

The complaint

Ms S says she never wanted to be a member of her employer's personal pension scheme and that Aviva Life & Pensions failed to provide her with the necessary information at the right time to enable her to opt out. She wants her contributions refunded.

What happened

Ms S employer had a workplace pension scheme which was administered by Aviva. In line with statutory requirements, she was auto-enrolled into the scheme with effect from 1 March 2023.

On 4 April 2023 Aviva sent Ms S a '*welcome to your Aviva plan*' letter and an illustration. These provided information about her pension contributions, investments and charges. She was informed of the terms and conditions of her policy, including details of how to opt out "*within 30 days of the date on this letter*", either online or by phone.

Ms S called Aviva on 2 February 2024 to raise a complaint. She wanted to opt out of the pension and receive a refund of premiums paid. She says she didn't receive the information about her pension in good time. This meant she missed her opportunity to cancel the arrangement.

One of Aviva's call handlers told her it might be possible to re-start the 30-day cancellation period if the address it had been provided had been inaccurate, so long as Ms S could provide evidence of such from her employer. Her employer confirmed the record it had was incomplete, it didn't have Ms S's flat number. But on further investigation Aviva found the documents had been sent to the full correct address.

On 8 February 2024 Aviva wrote to Ms S to confirm it couldn't cancel the plan and she was now unable to opt out. She was unhappy with the outcome and so brought her complaint to this Service. An Investigator looked into her case but concluded Aviva hadn't done anything wrong. She thought the evidence provided by the firm showed that it had sent Ms S's pension documents to the right address.

Ms S disagreed with the Investigator's view. In her response she said she received the relevant documents months later than indicated by Aviva. She explained why not addressing the correspondence fully would've led to problems and she believed the details it had used had been incomplete, as supported by her employer. She also provided an example of correspondence from Aviva which didn't have her full address.

Ms S noted she had since resigned from her employer and was moving overseas, so she was worried about what would happen to the funds she'd accumulated.

The Investigator responded in the following terms:

"Although I appreciate the letters you've sent to me don't include part of your address including the flat number, which would've potentially caused problems in the timeliness of you receiving them, these letters don't refer to the 30 day opt-out period. The letters which

confirmed the opt-out period were addressed correctly including the part with your flat number and rear entrance.”

“Because of this, as the opt-out letter was addressed correctly, I can't say Aviva has done anything wrong. It's fair to say that these letters would've been sent and received in a timely manner, as they were addressed correctly, within the 30 day opt out period, in order for you to then contact Aviva and express your wishes before the deadline passed.”

“Aviva has corresponded via letter to you, which isn't necessarily unreasonable. As Aviva would've received your contact details from your employer, it may not have even had access to personal information such as your email address. I understand that you'd have preferred them to contact you via email, however I can't see you requested Aviva to contact you via email once you'd started receiving correspondence about your pension, and it's contact details are provided on each letter it sent to you. Payments would also have been appearing on your pay-slips or bank statements from inception of the policy.”

Ms S remained unhappy with the Investigator's view and so her case has been passed to me to look afresh at her complaint and to provide a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Where there's conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm not upholding Ms S's complaint. I'll explain why.

The first thing I've considered is the extensive regulation around the services like those performed by Prudential for Mrs F. The FCA Handbook contains twelve Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 2.1.1 R in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6, which requires a firm to pay due regard to the interests of its customers and treat them fairly.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms. As such, I need to have regard to them in deciding Ms S's complaint.

To encourage more people to save for later life, in 2012 the government made it compulsory for employers to enrol their eligible employees into a workplace pension scheme automatically. So when Ms S joined her new employer it was obliged to check her eligibility

to join its pension scheme. It would then have passed her details to Aviva, as its scheme provider, to set up her individual policy.

Ms S's employer was responsible for making her aware she was eligible to join its pension scheme and that it had automatically enrolled her in the process. Aviva was responsible for setting up the plan and advising her that it done so by issuing a welcome pack which included details of how to opt out of the scheme. Ms S says she didn't receive the information in good time because Aviva held the incorrect address.

On the other hand Aviva has provided this Service with copies of the correspondence it sent to Ms S and this had been addressed correctly. I understand why she is sceptical about this, not least because she has provided other documents received from the firm with her flat number missing.

From the evidence I've reviewed, I think its more likely than not Aviva's welcome letter and pack were sent to the right address at the right time. And as the Investigator summarised:

"I understand you've said you didn't receive the documents, however as I've confirmed above, I believe Aviva did what we'd expect it to do when setting up the plan and sending out documents to your address. In this pack it says "If you don't want this plan.. you can opt out within 30 days of the date on this letter" then provides contact details to do so. Aviva are clear in explaining the opt-out period, and that after 30 days there's no longer the option to opt out. Aviva considered whether it could provide you with a longer window to opt out, however it was decided that this would be potentially classed as an unauthorised payment by HMRC which would have impacted all parties involved. Based on what I've seen, Aviva have acted in line with the requirements set by the regulator in relation to the opt-out window and therefore, I can't say it's done anything wrong in this situation."

I understand Ms S is now anxious about the security of the pension she has built up now that she is moving overseas. Her funds will be safe and there are likely to be options open to her about how she can organise matters in a way that suits her best. In the first instance she should contact Aviva for more information.

My final decision

For the reasons I've set out, I'm not upholding Ms S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 27 December 2024.

Kevin Williamson

Ombudsman