was confirmed by letter.
9. On 16 January 2016, Mr H emailed NEST to request that the matter be dealt with as a complaint under the Scheme's IDRP. He maintained that he had not been provided with the welcome pack in 2013, and so was unaware of the deadline to opt-out. He said he was also unhappy about his inability to transfer his benefits out to another scheme. Mr H emailed NEST on a number of occasions to confirm his case was being appropriately escalated and, on 9 May 2016 he made a further complaint to NEST regarding its lack of response.
10. On 18 October 2016, Mr H contacted NEST again. He queried what the status of his complaint was, and expressed his dissatisfaction about the length of time taken to deal with the matter. Mr H contacted The Pensions Advisory Service (**TPAS**), who liaised with NEST to obtain its IDRP response.
11. On 6 December 2016, Mr H received the Stage 1 IDRP response from NEST. It upheld his complaint regarding the delays in providing a response, but no compensation was offered. It said that Mr H had been provided with information regarding his rights to opt-out of autoenrolment, referencing a welcome pack that was sent to him when he was first enrolled, and a telephone call in on 26 July 2013, where opt out was discussed in detail.
12. Mr H did not agree with NEST's decision, arguing that he did not receive the welcome pack until nearly a year after enrolment, despite chasing it. Mr H was unhappy with the length of time taken to deal with his complaint, and stated NEST should award compensation for his distress. The complaint was escalated to Stage 2 of the IDRP. In his submissions, Mr H did accept that the 26 July 2013 telephone call may have taken place, although he had no memory of it.
13. On 10 March 2017, NEST issued its Stage 2 IDRP decision to Mr H. It reiterated the point that Mr H had been provided with information on opting-out of the Scheme in the welcome pack, and during his telephone call of 26 July 2013. It also stated that information on the strict legislation on transfers-out of the Scheme was available on its website. Mr H was advised that the legislation which prevented transfers out of NEST before age 55 would be revoked from April 2017. It apologised again for the delays in dealing with Mr H's complaint, explaining that steps had been taken to ensure such an event did not happen again. NEST advised that it had discussed the matter with the Trustee, who had agreed that, whilst the delay was regrettable, it

would not be appropriate to offer compensation as NEST is a not-for-profit organisation and must be careful when spending members' money.

14. On 16 March 2017, Mr H complained to this office. He argued that he had not been made aware of the restrictions on transferring-out upon enrolling in the Scheme, and he would not have joined NEST if he had known. Mr H commented that the time taken to deal with his complaint under the IDRPs was excessive, and he was unhappy that although part of the complaint had been upheld, no compensation had been offered.

Adjudicator's Opinion

15. Mr H's complaint was considered by one of our Adjudicators who concluded that no further action was required by NEST. The Adjudicator's findings are summarised briefly below.
 - It cannot be agreed that NEST failed to provide information regarding restrictions on opting out of the Scheme. Whilst it is possible the welcome pack was not received in July 2013, NEST confirmed Mr H's options, and all information relating to opting out, including any deadlines, during a telephone call on 26 July 2013.
 - NEST received no further contact from Mr H until 2014, so it was reasonable for it to assume the documentation had been received by Mr H, and it had no reason to assume he had misunderstood the contents of the 26 July telephone call. It was not NEST's responsibility to chase Mr H regarding opting out.
 - The time taken by NEST to review Mr H's complaint was certainly excessive. However, NEST has explained that the delay was as a result of human error, and the position of this office is that an individual should not benefit financially from a human error.
16. Mr H did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr H provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr H in his email of 29 October 2017, for completeness.

Ombudsman's decision

17. Mr H has produced no new evidence to support his case. Reference has been made to existing points, and these are summarised below.
 - Mr H states that he was awarded compensation by NEST for a prior complaint relating to 'poor customer service', which was no worse than that of this case. He says that NEST's decision not to make an award on this occasion is confusing and inconsistent with its previous practices. Mr H has requested that details of the prior complaint be obtained for review against this matter.

- Mr H has argued that nearly all errors originate from some form of 'human' error, in some way, therefore he disagrees with the position that an individual should not benefit financially from a human error.
 - Mr H maintains that the Adjudicator should not have allowed NEST to refer his complaint back to its Stage 2 IDR panel, as the outcome was no different to the original decision. He says that this was inappropriate given that the main part of his complaint was regarding NEST's delays, and added to his distress.
18. I will first address Mr H's complaint regarding NEST's failure to provide information about the relevant time limits within which he needed to act if he wished to opt out. I find that on the balance of probabilities information about the deadline for opting-out, was relayed to Mr H during his telephone call with NEST on 26 July 2013. Mr H has confirmed that, whilst he does not recall this telephone conversation, it is entirely possible that it did take place. I note that Mr H says he received the welcome pack in July 2014. If he had expected to be able to opt out at that point I would have expected him to contact the scheme and try to do so at that point.. But he did not contact the Scheme again until over a year later, in December 2015 at which point he was enquiring whether he could transfer his accrued benefits to another provider. I can therefore see no evidence that Mr H was deprived of an opportunity to opt out by anything said or done by NEST.
19. Turning to his complaint that he could not transfer out, NEST were correct to explain that he could not transfer out to another provider until he reached the age of 55 but the restrictions on transfers into and out of NEST would be lifted in April 2017. There is no evidence that NEST provided incorrect information about this issue, that they prevented Mr H from transferring out when he should have been able to or that failure to understand the restriction caused him to stay autoenrolled when he otherwise would have opted out.
20. I now turn to what appears to be Mr H's main issue, which is NEST's delay in dealing with his complaint. Mr H has contested NEST's decision not to award compensation for his distress. He has argued that it previously made an award to him for a prior complaint relating to poor customer service, and he views NEST's position in this case to be inconsistent. Mr H has asked that I request details of the prior complaint.
21. The details of any past issue Mr H had with NEST are irrelevant to this case, so I will not be requesting this information. I understand that Mr H feels there is an inconsistency in NEST's approach to compensation, however, I cannot comment on the previous circumstances in which it considered an award to be necessary. Irrespective of whether NEST has previously offered compensation to Mr H for poor customer service, I must consider this case on its own merits, as a separate matter.
22. My role is to determine whether NEST's delay in answering Mr H's complaint under the IDR process amounted to maladministration and if so whether that caused Mr H injustice such that I consider an award is necessary to remedy it. I agree with the

Adjudicator that the delays by NEST were excessive. I find that the delay constituted maladministration but in this case I do not consider that an award is required. The delay cannot itself have caused financial loss. An award for non-financial injustice (i.e. distress and inconvenience) will only be made where the injustice suffered was significant. I acknowledge that Mr H will have experienced some inconvenience because he had to chase the progress of his complaint, however, I can see no evidence of significant injustice which has not been remedied by the apology already provided.

23. Neither the outcome of Mr H's complaint, nor his ability to exercise choices , were affected in any way by the delay. Therefore, I do not uphold Mr H's complaint.

Karen Johnston

Deputy Pensions Ombudsman
22 November 2017