

Ombudsman's Determination

Applicant Mr A

Scheme Aviva Company Pension Plan – Balance My Hormones Ltd (**the Plan**)

Respondents Aviva Life and Pensions UK Limited (**Aviva**)

Outcome

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

Complaint Summary

2. Mr A complained that Aviva refused to refund his pension contributions. He says that they were deducted from his salary without prior notice.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points.
4. The Pensions Act 2008 (the **PA 2008**) introduced a duty for employers to make arrangements by which the jobholder becomes an active member of an automatic enrolment scheme with effect from the automatic enrolment date.
5. Under the PA 2008 as supplemented by The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (**the 2010 Regulations**), all employers must enrol certain workers into a pension scheme (**automatic enrolment**) if not already covered by a qualifying scheme (essentially one meeting minimum requirements particularly in respect of benefits and contributions). In accordance with Part One of the Pensions Act 2008, employers are responsible for establishing whether or not they need to provide a pension scheme and what their duties are. Broadly, employers who are required to provide a pension scheme, must:-
 - Set up a pension scheme that meets automatic enrolment or qualifying scheme requirements and under which minimum employer and employee contributions are payable.
 - Automatically enrol workers who qualify as eligible jobholders into a pension scheme with effect from their first day of employment and deduct pension contributions from their pay.

- Inform staff how automatic enrolment applies to them, within six weeks of the employer duties start date.
 - Declare their compliance to The Pensions Regulator (**TPR**) within five months of their duties start date.
 - Provide enrolment information to the member that confirms that they have been or will be automatically enrolled. They should also provide information on the right to opt-out and where the member can find further information about pensions.
6. In relation to a personal pension scheme, the legislation deems a contract to be made between the employee and the provider of the personal pension scheme.
 7. Section 8 of the PA 2008 (as supplemented by the 2010 Regulations) gives an employee who has been automatically enrolled into a pension scheme the right to opt-out within one month of the later of:-
 - (a) the date on which the employee became an active member of the scheme, and
 - (b) the date on which the jobholder was given the enrolment information.
 8. If the employee opts out within the month, they are treated for all purposes as having never been a member of the scheme and their contributions are required to be refunded as provided in the legislation. The employee can only opt-out after being automatically enrolled and by giving a notice to their employer in the form provided in the 2010 Regulations that must be obtained from the scheme provider, unless the scheme provider has delegated this task to the employer.
 9. The right to opt-out and have automatic enrolment reversed applies only in the first month after being automatically enrolled and receiving the enrolment information. Thereafter the employee may leave the scheme but contributions paid will not be refunded under the legislation.
 10. In January 2023, Mr A was enrolled into the Plan by his employer, Balance My Hormones Ltd (**the Employer**).
 11. On 27 January 2023, Aviva issued a welcome pack to Mr A by post, which included the Plan policy documents. The documents stated:-

“If you don't want this plan...

You can opt out within 30 days of the date on this letter. The easiest way to do this is to go to avivacustomer.co.uk/optout. Or if you'd prefer, you can call us ...”
 12. On 22 August 2023, Mr A contacted Aviva by phone about his pension contributions. He said he wanted his pension contributions to be refunded as they had been deducted from his salary without prior notice. He also raised a complaint regarding the matter.

13. On 23 August 2023, Aviva contacted the Employer to query whether Mr A was notified of his enrolment.
14. On 29 August 2023, Aviva acknowledged Mr A's complaint. It said it would provide a written response within eight weeks.
15. On 31 August 2023, Aviva responded to Mr A's complaint. It said it was unable to refund his pension contributions as he failed to opt out within one month of the date that the Plan policy documents were issued to him.
16. On 8 September 2023, the Employer responded to Aviva and said that Mr A had asked to not be included in the enrolment into the Plan when he first joined. The Employer also asked Aviva if it was possible to refund Mr A's pension contributions to him.
17. On the same day, Aviva responded to the Employer and confirmed that Mr A would not be able to opt out of his pension as he did not contact it to opt out within the 30 days opt out period. It also said:-

“The only reasons that the Pensions Regulator will allow us to reset a member's opt out period are:

If the employer confirms they submitted an incorrect postal address to us for the member, and this was specifically the employer's mistake, or;

If the employer confirms that they never sent an enrolment notification to the member

If either of the above two circumstances apply, please let me know. Otherwise, the member will have to either keep this pension with Aviva until minimum retirement age, or transfer it to another pension if he has one elsewhere.”

18. Following the complaint being referred to The Pensions Ombudsman (**TPO**), Mr A and Aviva made further submissions that have been summarised below.

Summary of Mr A's position:-

- Pension contributions were deducted from his salary and paid into the Plan from January 2023. This was without his consent or prior notification. He only became aware of the deductions in August 2023.
- Aviva did not inform him of when the deductions were initiated and the implications. He did not have familiarity with the operational mechanisms and withdrawal protocols of his pension with the Plan.
- He did not receive the welcome pack of 27 January 2023, and he finds it perplexing that Aviva chose to send important documents solely by post.
- He is not a UK citizen, and it would be a considerable financial strain to wait until retirement to access his pension funds.

- He is in a financially precarious situation and wants to be refunded his pension contributions so that he can meet his financial obligations.

Summary of Aviva's position:-

- It was part of the Employer's responsibility, prior to enrolling staff into the Plan, to inform them of whether they meet the criteria for automatic enrolment or not. This is usually done by the Employer on two occasions. If Mr A met the criteria, it should have informed him that he had been enrolled in the Plan and the date he would have started to make contributions.
- Under the government's automatic enrolment legislation, employers are not allowed to take opt out requests from employees, so any request Mr A submitted to the Employer would be classed as invalid by the Pensions Regulator and could not be accepted.
- The documents sent to Mr A on 27 January 2023 clearly stated that he needed to contact Aviva directly if he wished to opt out of the Plan.
- Aviva sends 'opt out rights' to new members who have been automatically enrolled, along with the Plan documents. The opt out rights gives Mr A one month to decide if he wants to keep the pension or cancel it.
- Aviva sent Mr A's Plan documents to the address the Employer provided on 27 January 2023. As Aviva and the Employer have met the obligations set out by TPR, it cannot extend Mr A's opt out window or refund his pension payments.
- It did not receive any notification that Mr A did not receive the Plan documents and opt out instructions after it had issued them on 27 January 2023.
- The Employer has confirmed that Mr A was aware that he was being enrolled as he asked it not to do this.
- Mr A did not contact Aviva within the specified timescale for opting out of the Plan, which meant it was unable to refund his pension contributions, as this would be against the rules of TPR.

Adjudicator's Opinion

19. Mr A'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:-

- It was the Adjudicator's view that Mr A was not entitled to a refund of his contributions. The 2010 Regulations sets out that refunds can only be paid where an opt out request is made within the opt out period, and no valid opt out request was made to Aviva within one month of the date that the Plan policy documents were issued to Mr A.

- The 2010 Regulations sets out the law in relation to the period over which the opt out period will run. In applying the test of whether the opt out period started running, Aviva needed to decide whether Mr A “was given the enrolment information”.
- Aviva sent a welcome pack on 27 January 2023 by post, which included the Plan policy documents to Mr A’s address which was provided by the Employer. The welcome pack explained the opting out process, and that Mr A had to contact Aviva to opt out of the Plan. It was the Adjudicator’s view that it was reasonable for a pension provider to rely on the information provided to them by an employer. Mr A also confirmed that the welcome pack was issued to the correct address.
- Aviva considered whether Mr A was in fact given the enrolment information, when it was informed that he did not receive the welcome pack in August 2023. It contacted the Employer to query whether it had provided an incorrect address for Mr A or failed to provide him with an enrolment notification. The Employer confirmed to Aviva that Mr A was aware of the enrolment, as he had asked the Employer not to enrol him into the Plan at the time.
- It was the Adjudicator’s view that Aviva’s actions did not amount to maladministration, as it did issue the welcome pack to the correct address. It also ensured that the Employer had notified Mr A of the enrolment before it decided that it could not refund Mr A’s pension contributions.
- The Adjudicator said that Aviva must administer the Plan in line with the overriding legislation and the 2010 Regulations, and so it would not be able to refund Mr A’s contributions as this would be classed as an unauthorised payment by HMRC and would attract a tax charge for both Mr A and Aviva.

20. Mr A did not accept the Adjudicator’s opinion and the complaint was passed to me to consider. He provided further comments in response to the Opinion. In summary, he said:-

- He was never informed about the Plan and he never received a letter from Aviva.
- Aviva should have sent important information by email rather than sending hard copy letters.
- As a non-UK citizen he would not be able to access his pension at retirement age, and he wants his hard-earned money to be refunded to him.

21. I have considered Mr A’s further comments, but they do not change the outcome, I agree with the Adjudicator’s Opinion.

Ombudsman's decision

22. I do not find that Mr A made a valid opt out request in accordance with the PA 2008 and the 2010 Regulations within the opt out period which expired on 27 February 2023. He is therefore not entitled to a refund of his contributions.
23. I find that Aviva acted reasonably by issuing the welcome pack of 27 January 2023 by post to the address that the Employer had provided for Mr A. The welcome pack explained the opting out process and informed Mr A that if he did not want to be part of the Plan, he had to opt out within one month of the date that the Plan policy documents were issued to him.
24. I appreciate that Mr A has said that he never received the welcome pack, which is why he did not ask to opt out of the Plan until August 2023. Aviva must administer the Plan in line with the 2010 Regulations, and it sets out the period over which the opt out period will run. Aviva needed to consider whether Mr A “was given the enrolment information” to decide when the opt out period started running,
25. As Mr A has confirmed that the welcome pack was sent to the correct postal address provided to Aviva by the Employer in accordance with the 2010 Regulations, and Aviva confirmed with the Employer that Mr A was informed of his enrolment into the Plan, I find that it was reasonable for Aviva to conclude that it could not reset Mr A’s opt out period, and that he was not entitled to a refund of his pension contributions. I agree with the Adjudicator that its actions did not amount to maladministration.
26. I understand that Mr A considers that it would have been better practice by Aviva to issue the welcome pack of 27 January 2023 by email as it contained important information. Although this might have led to a different outcome, Aviva was not required to issue the opt out information by email. I note the 2010 Regulations required the Employer to provide Aviva with a postal residential address for Mr A as part of enrolment information but only require an email address to be provided if available.
27. I have also considered Mr A’s statement that he is not a UK citizen. The Employer’s duties to automatically enrol him into a scheme under the PA 2008 and his participation in the Scheme do not require him to be a UK citizen. The provisions apply if he is working or ordinarily working in the UK and it appears that he meets this requirement and that he is also UK resident as he has provided UK residential postal addresses. As such, I find that he was correctly enrolled into the Scheme under the provisions of the PA 2008.
28. Whilst I sympathise with the position that Mr A is in, I have not seen any maladministration on the part of Aviva in the way in which it dealt with this matter.
29. I do not uphold Mr A’s complaint, and no further action is required by Aviva.

CAS-116234-R5N5

Camilla Barry

Deputy Pensions Ombudsman

4 March 2025