

The complaint

Miss T complains that Aviva Life & Pensions UK Limited (“Aviva”) won’t refund pension contributions that have been made on her behalf by her employer.

What happened

Miss T joined an Aviva pension plan in September 2023 as a result of an auto-enrolment scheme offered by her employer. Contributions were made to the plan until April 2024 when Miss T was signposted to Aviva by her employer when she complained about the pension deductions. She asked Aviva to refund the contributions that had been paid to date.

Aviva explained to Miss T that it would be unable to refund the contributions that had been paid due to the requirements of the relevant regulations set out by The Pensions Regulator and HMRC. It said it wrote to her around a month after the start of the plan to explain that she could opt out of the pension arrangement within the first thirty days. But since that time had now passed her pension savings could not be repaid to her. Unhappy with that response Miss T asked us to continue looking at her complaint.

Miss T’s complaint has been assessed by one of our investigators. She said that Aviva had sent information to Miss T about the pension plan around a month after it had started. Although Miss T said that information wasn’t received until some time later, the letter was correctly addressed so the investigator thought that Aviva hadn’t done anything wrong. And she said that Aviva’s interpretation of the relevant pension regulations about the refund of contributions was correct. So the investigator didn’t think the complaint should be upheld.

Miss T didn’t agree with that assessment. So, as the complaint hasn’t been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process.

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.

In deciding this complaint I’ve taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Miss T and by Aviva. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn’t intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn’t occurred.

Under certain circumstances employers are required to offer a pension plan to employees. That is done through a process called auto-enrolment. The amount of salary that Miss T was being paid meant that her employer needed to enrol her in a pension arrangement. It would have been possible for Miss T to decline that enrolment. But that would have been something to be discussed between her and her employer. This complaint is only dealing with the actions of Aviva – and its part in the process only started after it had been notified by Miss T's employer that she had agreed to be enrolled in the pension arrangement.

Once Aviva had opened a pension plan for Miss T, that would receive monthly contributions deducted from her salary and topped up by her employer, it sent some information to her home address. That address information was provided to Aviva by Miss T's employer. But I can see that the letter Aviva sent, was sent to the same address as Miss T has provided to us in relation to this complaint.

Miss T says that it was some time before that information reached her. I obviously do not know whether or not that was the case, but I have no reason to doubt what Miss T has said. But given that the letter was correctly addressed I cannot hold Aviva responsible for any postal delays in the information reaching Miss T.

The information that was sent to Miss T told her about the pension plan, how much the contributions would be each month, and how they would be invested. And, of particular relevance to this complaint, it also told Miss T that she was allowed to opt out of the pension plan within thirty days.

That time period is governed by legislation. So once the time period has expired, as happened here, Aviva has no way of allowing Miss T to opt out of the plan. It is possible, as I believe Miss T has done, for any contributions to be stopped although I should warn Miss T that her employer is required to re-enrol her in the pension plan on or around three years after she first joined it. But after the thirty days had expired Aviva was unable to return any of the contributions – doing so would constitute what HMRC would deem an unauthorised payment and would lead to taxation charges being levied on both Miss T (or her employer) and Aviva.

I appreciate how disappointing this decision will be for Miss T – it seems she didn't intend to make pension contributions at that time, and now has a sum of money that was taken from her salary tied up until she reaches at least 55 years of age. But I think Aviva has acted correctly in setting up the pension plan following the notification from Miss T's employer. And Aviva has correctly told Miss T that, since the opt out period has expired, it is unable to refund the contributions to her.

My final decision

For the reasons given above, I don't uphold the complaint or make any award against Aviva Life & Pensions UK Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 11 March 2025.

Paul Reilly
Ombudsman