

## Ombudsman's Determination

Applicant	Mr Y
Plan	NOW: Pensions Trust ( <b>the Plan</b> )
Respondent	NOW: Pensions ( <b>NOW</b> )

## Outcome

1. Mr Y's complaint is not upheld, and no further action is required by NOW.

## Complaint summary

2. Mr Y has complained that he was not provided with a valid notification of his enrolment into the Plan. As a result, he did not have the opportunity to opt out. Mr Y says NOW's offer of £76.38 was inadequate, as he wants it to pay him £500 for the significant distress and inconvenience it has caused him.

## Background information, including submissions from the parties

3. On 4 August 2014, Mr Y began employment with Driver Hire (GG Work Solutions Ltd) (**the Employer**).
4. On 27 September 2014, Mr Y was automatically enrolled into the Plan by the Employer.
5. On 16 November 2014, NOW, the Plan administrator, emailed Mr Y an enrolment notice (**the Notice**). It said that, if Mr Y wished to opt out, he would have to do so by 16 December 2014.
6. Mr Y said that he first discovered there was a problem in May 2021.
7. On 24 May 2021, Mr Y emailed NOW to complain that the Employer had deducted pension contributions from his pay. He asked for all his money to be refunded on the basis that he had not consented to it being taken. Mr Y complained he was not given the option to "opt out" and he complained about NOW's exorbitant fees.
8. On 1 June 2021, NOW responded to Mr Y's complaint. It said that the Employer had given Mr Y's information, including his contact details. It said that it was NOW's standard procedure to provide enrolment communications to a member via email,

unless a postal address is provided. NOW advised Mr Y that his enrolment notice was sent to the email address provided by the Employer, pabb-c@hotmail.com. It said Mr Y was correctly enrolled into the Pension Scheme and the correct correspondence had been issued, so it was unable to proceed with his request for a refund of contributions.

9. On 2 June 2021, Mr Y emailed NOW Pensions to tell it that his Employer had given them his postal address. Mr Y said his email address had always been pabb\_c@hotmail.com and he included a screenshot of an email from the Employer to prove his email address at the time (pabb\_c@hotmail.com). Mr Y said he wanted to formally complain through the Internal Dispute Resolution Procedure (**IDRP**).
10. On 4 June 2021, NOW emailed Mr Y to say that it would investigate his complaint further.
11. On 9 June 2021, NOW responded to Mr Y's complaint. It said it had completed a full review and it was disappointed it had not provided the level of service it wished to provide, but it was dependent on information from an Employer. NOW said it had noted that Mr Y had said that the email address NOW had been given was incorrect, and so, Mr Y had not received his enrolment notice. It said as a gesture of goodwill, it would offer him an ex-gratia payment of £51.38. NOW said this was the total of Employee and Employer contributions it had received from the Employer. NOW asked Mr Y to return its acceptance form if he wanted to accept the offer.
12. On 9 June 2021, Mr Y emailed NOW a completed acceptance form, but on it, he said he rejected its ex-gratia offer. Mr Y told it he wanted NOW to pay him a minimum of £500 compensation. Mr Y said that NOW was still failing to admit it was wrong and he did not believe his employer gave it an incorrect email address. Mr Y said NOW's offer of £51.38 was a joke. He complained it was legally obliged to pay him interest and compensation for distress and inconvenience.
13. On 11 June 2021, NOW wrote to Mr Y on behalf of its CEO. It said it would send him a full response within 14 days, or update him every 14 days, if it was unable to do so.
14. On 29 June 2021, Mr Y emailed NOW to complain he had not had a full response to his complaint. He asked for evidence that his enrolment notice was sent to pabb-c@hotmail.com and asked why NOW did not post him an enrolment notice, as it had his address. He said that he wanted a minimum of £500 compensation.
15. On 29 June 2021, NOW emailed Mr Y to inform him its offer of £51.38 would not be increased. It told him that had he opted out, he would only have got back his £25.69 Employee contribution. It gave Mr Y its IDR details.
16. On 30 June 2021, Mr Y submitted an application to The Pensions Ombudsman (**TPO**).

17. On 13 July 2021, NOW provided Mr Y with a response under stage one of its IDR. It said: -
- Once a member is enrolled, an employer has a legal obligation to deduct contributions. The member's consent is not required for this.
  - It apologised for telling Mr Y that it was NOW's standard procedure to provide enrolment communications via email.
  - It accepted that it sent the Notice to an incorrect email address, which had been provided by the Employer. So, Mr Y was unaware that he needed to opt out.
  - It offered Mr Y £76.38 in full and final settlement of his complaint. This consisted of a refund of employee and employer contributions, totalling £51.38, and £25 for distress and inconvenience.
18. On 22 July 2021, NOW paid £76.38 into Mr Y's bank account.
19. On 22 April 2022, TPO emailed Mr Y and said that we had received information from NOW that confirmed that Mr Y's former employer had given NOW an incorrect e-mail address in 2014. NOW also said it did not receive a "bounce back" e-mail.
20. On 2 May 2022, Mr Y emailed TPO and said the Excel sheet sent by NOW (showing the Employer gave an incorrect email address) could have been sent by anyone. Mr Y advised he never agreed to accept £76.38 in full and final settlement of complaint. He complained that NOW should have written to him at his home address.

## Caseworker's Opinion

21. Mr Y's complaint was considered by one of our Caseworkers who concluded that no further action was required by NOW. The Caseworker's findings are summarised below:-
- Mr Y's complaint concerns the fact that he did not receive notification of his auto-enrolment into the Plan.
  - NOW has said that the enrolment notice was emailed to an address given by Mr Y's Employer on 16 November 2014, and it did not receive a "bounce back" email. NOW provided TPO with an Excel spreadsheet that showed the information the Employer provided. The Caseworker said he had no reason, on the balance of probabilities, to doubt its authenticity. Mr Y had said anyone could have made the spreadsheet up, but the Caseworker said that there was nothing to suggest that the plan provider had sent fabricated evidence. The Caseworker was of the view that Mr Y's complaint was the result of an error by the Employer.
  - He noted that The Pensions Regulator (**TPR**) provided guidance to employers in relation to auto-enrolment. This guidance listed the communication methods that it considers appropriate for sending information. Included in the list are the body of

an email and an email with appropriate attachments. Therefore, he did not agree that NOW had to also post the enrolment notice to Mr Y.

- He acknowledged Mr Y's frustration that, due to the Employer not giving NOW his correct email address, he had not read and acted on the Notice in time to opt out of the Plan. However, in his view, Mr Y had not suffered a financial loss as a result of the maladministration by the Employer.
- The Caseworker noted that the money that Mr Y had contributed had been refunded to him. In addition, NOW had also refunded the employer's contribution. Had he opted out, he would have only been entitled to a refund of his contributions. An Ombudsman would only look to put an applicant back in the position they would have been in had an error not occurred. So, there was an argument that Mr Y was in a better position than he would have been in had he been opted out in the first place.
- Furthermore, NOW has also paid Mr Y £25 for the distress and inconvenience it caused him when it investigated his complaint.
- In conclusion, I do not accept that there has been maladministration by NOW. It acted on the information provided by the Employer. Mr Y has not suffered a monetary loss as a result.

22. Although NOW accepted the Caseworker's Opinion, Mr Y did not accept it and the complaint was passed to me to consider. Mr Y provided his further comments, as summarised below:-

- You know what to do with this email that I would describe as very biased?
- Get my complaint re-evaluated by a proper Ombudsman. I do not accept your biased and flawed opinion one bit.
- My complaint needs escalating, right to the top, and ALL correspondence and information needs to be looked at again, right from the beginning, from scratch.
- If this complaint fails to be resolved to my desired outcome, legal action will inevitably be taken to all those held accountable. I will not be letting this slip.
- Please escalate my complaint to be properly evaluated.

23. I will respond to the additional points made by Mr Y but they do not change the outcome, I agree with the Caseworker's Opinion.

### **Ombudsman's decision**

24. NOW has provided evidence to my Office to show that Mr Y's employer provided an incorrect email address for him. Mr Y's complaint was caused by this error, not any maladministration on the part of NOW.

25. I am satisfied that NOW correctly followed TPR's guidance on auto-enrolment. It was legally obliged to enrol Mr Y in its Plan using the information provided by the Employer. It had no reason to doubt its accuracy.
26. Contrary to Mr Y's claims, NOW were not required to post the enrolment notice to him.
27. Mr Y did not opt out of the Plan by 16 December 2014, his opt out deadline.
28. I do not find that any of NOW's actions amounted to maladministration. So, the complaint is not upheld.
29. Regardless, Mr Y has not suffered any financial loss during his short period as Plan member. He contributed one payment of £25.69. NOW has already paid £51.38 into his bank account by refunding both his contribution and the Employer's contribution. In addition to refunding contributions, it also paid Mr Y £25 for distress and convenience.
30. I do not uphold the complaint.

**Anthony Arter CBE**

Deputy Pensions Ombudsman  
30 January 2023