

Ombudsman's Determination

Applicant	Mr T
Scheme	Faltec Europe Ltd (the Scheme)
Respondents	Aegon Plc (Aegon); Faltec Europe Limited (Faltec)

Outcome

1. Mr T's complaint against Faltec is upheld and to put matters right Faltec shall within 14 days pay to Mr T the refund of contributions due and £500 for the significant distress and inconvenience he has experienced. I do not uphold the complaint against Aegon.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr T has complained that he was auto enrolled into the Scheme without his agreement and Aegon and Faltec have refused to refund his contributions.

Background information, including submissions from the parties

4. Mr T became an active member of the Scheme when he was auto enrolled into the Scheme from 1 September 2015. He became aware of his membership of the Scheme when he received a letter from Aegon in February 2016. By this time Mr T had left Faltec.
5. Mr T says he did not wish to be a member of the Scheme and requested a return of his contributions. However, both Aegon and Faltec said that this was not possible as he had passed the one month opt out date.
6. Mr T continued to request a return of his contributions but Aegon and Faltec continued to repeat the message that a refund would not be possible as he had passed the one month opt out date.
7. Under the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (**the Regulations**) a request to opt out of a scheme must be received within 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)(a), or

(b) the date on which the jobholder was given the enrolment information.

8. Following the intervention of this office Aegon explained the background to the auto enrolment process as follows:-

- Faltec had selected Aegon to be the provider of auto enrolment pension plans for its employees. Aegon offers employers the use of its digital software, SmartEnrol to support them in relation to their auto enrolment duties. Use of the SmartEnrol system is conditional on the employer accepting its SmartEnrol terms and conditions.
- Faltec accepted the SmartEnrol terms and conditions and use the SmartEnrol system.
- Clause 2.6 of the terms and conditions requires the employer to provide Aegon with email addresses for all workers.
- Clause 2.7 of the terms and conditions says that if a worker does not provide a valid email address to the employer Aegon will send information to an email address provided by the employer (the default email address) and the employer shall be responsible for printing the email communication and passing it on to the worker promptly. Aegon will not be responsible for any failure by the employer to comply with its obligations under this section 2.7 or the consequences of it.

9. Aegon say that Faltec provided, as part of the set up for Mr T, basic details of his membership but did not provide a personal email for him. Aegon therefore issued correspondence regarding Mr T's membership of the Scheme to the Faltec default email address.

10. Aegon also say that it does not know if Faltec issued the letter and enclosures to Mr T and confirmed that Mr T did not log on to the SmartEnrol system to opt out within the prescribed period. As a result, Aegon issued to Mr T on 11 February 2016 a Scheme schedule and a copy of the terms and conditions.

11. On 25 February 2016 Mr T contacted Aegon by email and asked how he could receive a refund of contributions. Aegon replied on 7 March 2016 and said it could not provide a refund of contributions as the opt out period had expired. Mr T continued to pursue his request with Aegon who advised him that he should contact Faltec as it was its responsibility to issue the opt out notice.

12. On 24 April 2017 Faltec emailed Aegon to say that Mr T had paid into the Scheme when it "was having all the problems and he wasn't given the option to opt out." Aegon replied on 27 June 2017 and said that the plan could not be cancelled for Mr T until proof of the lack of opt out notice was received. Faltec replied to say:

“There has been some confusion here but not from our side. We have been very clear with Mr [T] in that he missed his opportunity to opt out of the scheme.”

13. Mr T continued to request a refund of contributions from Faltec but it maintained its position that it was unable to do so. Mr T therefore brought his complaint to this office.

Adjudicator’s Opinion

14. Mr T’s complaint was considered by one of our Adjudicators who concluded that further action was required by Faltec. The Adjudicator’s findings are summarised below.
15. Aegon has confirmed the circumstances in which a refund of contributions is payable. An employee has to give their employer a valid opt out notice within one month of the later of:
 - the date they became an active member of the scheme, or
 - the date on which they were given the required information.
16. Mr T joined the Scheme on 1 September 2015 but Faltec failed to provide Aegon with an email address for Mr T so the information pack including the opt out notice could not be issued electronically. Aegon therefore emailed the information to the Faltec default email address but it appears that Faltec did not print off the information and give it to Mr T, as by its own admission it was having problems at the time.
17. The Adjudicator was of the view that the failure to issue the documentation to Mr T amounted to maladministration and the matter could have been resolved before if there had been a willingness on the part of Faltec to admit to this oversight earlier. However, even when this course of action was proposed by Aegon in April 2017, Faltec continued to insist that no refund was possible.
18. On reviewing the complaint, the Adjudicator asked if Faltec would now be willing to confirm that no opt out notice had been given to Mr T. Faltec agreed to this proposal and this allowed Aegon to reissue the information pack to Mr T so that he could complete an opt out notice (which he has done) and for Faltec to pay a refund of contributions.
19. The Adjudicator also asked Faltec if it would be prepared to pay an award to Mr T due to the length of time it has taken to resolve this complaint which is now over two years.
20. Initially Faltec offered the sum of £50 but on reviewing the refund amounts the Adjudicator noted that Mr T would receive a refund of £42.37 and Faltec would receive £52 in respect of contributions. The Adjudicator therefore asked Faltec if it

would increase its offer to Mr T as otherwise it would result in a net gain to Faltec of £2. Faltec offered to increase the offer to £52.

21. The Adjudicator did not consider the offer made by Faltec to be satisfactory. Although Mr T only worked for Faltec for a short period of some three months it has taken over two years to resolve the matter. Mr T has made the point that he has spent a considerable amount of time phoning and emailing Aegon and Faltec and been frustrated in his attempts to recover money that is rightfully his.
22. Therefore, the Adjudicator was of the view that Mr T should be awarded a payment for the significant distress and inconvenience he has suffered and considered the sum of £500 to be appropriate. Although this sum is greater than the value of the refund of contributions it is in line with our guidelines for awards of this nature.
23. The Adjudicator did not consider that the complaint should be upheld against Aegon.
24. Faltec did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Faltec provided its 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 Faltec for completeness.
25. Faltec says that it does not dispute the sequence of events and wishes to resolve the case as soon as possible. However, Faltec does oppose the new level of compensation for the following reasons:-
 - (1) Faltec has actively engaged with the Pensions Ombudsman's office in a timely manner.
 - (2) An award of £50 was suggested by the Adjudicator and agreed by Faltec on 18 December 2018. The compensation amount was increased to £52.96 to ensure that Mr T received this amount in addition to his own contributions and that there would be no net gain to Faltec.
 - (3) As explained in the email correspondence of 3 April 2019, Faltec opposed a new payment of £200, suggested by the Adjudicator, and asked why the amount should increase to £200. There was no response from the Adjudicator.
 - (4) Faltec is also aware of an email from Mr T to the Pensions Ombudsman's office where he alludes to difficulties between himself and Faltec. The cost reduction activity which led to Mr T's departure was unfortunate and unavoidable. Faltec believes that Mr T harbours ill-feeling and bitterness towards the company and this should not be permitted to impact on decision or outcome on this complaint.
 - (5) Faltec feels that a level of award of £500 is the wrong decision in this case as:
 - £500 is 10 times the original amount proposed by the Adjudicator;
 - the minimum level of contributions concerned; and
 - Mr T's ongoing hostility towards Faltec is an unrelated matter.

Faltec request that the non-financial injustice award is reviewed impartially.

Ombudsman's decision

26. The way in which we assess an award for non-financial injustice is set out in a factsheet which can be found on our website under the following link:

<https://www.pensions-ombudsman.org.uk/wp-content/uploads/Updated-Non-financial-injustice-September-2018-2.pdf>

27. We also operate a system whereby Adjudicators have the ability to try and resolve complaints impartially without the need for a more formal procedure. In this case the Adjudicator attempted to resolve the complaint by making suggestions to allow Mr T to receive a refund of his contributions to the Scheme plus a small payment for the distress and inconvenience he had experienced. Initially the Adjudicator proposed a sum of £50 but on discovering that Faltec would also receive a repayment of £52.96 suggested that the payment should be increased to £200.

28. However, Faltec did not accept this proposal and were only prepared to offer an increase in the payment from £50 to £52, the sum it had received from the refund of contribution. The Adjudicator did not consider this to be appropriate and therefore increased the award to £500 which is the minimum payment in line with the guidelines I have set for non-financial injustice.

29. As mentioned in the factsheet each case is assessed on its own facts and merits and relevant factors that we may take into account include:

- If it was obvious that there was maladministration and whether the complaint could have been easily avoided or resolved at an early stage.
- How well did the respondent handle the applicant's complaint, and
- were there excessive delays that were extensive or readily avoidable by those responsible for handling the complaint.

30. I find that there were significant delays by Faltec in dealing with this complaint and these could have been avoided if it had readily accepted at an earlier stage that it had failed to provide Mr T with the opt out forms to allow him to opt out. There were instances where Faltec refused to accept that Mr T may have a right to a refund of contributions which led to frustration on his part and warrants a payment for the significant distress and inconvenience which Mr T suffered. Although the Adjudicator may have proposed a lower amount in an effort to resolve the complaint I find that a payment of £500 is reasonable in the circumstances and I therefore uphold Mr T's complaint against Faltec.

31. I do not uphold the complaint against Aegon.

PO-21412

Directions

32. Within 14 days of the date of this Determination, Faltec shall pay Mr T the refund of contributions due to him plus £500 for the significant distress and inconvenience he has experienced.

Anthony Arter

Pensions Ombudsman
10 June 2019