

## Ombudsman's Determination

Applicant	Miss S
Scheme	NOW: Pensions Trust ( <b>the Plan</b> )
Respondents	Office Angels Limited ( <b>Office Angels</b> ) NOW: Pensions ( <b>NOW</b> )

## Outcome

1. I do not uphold Miss S' complaint and no further action is required by Office Angels or NOW.

## Complaint summary

2. Miss S has complained that she was not provided with a valid notification of her enrolment into the Plan. As a result, she did not have the opportunity to opt out.

## Background information, including submissions from the parties and timeline of events

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. On 28 September 2019, Miss S started employment with Office Angels.
5. On 21 December 2019, Miss S was automatically enrolled into the Plan by Office Angels.
6. On 3 January 2020, NOW, the Plan's administrator, emailed Miss S an enrolment notice (**the Notice**). It said that, if Miss S wished to opt out, as if she had never been a member of the Plan, she would have to do so by 2 February 2020.
7. On 28 February 2020, Miss S telephoned NOW to complain that she had not been notified of her enrolment into the Plan. She asserted that she had missed out on the opportunity to opt out of the Plan. She requested a refund of her contributions.
8. On 9 March 2020, NOW wrote to Miss S to confirm that she could pursue a formal complaint through the Plan's two-stage Internal Dispute Resolution Procedure (**IDRP**). It provided details of the IDRP.

9. On 28 July 2020, Miss S submitted a complaint under stage one of the IDRPs. She said:-
  - She did not receive any notification of her enrolment into the Plan.
  - She wanted a refund of her contributions.
  - An email notification was not a secure or reliable form of legal communication.
10. On 31 July 2020, Office Angels sent an email to Miss S enclosing a booklet (**the Booklet**) for her to read and sign. It apologised that it would normally have sent it to her earlier. In relation to the Plan, the Booklet stated that:

“When you are first paid by us NOW: Pensions will send you information on the scheme and explain when you will start to pay contributions into it. If you don’t want to belong to the scheme you are able to opt out of it. In order to do this you must contact NOW: Pensions but only after they have written to you and confirmed that they have enrolled you into the scheme.”
11. On 14 August 2020, NOW wrote to Miss S to provide its stage one IDRPs response. It did not uphold her complaint. It said:-
  - Miss S had been enrolled into the Plan correctly by Office Angels.
  - It had sent her the Notice by email to inform her that she had been enrolled in the Plan and provide details of the option to opt out. She was given one month from the date of the Notice to opt out. The opt-out window expired on 2 February 2020.
  - NOW used the email address that it had on record for Miss S; its records showed that the email was successfully delivered.
  - The Pensions Regulator’s (**TPR**) guidance stated that it was not obliged to send notification by post. The approach that NOW adopted was to send a notification by email, if Office Angels had notified it of an email address. Otherwise, it would send the notification to Office Angels, by email, for onwards communication.
  - Legislation meant that it could not now refund Miss S’ contributions.
  - Miss S’ options were to leave the money invested in the Plan or request a transfer out. If she wanted to transfer out, she would have to opt out first.
12. Extracts from TPR’s ‘automatic enrolment detailed guidance for employers no. 5’ can be found in the Appendix.
13. On 7 January 2021, NOW received confirmation from Miss S that she wanted her complaint to be considered under stage two of the IDRPs.
14. On 8 January 2021, NOW wrote to Miss S to acknowledge her communication of 7 January 2021.

15. On 1 March 2021, NOW provided its response under stage two of the IDR. It did not uphold Miss S' complaint. In its response, it reiterated some of the main points from its stage one response.
16. On 25 June 2021, Miss S ceased contributions to the Plan following a change of employment.
17. Office Angels confirmed that the email address that NOW used for its communications to Miss S was the only one that it held on its records.

### **Summary of Miss S' position**

18. Miss S submits:-
  - NOW's email of 3 January 2020 went into the spam folder of her old email address. She did provide Office Angels with her new email address in a telephone conversation. It said it would ensure that NOW's records were updated.
  - Other employees of Office Angels received a letter notifying them of their enrolment into the Plan.
  - She had been living overseas and was not aware of what auto-enrolment was.
  - Until recently, she was still paying contributions to the Plan as she had been told that she could not cancel her membership without losing the money. She wants a refund of her contributions, in addition to a payment for the distress and inconvenience that she has suffered.

### **Summary of NOW's position**

19. NOW submits:-
  - It did not send letters to other employees, as Miss S had suggested.
  - The email address that it held for Miss S did not change during her employment with Office Angels.
20. During the investigation into this complaint Miss S subsequently found further evidence which she submitted. This consisted of an email dated 4 October 2019 that Miss S had sent to the person at Office Angels who was her first contact point for, among other things, pension information updates. Included in the email was the information below which referred to Miss S' new email address:

"Also I just wanted to inform you that all correspondence must be sent to this email address now."
21. Office Angels maintained that, as people had multiple email addresses, it would normally still ask for a request in writing if an employee wanted to change their email address. It also said that most employees maintained this information themselves on its system.

## Adjudicator's Opinion

22. Miss S' complaint was considered by one of our Adjudicators who concluded that no further action was required by Office Angels or NOW. The Adjudicator's findings are summarised below:-

- NOW said that the Notice was emailed to Miss S on 3 January 2020 and that it received automatic confirmation that the email had been delivered. Miss S maintained that the email was sent to an old email address and appeared in her spam folder. She added that email was not a secure or reliable form of legal communication.
- The Adjudicator noted that TPR provided guidance to employers in relation to auto-enrolment. This guidance lists the communication methods that it considers appropriate for sending information. Included in the list is an email and an email with appropriate attachments.
- Miss S provided evidence that she notified Office Angels of her new email address on 4 October 2019, stating that: "all correspondence must be sent to this email address now."
- The Adjudicator found no evidence that Office Angels provided NOW with Miss S' new mail address. So, in the Adjudicator's opinion, NOW sent Miss S the Notice via an acceptable method of communication, and it used the email address that it held at the time.
- In the Adjudicator's view, Office Angels had sufficient time to pass Miss S' new email address on to NOW before NOW issued Miss S with the Notice on 3 January 2020. In the Adjudicator's Opinion, Office Angels' failure to record Miss S' new email address and pass it on to NOW amounted to maladministration.
- Miss S maintained that other employees of Office Angels received a letter by post notifying them of their auto-enrolment. The Adjudicator found no evidence to corroborate this. He noted that NOW had said that it issued notifications by email. It confirmed that these emails were sent either to the member, if it held an email address or, if not, to Office Angels. It is possible that, where Office Angels did not hold an email address for the employee concerned, it forwarded on the Notice by post. This approach, in the Adjudicator's view, was reasonable.
- Office Angels sent Miss S the Booklet 10 months after she joined its employment. By its own admission, this had been sent to her later than would have been normal. The Adjudicator noted that, had it been sent at the start of her employment, it would have provided Miss S with confirmation that she could opt out of the Plan once she had received a communication from NOW. So, in the Adjudicator's view, it is unfortunate that this was not sent to her earlier as she would have then been aware to look out for the communication from NOW.

- The Adjudicator acknowledged Miss S' frustration that, due to Office Angels not passing her new email address to NOW, she did not locate the Notice in time to reverse her membership of the Plan. However, in the Adjudicator's view, Miss S did not suffer a financial loss as a result of this maladministration by Office Angels.
  - The Adjudicator said this because the money that Miss S paid into the Plan was not lost. It was the case, however, that she had limited options in relation to what she could do with her money in the Plan. Furthermore, it was likely that she would have preferred to have had that money available to spend. However, it was not possible for NOW to return the money to Miss S as it was required to administer the Plan in accordance with the rules that govern the Plan and pensions legislation.
  - In conclusion, the Adjudicator accepted that Miss S had notified Office Angels of her new email address in advance of NOW sending the Notice to her old email address. However, while this amounted to maladministration, Miss S did not suffer a financial loss as a result. Further, the Adjudicator was not persuaded that Miss S was caused distress and inconvenience, sufficient to warrant an award for redress in this instance. The minimum award for non-financial injustice awarded by me is £500 and, in the Adjudicator's opinion, this threshold had not been met.
23. Miss S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
24. Miss S provided her further comments which do not change the outcome. As well as reiterating points that she had made previously, Miss S said:-
- She had no knowledge of her automatic enrolment in the Plan until after the fact. Without that knowledge there was no consent from her.
  - While she had been forthcoming with as much evidence as she was able to provide, Office Angels had not.
  - The fact that NOW was unable to provide recordings of the telephone conversations that she had with it seemed 'convenient'. She had been told during these conversations that, if she stopped paying into the Plan, she would lose the funds she had already contributed. However, this was not reflected in the file notes NOW had provided. Also, the number of telephone conversations was higher than suggested by the file notes.
  - She was unable to log on to NOW's systems to make requests in relation to her entitlement in the Plan.
25. I note the additional points raised by Miss S, but I agree with the Adjudicator's Opinion.

## **Ombudsman's decision**

26. Miss S has referred to the fact that she did not receive notification of her auto-enrolment into the Plan.
27. Miss S has said that email is not a valid communication method for notifications of this type. However, I do not agree that this is the case as email is listed in TPR's guidance as an example of a valid way of giving information.
28. I find that NOW attempted to provide Miss S with enrolment information in a timely fashion and in a valid format.
29. I note that Miss S provided Office Angels with her new email address on 4 October 2019. But I have seen no evidence that this information was passed to NOW, so I find that Office Angels in not providing NOW with Miss S' new email address does amount to maladministration.
30. I understand Miss S' frustration that NOW sent the Notice to her old email address and that she did not see it in time to take appropriate action. However, I do not agree that Miss S suffered a financial loss as a result of Office Angels' maladministration as the money she had paid into the Plan was not lost but is invested for her to be provided with a pension. She also has the option of transferring the monies invested to another pension arrangement.
31. Miss S said that she had no knowledge of her enrolment in the Plan until after it had occurred, and that, without that knowledge, she could not be held to have consented. I find that, at the point that she was automatically enrolled in the Plan, there was no legal requirement for Office Angels or NOW to have received her consent and she was correctly auto-enrolled in the Plan.
32. Miss S maintained that she had been told by NOW during telephone conversations that, if she stopped paying into the Plan, she would lose the funds she had already contributed. She is also concerned that she had more conversations with NOW than was suggested by the file notes provided by NOW.
33. NOW has confirmed that it has provided all the file notes that it holds in relation to the telephone conversations that it had with Miss S during the period in question. These notes make no reference to the conversation that Miss S has highlighted concerning the loss of funds. Unfortunately, it is not possible for me to comment on this aspect of Miss S' complaint as I have seen no evidence of what Miss S alleges that NOW said and the context in which those comments were made.
34. Miss S has confirmed that she no longer has access to her benefits through NOW's systems. I would recommend that, if this is still the case, or she has any uncertainty in relation to her options, she should contact NOW directly to resolve these concerns.
35. In conclusion, I find that Miss S did not suffer a financial loss as a result of Office Angels' maladministration. Furthermore, while I acknowledge that Miss S has been

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caused some distress and inconvenience, I find that this is not sufficient to warrant a minimum award for redress in this instance.

36. I do not uphold Miss S' complaint.

**Anthony Arter**

Pensions Ombudsman  
14 June 2022

## **Appendix**

### **Extracts from TPR's automatic enrolment detailed guidance for employers no. 5**

#### **Enrolment information to the eligible jobholder**

“26. Once enrolled into an automatic enrolment pension scheme, an eligible jobholder can decide to opt out of the pension scheme. It is important they are able to make an informed decision. The employer must provide the eligible jobholder with certain enrolment information, before the end of the joining window, that tells them:

- that they have been, or will be, automatically enrolled and what this means to them
- of their right to opt out and their right to opt back in.”

#### **Giving the information**

“27. The information must be given in writing. ‘Giving’ information, in the regulator’s view includes:

- sending hard copy information by post or internal mail
- handing over hard copy information by hand
- sending information in the body of an email
- sending information in pdf attachments or other attachments by email.”