

## Ombudsman's Determination

Applicant	Mr E on behalf of the Estate of Mrs E Mr E as Mrs E's beneficiary
Scheme	Boots Retirement Savings Plan ( <b>the Plan</b> )
Respondents	Walgreens Boots Alliance ( <b>WBA</b> ) Legal & General ( <b>L&amp;G</b> )

## Outcome

1. I do not uphold Mr E's complaints and no further action is required by WBA or L&G.

## Complaint summary

2. Mr E submitted two complaints:-
  - On behalf of the Estate of Mrs E, he complained that when employee contribution rates increased in the Auto-Enrolment Section (**the AE Section**) of the Plan in 2017, Mrs E should have been informed that she would receive higher employer contributions and obtain life assurance cover if she switched to the original Main Section (**the Main Section**) of the Plan.
  - As Mrs E's beneficiary, he complained that because Mrs E was not enrolled in the Main Section in 2017, he received a lower value from her pension fund, and did not receive a life assurance payout.
3. Mr E considered he should receive the benefits that would have been paid if Mrs E had been in the Main Section of the Plan. He also requested that a review be conducted of WBA's pension management and communication practices.

## Background information, including submissions from the parties

4. Boots Group and Alliance UniChem merged in 2006 to become Alliance Boots, and WBA was formed after Walgreens purchased a majority share of Boots Alliance in 2014. Although the timeline of events below starts before WBA was established, for consistency, Mrs E's employer and the Plan's sponsoring employer are referred to as WBA. The Plan's name has also changed several times but is referred to by its current name.

5. Mr E was Mrs E's husband. Ms P and Mrs Y are Mr E's sisters. Ms P is also Mr E's representative.
6. Mrs E started working for WBA in 2006.
7. On 1 June 2006, WBA set up a defined contribution (**DC**) personal pension, the Boots 2006 Stakeholder Pension Plan (**the 2006 Plan**). WBA matched employee contributions up to 5% of salary and provided life assurance cover of three times base salary. WBA says Mrs E would have been able to join the 2006 Plan if she had applied, but it did not receive an application form from her. Therefore, she did not join the 2006 Plan.
8. On 30 June 2010, the 2006 Plan closed to future service accrual and was replaced with a new DC personal pension, the Plan, managed by L&G. WBA says that it undertook a communication exercise with employees before the Plan started, which included sending Mrs E a brochure entitled "the Alliance Boots Retirement Savings Plan – Helping you plan for the future" (**the Plan brochure**) and an application form. The Plan brochure set out information, including contribution rates. Members could choose to contribute between 3% and 6% of their retirement savings pay, which would be matched by employer contributions in the ratios of 1:1, 2:1 or 2.5:1, depending on the member's salary band. The Plan included life assurance cover of four times retirement savings pay. The Plan brochure said that employees could join the Plan at a later date if they wished.
9. WBA says it sent a reminder to members who had not submitted an application form. The reminder told members that if they did not apply, they would no longer be an active member of a WBA pension arrangement, nor have life assurance cover. WBA did not receive an application form from Mrs E, and therefore she did not join the Plan.
10. In 2013, the AE Section was introduced in order for WBA to meet auto-enrolment requirements. This was part of the Plan but separate to the Main Section. The Main Section was still available to members who applied to join it.
11. WBA says it sent a brochure entitled "Workplace Pension Scheme – Understanding auto-enrolment" (**the AE brochure**) to all employees not in the Main Section. The two Sections had different contribution rates. The AE brochure set out current and future contribution rates of the AE Section as follows:
  - 2012 to 2017: 1% from employees, 1% from WBA;
  - 2017 to 2018: 3% from employees, 2% from WBA; and
  - 2018 onwards: 5% from employees, 3% from WBA.

12. The AE brochure said that to be eligible to be enrolled in the AE Section, employees must not currently be a member of a qualifying scheme, such as the Plan. It also had a section entitled "How is the auto-enrolment scheme different from the main Alliance Boots Retirement Savings Plan". It said that the differences were:
  - in contribution levels;
  - the definition of pensionable pay; and
  - auto-enrolled members would not receive life assurance cover.
13. All employees who were not in the Main Section were assessed for enrolment in the AE Section. If they met the criteria, they were automatically enrolled, but they had the option to opt-out. Mrs E was assessed and automatically enrolled in the AE Section. She did not opt-out.
14. Subsequently, L&G sent Mrs E annual pension statements. The name of the Plan was at the top of each statement, but there was no mention that she was in the AE Section.
15. On 27 April 2017, L&G wrote to Mrs E about changes to the Plan's default investment strategy. This also named the Plan at the top of the letter, but again there was no mention of the AE Section.
16. Mrs E's April 2019 statement valued her contributions at £1,333.01. During the previous year, Mrs E had contributed £147.71, while WBA had contributed £98.49.
17. Mrs E died on 9 October 2019. Mrs E's family contacted WBA to find out about her pension arrangements, but WBA told the family to contact L&G.
18. On 21 October 2019, WBA sent Mrs E a letter saying that she was eligible to join the AE Section. This was sent in error and WBA subsequently apologised for sending it.
19. On 31 October 2019, Mrs E's family informed L&G of her death. However, L&G did not know which Section of the Plan Mrs E was in and asked the family to ask WBA. Ms P says that WBA told her that it needed to contact its payroll provider to find out. In the meantime, Ms P researched the Plan online and concluded that Mrs E had been in the Main Section.
20. On 22 November 2019, Ms P telephoned WBA, who told her that Mrs E had been in the AE Section. WBA agreed to obtain evidence of this and to find out how the 21 October 2019 letter had been sent in error.
21. On 2 December 2019, Ms P emailed WBA asking for an update. She said that the Plan's online documents had the same pension name as Mrs E's pension statements, and the statements did not mention the AE Section. So, she wanted a copy of Mrs E's signed AE Section application form. She said she did not believe that anyone would join the AE Section rather than the Main Section, as the employer contribution rates were lower in the AE Section.

22. On 9 December 2019, WBA confirmed that Mrs E had been in the AE Section. It said that in July 2010, Mrs E had been invited to join the Plan, which subsequently became the Main Section, but she had not applied to join. There was no signed application form, as Mrs E had been automatically enrolled in the AE Section in 2013.
23. On 26 February 2020, L&G confirmed to Mr E that he was entitled to receive the current value of Mrs E's contributions, amounting to approximately £1,000. It sent Mr E a beneficiary payment form and details of the required verification documents and informed him that he needed to complete his claim by 30 October 2021 to avoid paying tax.
24. On 1 April 2020, Mrs Y emailed L&G requesting details of its Internal Dispute Resolution Procedure (**IDRP**). On 3 April 2020, she emailed additional information about the complaint.
25. On 14 April 2020, L&G emailed Mrs Y saying that it was not responsible for determining which Section of the Plan members should join and that she should send her complaint to WBA.
26. On 14 April 2020, Ms P complained to WBA. She said that there had been no employee communication from WBA after 2013 about the contribution differences between the two Sections, and that in 2017, the AE Section had changed so significantly that it made no sense for anyone to remain a member of it. In her opinion, WBA had an obligation and duty of care to contact all members of the AE Section to inform them of the changes. WBA had only updated the Plan's website and online brochures, so responsibility had fallen to employees to work out the difference for themselves.
27. Ms P submitted that anyone still in the AE Section after 2017 must have been unaware that the Main Section was available to them. She said that these members could not have knowingly chosen to stay in the AE Section. She wanted WBA to review all existing, retired, and deceased employees from 2017 onwards. She submitted that the Estate was entitled to receive additional employer contributions and the life assurance benefit.
28. On 11 May 2020, Ms P chased WBA for its response.
29. On 26 May 2020, WBA emailed Mrs Y replying to the complaint. It made the following points:-
  - While L&G managed the Plan, WBA was responsible for the basis under which employees were enrolled.
  - The Plan's website and regular communications to members, including when changes were made to the Plan in 2019, had explained the circumstances under which an employee could also be covered for life assurance.
  - The difference in contribution rates were set out in member communications and on the Plan's website.

- Contributions for the AE Section were based on salaries above a threshold amount, currently £6,240 per annum. This was not the case in the Main Section.
  - “Benefits Box” was a self-service facility that allowed employees to choose benefits annually. It included information to enable employees to make informed choices, and employees were sent annual reminders. “Benefits Box” included the statement “Please note that there’s no life assurance cover with the auto enrolment pension scheme”.
  - It did not uphold the complaint.
30. On 10 August 2021, a grant of letters of administration for the Estate was issued by the High Court of Justice. The administrator was Mr E.
31. On 30 August 2021, Ms P wrote to WBA checking that accepting the benefits stated in L&G’s letter on 26 February 2020 would not prejudice any potential redress awarded by The Pensions Ombudsman (**TPO**). On 24 September 2021, L&G confirmed that it would uphold any redress provided by TPO.

### **Mr E’s position**

32. WBA did not address the complaint that Mrs E was not informed about the significant changes to the AE Section in 2017 and WBA never disputed that members were not told about the differences between the two Sections after 2013. Ms P had previously been told by WBA that the points she made about communicating information were “well put”.
33. WBA’s reference to salary structure and the “Benefits Box” had no relevance to the complaint.
34. WBA’s reference to employee communications about changes to the Plan in 2019 was also irrelevant as Mrs E died that year.
35. WBA had used an incorrect christian name for Mrs E in its response.
36. He knew of other WBA employees in the AE Section who were also unaware of the different contribution structures. TPO should contact Mrs E’s daughter who was in this position.

### **WBA’s position**

37. It did not agree that the complaint against it should be upheld. As pension communications and documents were issued to Mrs E, it was reasonable to presume that she was aware of the structure of the Plan.
38. Throughout her employment with WBA, Mrs E had the opportunity to be covered for life assurance, dependent on her decision regarding retirement savings under the Plan.

39. Mrs E did not choose, or take the required action, to join the Main Section in 2013 or subsequently. Nor did she ensure that she was covered for life assurance by joining the Plan when it was established in 2010.
40. As Mrs E was not covered for life assurance under the AE Section of the Plan, the value of her contributions had been paid on her death.

## **Adjudicator's Opinion**

41. Mr E's complaints were considered by one of our Adjudicators who concluded that no further action was required by WBA or L&G. The Adjudicator's findings are summarised below:-
  - WBA said that Mrs E was invited to enrol in the 2006 Plan. Although no evidence was provided to show that Mrs E had been invited, there was no reason to be believe that she had not. Mrs E did not join the 2006 Plan.
  - In 2010, WBA said that Mrs E was invited to enrol in the Plan. Again, while no evidence was provided to show that Mrs E had been invited, there was no reason to be believe that she had not. Mrs E did not join the Plan.
  - In 2013, Mrs E was automatically enrolled into the AE Section. In accordance with auto-enrolment rules, minimum contribution rates increased over time. Details of the pension arrangement including contribution rates were set out in the AE brochure, which was sent to employees not already in the Plan.
  - By 2017, the AE Section had a different employer contribution rate to the Main Section, and for some members, the employer contribution rates were more attractive in the Main Section than the AE Section. WBA said that it sent the Plan brochure in 2010 and the AE brochure to Mrs E in 2013, so Mrs E was notified of the different employer contribution rates in the two Sections.
  - Mr E submitted that WBA should have informed Mrs E again in 2017, when contribution rates in the AE Section started changing. However, as WBA had previously notified members of how the contribution rates would change over time, and the information was available on the Plan's website, along with details of the Main Section, it was under no obligation to do so.
  - WBA said that Mrs E was sent the Plan brochure and invited to join the Main Section in 2010, and in 2013 was informed in the AE brochure that to be eligible for the AE Section, which she was subsequently enrolled into, she must not already be in the Main Section. Information about the Main Section was also available on the Plan's website. So, Mrs E was made aware of the Main Section, and as she did not apply to join it, she must have known that she was not a member of it.

- If WBA had written to Mrs E in 2017, it may have prompted her to consider switching to the Main Section. However, on the balance of probability, this was unlikely, as she did not join either of the two Plans, and the only reason she was in the AE Section was that she had been automatically enrolled, which had not required her to submit an application form.
- WBA said that information about the availability of life cover had been given to Mrs E or was available to her in 2006, when she was invited to join the 2006 Plan. Also, it was available in 2010 when she was sent the Plan brochure and was again invited to join the Plan. In 2013 she was sent the AE brochure, and each year she was invited to choose benefits from the “Benefits Box”. She could also view the pension information on the Plan’s website. So, Mrs E knew that she was not a member of the Main Section and did not have any life assurance cover. Indeed, Mrs E never had life assurance cover through her WBA pension arrangements as she had not applied to join the 2006 Plan or the Plan.
- Mr E’s request for a review of WBA’s administration and communication practices was noted, but TPO is not a watchdog and can only consider the merits of the complaints accepted for investigation as far as they apply to the Estate and Mr E as a beneficiary.

42. Mr E did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. His relevant comments are summarised below:-

- WBA had not provided any evidence to show that Mrs E was not in the Main Section. He had provided evidence that showed Mrs E was a member of the Plan, not a member of the AE Section.
- WBA had not explained why the October 2019 letter had been sent to Mrs E in error, after it had been informed of her death. WBA did not tell him how it would rectify its lack of communication despite it saying that the points made were “well put”.
- It could not be stated as fact that the pension letters or any other communications had been sent to Mrs E, as WBA had not provided any evidence to support the claims. It also had not provided evidence to show that Mrs E was informed about the “Benefits Box”, or that she had been invited to participate annually.
- The statement that information was available to Mrs E on the Plan’s website was irrelevant unless the Plan’s website was reviewed historically.
- He did not agree that Mrs E’s past behaviour of not applying to join the 2006 Plan, or the Main Section was an indication that she would not have taken action if WBA had sent her a reminder letter in 2017. Past behaviour of WBA indicated that it was not the most efficient in terms of documentation, communication, and keeping records of which pension each employee was a member.

- He did not believe that it was reasonable to expect Mrs E to know precisely which pension section she was in and whether she had life assurance. WBA had a duty of care to highlight material changes in its pension plans in 2017. If it had written to members, Mrs E would have had a clearer understanding of which pension section she was in, and which one would have been most beneficial to her.
- He argued that pensions were not straightforward and that updating a website and assuming employees' knowledge of the options was not sufficient. Not communicating with employees for five years was not reasonable. It should be considered probable and acceptable for an employee to rely on the name of their pension on their pension statement. Mrs E's statements confirmed that she was in the Plan and not the AE Section.

43. I have considered Mr E's comments, but they do not change the outcome, and I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

44. I acknowledge Mr E's comment that WBA has not been able to provide substantiated evidence that it invited Mrs E to join the 2006 Plan or the Plan, or that she received annual invitations to the "Benefits Box". However, in 2013 Mrs E was assessed for eligibility to automatically become a member of the AE Section and this is evidenced by the fact that she was subsequently enrolled into it without needing to complete an application form. So, at that point in time, WBA's records correctly identified Mrs E as an employee, and that she was not a member of the Plan.
45. WBA had a process in place to invite employees to join the pension arrangements available at the commencement of employment and when pension changes were subsequently made. WBA also has a process in place to invite employees to view the "Benefits Box" on an annual basis. There is no dispute that Mrs E was an employee, and on the balance of probabilities, I find it unlikely that Mrs E was not invited to join the 2006 Plan in 2006 and the Plan in 2010 and was excluded from the annual invitations to view the "Benefits Box".
46. Although the Plan consists of the Main Section and the AE Section, the name of the Plan for all members is the Boots Retirement Savings Plan. While I accept that it may be more helpful for pension statements to identify whether a member is in the Main Section or the AE Section of the Plan, Mrs E's annual pension statements correctly identified her as being a member of the Plan. As she knew that she had not completed an application form to join the Plan or the Main Section, and given my comments in paragraph 44 above, I have no reason to believe that she was not sent the AE brochure in 2013, I conclude that Mrs E should have reasonably known that she was not in the Main Section.



47. I agree with the Adjudicator that it would have been helpful for WBA to have reminded members how the contribution structure of the AE Section had been set up to change over time. But the contribution rates had already been communicated to members in 2013 and I have no reason to believe that the information was not subsequently available to members on the Plan's website. Also, members of the Plan have an individual contract with L&G, and WBA, as the sponsoring employer, does not have an obligation to continue to provide members with further pensions information about the pension arrangement which is already provided on its website.
48. It was extremely unfortunate that, despite being informed of Mrs E's death, WBA still sent a letter inviting Mrs E to join the AE Section. This must have been upsetting for her family so soon after Mrs E's death. However, WBA subsequently apologised for its error.
49. I can only consider the merit of Mr E's complaints as far as they apply to the Estate and Mr E as a beneficiary, so I cannot direct that a review of WBA's overall administration and communication practices should be undertaken.
50. I do not uphold Mr E's complaints.

**Anthony Arter CBE**

Deputy Pensions Ombudsman  
30 October 2023