

Ombudsman's Determination

Applicant	Mr T
Scheme	Sainsbury's Retirement Savings Plan (the Scheme)
Respondents	J Sainsbury Pension Scheme Trustee Limited (J Sainsbury); Legal & General (L&G)

Outcome

1. I do not uphold Mr T's complaint and no further action is required by J Sainsbury or L&G.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr T has complained that L&G refunded his pension contributions to J Sainsbury without his consent.

Background information, including submissions from the parties

4. On 6 January 2017, L&G wrote to Mr T outlining the options available to him following his leaving the Scheme, namely, transfer the value of his accrued benefits to another approved pension scheme; request a refund of contributions; or, contact L&G to discuss his options if he were over 55 years of age. The letter stated that the deadline for responding to elect to either transfer his fund to another provider, or claim retirement benefits, was three months from the date of the letter.
5. In May 2017, L&G wrote to Mr T saying that, as it had not received a response to its letter, it had processed an automatic refund of his contributions. It enclosed a cheque for the relevant amount of £3,968.27.
6. On 21 October 2017, Mr T raised a complaint to L&G. He said he was unhappy that his contributions had been automatically refunded, and he felt the communication relating to the refund process was misleading and deceitful.
7. On 30 November 2017, L&G responded to his complaint and said that it had not done anything wrong. L&G reviewed the letter it had sent to him, explaining his options, and did not agree that it was misleading; and said all the information relating to the

process was included in the letter. L&G further said that as Mr T did not respond to its letter, it had followed the Master Trust Scheme rules and processed a refund of his contributions. It explained that he had joined the Scheme at a time when the Short Service Refunds still applied.

8. On 7 December 2017, Mr T appealed under the Scheme's Internal Dispute Resolution Procedure (**IDRP**).
9. On 4 January 2018, L&G issued its stage 2 IDRP response to Mr T. It said it had refunded his contributions in accordance with the Scheme rules and had not done anything wrong.

Adjudicator's Opinion

10. Mr T's complaint was considered by one of our Adjudicators who concluded that no further action was required by J Sainsbury or L &G. The Adjudicator's findings are summarised briefly below: -
 - Mr T said that he would have chosen option one once he had found a new job. The Adjudicator was of the opinion that L&G had acted correctly by sending Mr T the letter on 6 January 2017 informing him of his options and as such had not made any administrative errors.
 - Mr T had confirmed in his application form to this Office that he did not fully read the letter dated 6 January 2017. L&G in its letter set out the important sections relating to the automatic refund in bold. The Adjudicator believed that L&G acted appropriately and sufficient information was available to Mr T to make him aware of his options.
 - The Adjudicator thought it was reasonable for L&G to rely on its letter and assume that as Mr T did not respond, he wanted a refund of his contributions.
11. Mr T did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr T provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr T for completeness.

Ombudsman's decision

12. Mr T contends that the letter sent on 6 January 2017 was misleading and deceitful in that it left the most important message ie that he would lose his employer contribution if he took a short service refund, to the end, rather than placing it at the head of the letter, which would be good practice in choice architecture terms. He contends the ordering of information was a 'bad nudge' likely to cause members lose their employer contributions.

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13. There is no argument that the refund practice was legal at the time. The issue is solely whether the information provided to Mr T to guide his early leaver choices was adequate, or conversely, whether it amounted to maladministration.
14. The minimum information giving requirement at the time Mr T left the scheme was set out in Reg 27A of the Preservation of Benefits Regulations 1991. This required the Scheme to provide:
 - information relating to ‘the rights and options available’ to an early leaver,
 - information about whether a refund of contributions is or would be available in any circumstances together with an estimate of the amount of the refund and an explanation of the method of the calculation.
15. I have considered the early leaver letter in question. I am satisfied that it both explained the options available to Mr T and set out the amount of the refund which would be available to him and how it was calculated. The option 2 refund figure was stated to be only £58.93. This compared with the option 1 transfer value figure of £5,953.19. Thus a message flagging a very large disparity between the transfer value and any refund which might be due appeared on page 1. In bold, immediately over the page the letter explained that any refund ‘will not include your employer’s contributions and therefore will be lower than your account transfer value’. The letter concluded (also in bold) that a refund would happen automatically if no choices were made with a three month timeframe.
16. While it might be possible to improve upon the design of the letter, I can see no evidence that the letter was a ‘bad nudge’ in the sense that it manipulated the recipient into a default position of accepting a refund. Nor do I consider that the explanation provided was accidentally so lacking as to constitute maladministration. The important sections relating to the way the automatic refund worked were highlighted.
17. The law on early leaver refunds has since changed to prevent this situation occurring. Mr T would like me to apply the ‘ethical principle’ underlying that change retrospectively. While I sympathise with his position, I am bound to uphold the legal and administrative standards of the day and in this case I do not consider they were lacking.
18. Therefore, I do not uphold Mr T’s complaint.

Karen Johnston

Deputy Pensions Ombudsman
21 August 2018