

## Ombudsman's Determination

Applicant Ms Z  
Scheme NOW: Pensions (the **Scheme**)  
Respondent Now: Pensions Ltd (**NOW**)

### Outcome

1. I do not uphold Ms Z's complaint and no further action is required by NOW.

### Complaint summary

2. Ms Z has complained that she was not informed of her enrolment into the Scheme. As a result, she did not have the opportunity to opt out. Ms Z said NOW's refusal to refund her pension contributions is unlawful and the option provided, to transfer her pension to her US retirement plan, is not possible as it is not a Qualifying Recognised Overseas Pension Scheme (**QROPS**).

### 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. I acknowledge there were other exchanges of information between all the parties.
4. On 18 October 2021, Ms Z began employment with Huntswood Scotland Ltd (**the Employer**).
5. On 25 November 2021, NOW, the Scheme's Administrator, emailed Ms Z. It confirmed that an online account had been set up for her using the email provided by the Employer. A subsequent email was sent on the same day indicating the Employer had requested a postponement, and that Ms Z would be automatically enrolled into the Scheme if she met the eligibility criteria.
6. On 1 January 2022, Ms Z was automatically enrolled into the Scheme by the Employer. NOW emailed Ms Z an enrolment notice (**the Notice**). It said that, if Ms Z wished to opt out, she would have to do so by 26 February 2022.
7. Ms Z said that she first discovered there was a problem in March 2022.

8. On 17 March 2022, Ms Z emailed NOW to opt out of the Scheme. She asked for all her pension contributions to be refunded on the basis that she did not receive a notification of being enrolled into the Scheme.
9. On the same day, Ms Z received an email from NOW informing her that because her request to opt out of the Scheme was received after the deadline, her contributions could not be refunded.
10. On 6 May 2022, Ms Z raised a complaint with NOW under the Scheme's Internal Dispute Resolution Procedure (**IDRP**), stating she did not receive the email communications sent to her by NOW.
11. On 18 May 2022, NOW responded to Ms Z's complaint under stage one of the Scheme's IDRP. It said, in summary: -
  - Its standard procedure was to provide enrolment communications to a member via email. It advised Ms Z that her enrolment notice was sent to the email address provided by the Employer.
  - Ms Z was correctly enrolled into the Scheme and the correct correspondence had been issued, so it was unable to proceed with her request for a refund of contributions.
  - If there are technical issues logging into the online pension account, this only prevents members from viewing their pension funds and personal information. The technical error would not have had any effect on the communications it issued, as it had sent Ms Z a copy directly to her email address.
  - It monitors for any undeliverable communications and should the email delivery of an enrolment notice fail, it would contact the Employer to inform them of this. It did not receive any undeliverable communication in relation to Ms Z's enrolment and provided evidence from a communication audit log of all the emails that were sent to Ms Z.
  - For that reason, it was unable to make any refunds to Ms Z for her pension contributions as her request to opt out of the Scheme was done outside of the opt-out window. It informed Ms Z that any payments made into her pension must remain invested until her retirement or until she transfers out of the Scheme.
  - As Ms Z was a foreign national and did not require a United Kingdom (**U.K.**) pension, she could transfer the invested contributions into a QROPS.
12. On 28 July 2022, Ms Z requested to escalate her complaint to the second stage of IDRP.
13. On 20 September 2022, NOW responded to Ms Z's complaint under stage two of the Scheme's IDRP. It said that on this occasion, it was unable to agree that a refund was owed to Ms Z as she was correctly enrolled into the Scheme and correspondence was sent to the email address provided by her Employer.

14. Following the complaint being referred to The Pensions Ombudsman, Ms Z and NOW made further submissions that have been summarised below.

### **Ms Z's position**

15. Regardless of what NOW has said, she did not receive its emails and so, did not have the chance to opt out when she wanted to.
16. She had previously submitted evidence in the form of a statement where her manager stated the following:

“After [Ms Z's] first three months with us, [Ms Z] was automatically enrolled in the [Scheme] however it appears this information was never sent to [Ms Z] until [she] received notification from [NOW] in March. As advised, please contact [NOW] directly to stop your enrolment in the programme...”

She believed that this confirmed that there appeared to have been technical issues with her account which may have prevented her from receiving the emails.

17. She lived abroad and so, had no need for a U.K. pension as she had a retirement plan where she lived. The money that NOW put into her U.K. pension was not transferable to this retirement plan. So, unless she received a refund, she would lose this money, which she believed was unlawful.

### **NOW's position**

18. It had completed its regulatory duties by issuing the opt out options to a valid email address. It did not receive any undeliverable messages, so it was under the impression that all emails had been successfully delivered to Ms Z's email address.
19. As Ms Z did not opt out within the opt-out window, which expired on 26 February 2022, the contributions that the Employer provided for January and February 2022 were collected via the next available Direct Debit on 16 March 2022. The contributions were subsequently invested on 23 March 2022. As a result, she was not eligible for a refund for the contributions invested for January and February 2022.
20. If Ms Z wanted to transfer her funds to an overseas pension scheme, the scheme must be a QROPS verified by HM Revenue & Customs (**HMRC**).
21. It provided a communications audit log that showed the number of emails sent to Ms Z, the email address used, their contents and the dates they were sent.

### **Adjudicator's Opinion**

22. Ms Z's complaint was considered by one of our Adjudicators who concluded that no further action was required by NOW. The Adjudicator's findings are summarised in paragraphs 23 to 28 below.

23. Ms Z's complaint concerned being automatically enrolled into the Scheme without being informed by NOW. She was also unhappy that because she is a foreign national, she is only able to transfer her pension into a QROPS. The Adjudicator considered each of these in turn.
24. The Pensions Act 2008 (**the 2008 Act**) requires an employer to automatically enrol eligible employees into a pension scheme. As Ms Z was an eligible employee, it was the Employer's responsibility to provide her details to NOW for the purposes of automatic enrolment.
25. NOW said that the enrolment notice was emailed to an address given by Ms Z's Employer on 20 January 2022, and, prior to this, two emails were sent to the same email address in November 2021. The first confirmed that an online account had been set up for her and the second email confirmed that her Employer had postponed her automatic enrolment eligibility assessment until 1 January 2022. It said it did not receive an undelivered notification for any of the emails sent to Ms Z.
26. The Adjudicator noted, having reviewed the communications audit log, that the email address NOW used was correct, as it was the same email address that was provided in the application form submitted to The Pensions Ombudsman. So, taking this into account, combined with the lack of undelivered email notifications, there was no evidence to suggest that NOW's emails had not been delivered. In the Adjudicator's view, NOW had adhered to auto-enrolment legislation, it had correctly set up an account for Ms Z and so there had been no maladministration.
27. Ms Z referred to difficulties in transferring her pension into her overseas account. In the Adjudicator's view, if Ms Z wished to transfer her pension overseas, there were certain rules that had to be complied with, that had been set out by HMRC. This included transferring her pension to a QROPS. So, NOW could not be held responsible for this, as it had to follow rules and procedures as set out by legislation, HMRC and the Pensions Regulator in relation to transferring pensions overseas.
28. Ms Z did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms Z provided some further comments in response to the Opinion as follows:
  - She had checked all her spam, junk and inboxes and nothing had been received during the relevant period.
  - She has moved back to the USA and NOW's refusal to refund her pension contributions means they will be lost.
29. I have considered the additional points raised by Ms Z however, they do not change the outcome, however, I agree with the Adjudicator's Opinion.

## **Ombudsman's decision**

30. Ms Z has raised a number of complaints in relation to being auto enrolled into the Scheme.
31. I have considered the complaints that Ms Z raised in relation to not receiving the enrolment notification. I find that NOW cannot be held responsible for Ms Z not having sight of the communication sent to her pursuant to automatic enrolment, for broadly the same reasons as those stated in the Adjudicator's Opinion.
32. In relation to Ms Z not being able to transfer her pension into her overseas account, I find that the offer of transferring her pension into a QROPS is the correct solution to prevent Ms Z from losing her pension contributions. A transfer to an overseas scheme that is not registered as a QROPS is not permissible and would amount to maladministration. If Ms Z would like to explore the QROPS option further, she should contact NOW directly.
33. I do not uphold Ms Z's complaint.

**Dominic Harris**

Pensions Ombudsman

17 June 2024