

Ombudsman's Determination

Applicant	Mr U
Scheme	NEST Pension Scheme (the Scheme)
Respondent	NEST

Outcome

1. I do not uphold Mr U's complaint and no further action is required by NEST.

Complaint summary

2. Mr U has complained that he cannot opt out of the Scheme and is unhappy with how NEST have handled his complaint.

Background information, including submissions from the parties

3. Mr U was employed in the UK and all UK employers are obliged to provide a work-based pension scheme for eligible staff. Mr U had chosen to be enrolled into the Scheme.
4. On 31 October 2017, Mr U's employer provided information about the Scheme to him saying:-
 - Mr U had chosen to opt into the Scheme and was enrolled into the Scheme on 1 October 2017;
 - Mr U's personal details had been given to NEST and further details surrounding the Scheme would be provided to him by NEST; and
 - to opt out of the Scheme Mr U would need to contact NEST.
5. On 26 January 2018, NEST issued a "Welcome Pack" to Mr U. This explained how a "jobholder" who had become an active member of a scheme is entitled to cease (opt out) of active membership. It also explained that a jobholder that elected to opt out would be treated as never having become an active member of the Scheme in the first place and any contributions would be refunded.

6. The Welcome Pack said "If you opt out, any money you've contributed with this employer will be refunded, but you should think carefully before making this decision. If you still want to opt out, you must do this between 31 January 2018 and 28 February 2018. You can't opt out of NEST outside of this period, but you can cease contributing at any time."
7. The Welcome Pack was returned in the post as Mr U's address was incorrect.
8. On 24 March 2018, NEST contacted Mr U's employer and asked for his correct address details. NEST explained to the employer how to update Mr U's contact details online and said, "Alternatively please tell them we received some returned correspondence for them, and they need to provide us with their current address."
9. In August 2018, Mr U contacted NEST as he needed help setting up his online account as some of his personal details were incorrect.
10. In September 2018, Mr U called NEST to check his personal details had been updated. He was being made redundant and asked if he could continue to contribute to the Scheme after he left employment. NEST confirmed Mr U could but was under no obligation to do so.
11. In October 2018, Mr U contacted NEST as he wanted to opt out of the Scheme.
12. On 1 November 2018, Mr U contacted NEST to complain. The transcript of the call indicates:
 - Mr U had moved on 17 December 2017, and he did not get his mail redirected therefore he had not received the Welcome Pack;
 - he had updated his employer with his new address;
 - Mr U did not know about opting out as he did not get the Welcome Pack or the letter from NEST;
 - NEST advised Mr U he could not opt out;
 - NEST said the letter of 31 October 2017, from Mr U's employer showed a different enrolment date to the date he was enrolled, and he should contact his employer about this; and
 - Mr U did not agree it was for him to contact NEST and he should be allowed to opt out of the Scheme due to lack of information.
13. On 2 November 2018, NEST replied under Stage One of its Internal Dispute Resolution Procedure (**IDRP**) and said:-
 - The date Mr U was enrolled in the Scheme differs from the information in the letter sent from Mr U's employer.

- If Mr U's employer had enrolled him into the Scheme incorrectly his employer had the option of cancelling his initial enrolment and re-enrolling him, at which point he would have another month to opt out. NEST offered to discuss this with his employer directly.
 - It was Mr U's employer's responsibility to provide Mr U with the information about his enrolment.
 - The Welcome Pack was sent to the address provided by Mr U's employer. NEST relied on his employer to provide up to date and accurate information upon enrolment.
 - Mr U would still have been able to opt out without the Welcome Pack as his employer had provided him with NEST's contact details.
 - The Pensions Regulator (**TPR**) provided guidance on the minimum information an employer must provide their workers when automatically enrolling them into a pension scheme. TPR says that within six weeks of automatically enrolling a worker must be provided with certain information including the start date and end date of the opt out period, if known by the employer.
 - Mr U's employer had the option of providing an email address for Mr U, but no email address was provided.
 - When Mr U contacted NEST, in September 2018, he did not mention opting out.
 - Mr U's opt out period ended on 28 February 2018. This was defined by legislation and NEST have no authority or discretion to extend this for any reason.
 - As the opt out period had ended NEST was unable to refund any contributions Mr U had already made. Mr U could transfer his NEST plan or stop contributing at any time.
14. Mr U remained unhappy as he did not receive the Welcome Pack telling him about the opt out period.
15. On 19 February 2019, NEST replied under Stage Two of IDRPs saying:-
- Mr U's employer provided the incorrect address, but it was the employer's responsibility to provide the correct information to NEST.
 - It was the employer's responsibility to tell Mr U about the opt out period.
 - The opt out period started three days from 31 January 2018, when he was enrolled and expired on 28 February 2018 lasting one calendar month.
 - Mr U did not receive the Welcome Pack, but NEST had no control over the legislation regarding the opt out period. Mr U would remain in the plan until he is 55, as he did not opt out during the opt out period.

Adjudicator's Opinion

16. Mr U'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 below:-
- The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (**the Regulations**), set out the law in relation to auto-enrolment, including the period over which the opt out period will run.
 - Mr U had until the end of February 2018, to provide a valid opt out notice to his employer. The Adjudicator fully appreciated Mr U's argument that he did not receive the Welcome Pack as it was sent to his previous address, so he did not know about the opt out deadline, but NEST had no discretion to extend the opt out period. The Adjudicator considered NEST had acted within the Regulations and there was no maladministration.
 - As no valid opt out request was made Mr U was not entitled to a refund of his contributions. The Regulations make clear that refunds can only be paid where a valid opt out request is made within the opt out period. NEST must administer the Scheme in line with the overriding legislation and the Regulations, and returning the contributions now would be classed as an unauthorised payment by HMRC and would attract a tax charge for both the Scheme and Mr U.
 - NEST was reliant on the employer providing the correct contact details for members. It was not unreasonable for the Welcome Pack to be posted to Mr U using the address provided by his employer. When the Welcome Pack was returned NEST asked Mr U's employer for his updated details. or for the employer to tell Mr U to provide updated details.
 - NEST had tried to help and advised Mr U that as there were two different dates for his active membership, if he contacted his employer, the employer may have been able to cancel his membership and offer another opt out period.
 - Although Mr U was not able to opt out of the Scheme, he does have accrued pension benefits that he can claim when he reaches age 55.
17. Mr U did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr U provided his further comments which do not change the outcome.
18. Mr U said:-
- It had been proved he had no knowledge of the 30 day opt out period.
 - NEST could have contacted him directly while seeking an update from his employer.
 - NEST should have ensured the Welcome Pack had been delivered and signed for, so he had the chance to read and understand the terms and conditions.

- He did not consider NEST could activate his NEST account without getting his address updated.
- He wanted HMRC to apply a tax charge against NEST, as punishment for its errors. He felt this would ensure that NEST would “learn to respect him”.

19. NEST replied to Mr U's comments saying:-

- NEST did not have any means to contact Mr U other than the address provided by the employer.
- NEST did not send the Welcome Pack via recorded delivery as it would be too costly to do so. Also, a member may not be in to sign for it, which would cause issues for members, such as retrieving it from the local Post Office.
- NEST contacted Mr U's employer when the Welcome Pack was returned undelivered to ask for his current address and did not receive a response.

20. I agree with the Adjudicator's Opinion and I will therefore only respond to the main points made by Mr U for completeness.

Ombudsman's decision

21. Mr U's complaint is that he missed the deadline to opt-out of the Scheme. I appreciate Mr U's argument that without receiving the Welcome Pack from NEST he did not know about the deadline, so could not opt out. NEST wrote to Mr U at the address provided by his employer. As the address was incorrect, I do not consider it would have made a difference if the Welcome Pack was sent by recorded delivery. Once the Welcome Pack had been returned, NEST requested up to date details from Mr U's employer, or for the employer to tell Mr U to provide updated details. NEST was reliant on the employer providing the correct contact details for members so it cannot be held responsible that Mr U did not receive the Welcome Pack.
22. The Regulations set out the time limit within which a valid opt out request must be received by an employer. NEST has no discretion to extend the opt out period. The fact that Mr U did not receive the Welcome Pack is regrettable but was not something NEST had control over. Therefore, I find that NEST acted within the Regulations and there was no maladministration.
23. Whilst Mr U wants a refund of his contributions, NEST cannot now return the contributions as the Regulations state this can only occur when a valid opt out notice had been received.
24. I acknowledge that Mr U is unhappy with the way his complaint was handled and he says he was caused distress and inconvenience. In order for a complaint to be upheld maladministration must first be identified and then financial injustice must flow from the maladministration or non-financial injustice caused by it. I have not identified

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any maladministration on the part of NEST, and it follows that no award will be directed for the distress and inconvenience Mr U claims.

25. I do not uphold the complaint.

Anthony Arter

Pensions Ombudsman
11 March 2020