

Ombudsman's Determination

Applicant	Mrs N
Scheme	Aviva Staff Pension Scheme (the Scheme)
Respondents	Aviva

Outcome

1. I do not uphold Mrs N'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. Mrs N has complained that her membership of the Scheme has been cancelled without her knowledge. Mrs N says this has had a huge financial impact on her plans for early retirement and she would like her membership and pension to be reinstated.

Background information, including submissions from the parties

4. Mrs N began employment with CGU, now part of Aviva, in October 1998. In 2000 she was given an employment contract which confirmed she was enrolled in the pension scheme. The contract also said that if she did not want to remain in the pension scheme then she should write to the Secretary of Pensions in Perth. Mrs N says at the time she was working only 9 hours a week on a low salary and the contributions would have been minimal.
5. Mrs N says that in 2017 following a discussion with her manager she contacted the Staff Pensions Department to ask for a valuation of her pension benefits. A few weeks later she was astounded to receive a reply from Staff Pensions saying she was not enrolled in the Scheme. Mrs N says she contacted several departments to request proof that she had opted out of the Scheme and eventually received a copy of a letter dated 18 October 2000 which said:

"We refer to your letter of 10th October 2000 advising that you do not wish to join the above Pension Scheme.

We confirm that we have updated our records accordingly. Please note that you do not have the option to join at a later date.

We confirm that the Scheme contributions deducted from your salary paid in September and October will be reimbursed in your salary paid at the end of November.”

6. Mrs N says she has no recollection of sending an opt out letter on 10 October 2000, or receiving the above letter confirming the opt out. She asked for proof that it was sent by recorded delivery but the letter was sent by normal post.
7. Aviva say that when Mrs N was moved onto a CGU contract in September 2000 she became eligible to join the CGU pension scheme. Mrs N is recorded as a ‘pension scheme opt out’. Under the process at the time Mrs N would have been required to contact the Trustee to opt out and the decision was reflected in the payroll record. The National Insurance class status would have changed from Class D to Class A to reflect that Mrs N was no longer contracted out of the State Earnings Related Pension Scheme. No pension deductions were made from Mrs N’s salary from 2000 until 2013 when she was automatically enrolled into the money purchase section of the Aviva Staff Pension Scheme.

Adjudicator’s Opinion

8. Mrs N’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.
9. The Adjudicator recognised that given the length of time that has elapsed since 2000 it is not always easy to recollect the sequence of events that occurred which have led to Mrs N’s complaint. But the Adjudicator could only look at the evidence provided and decide, on the balance of probabilities, what is likely to have occurred at that time.
10. Looking at the available evidence it is clear that Mrs N was automatically enrolled into the Scheme in September 2000. However, in October 2000 the position changed and Staff Pensions stopped Mrs N’s membership of the Scheme and refunded the contributions she had made. The Adjudicator was of the opinion that it was unlikely that Staff Pensions would have taken this action arbitrarily and it was more likely, than not, that it did receive a letter from Mrs N to opt out of the Scheme.
11. Staff Pensions issued a letter to Mrs N confirming her opt out on 18 October 2000. Mrs N says she did not receive it and there is no proof that it was issued as it was not sent by recorded delivery. Nonetheless, the Adjudicator had no reason to believe that the letter was not sent and there is a general presumption that letters sent by normal post will be delivered. But even if Mrs N did not receive the 18 October 2000 letter she should have been aware from her monthly payslips that no pension contributions were being deducted from her salary and queried the matter. Furthermore, it should have been apparent to Mrs N that she was not a member of the Scheme throughout

this period as she would not have received any annual pension benefit statements whilst her colleagues were receiving these.

12. Mrs N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs N has provided her 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 Mrs N for completeness.
13. Mrs N says the refund of contributions paid in November 2000 would have been for one month's contribution and due to her low salary would literally have been pennies. She asks if it would be reasonable for anyone to notice a change in their salary for the month of November. She would not have noticed any difference in salary as she believes she may have worked a few hours overtime so her salary would never be the same amount.
14. Mrs N also says that she believes payslips at that time were sent in the post and she was not really interested in scrutinising them as she earned very little and fully trusted her employer to pay the correct amount. Furthermore, she had never heard colleagues discussing their pension statements and was not aware that annual pension statements were issued.
15. Finally, Mrs N says she feels the Adjudicator has taken Aviva's side even though it cannot produce the alleged letter she sent to opt out of the Scheme. The letter of 18 October 2000 was only found after it was realised she was escalating the complaint.

Ombudsman's decision

16. Although I sympathise with Mrs N's realisation that she will not be receiving a pension from the Scheme I do not find that this position has been brought about solely by Aviva or CGU. As the Adjudicator has said CGU would not have taken the action arbitrarily to opt Mrs N out of the Scheme unless a letter had been received from her and all the evidence points to the fact that such a letter was received and Mrs N was advised of the opt out.
17. I also find it surprising that Mrs N did not notice at any time over the last 18 years that she was not paying pension contributions or that she never queried why she did not receive any statements informing her how her pension was progressing. Companies are required to provide payslips and pension statements, where applicable, so that employees can check the amounts paid and raise any queries. It was Mrs N's responsibility to check her payslips and raise any queries regarding her pension.
18. Therefore, I do not uphold Mrs N's complaint.

Anthony Arter

Pensions Ombudsman
2 October 2018