

Ombudsman's Determination

Applicant	Ms N
Scheme	The People's Pension (the Scheme)
Respondent	Vulcan Windows Limited (the Employer)

Outcome

1. Ms N's complaint is upheld and, to put matters right, the Employer shall pay the missing contributions in respect of her pension and make good any shortfall in units. In addition, the Employer shall pay Ms N £1,000 for the serious distress and inconvenience it has caused her.

Complaint summary

2. Ms N has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
3. Ms N has said that the missing contributions amounted to £1,015.56.

Background information, including submissions from the parties

4. In February 2004, Ms N began her employment with the Employer.
5. Between December 2021 and January 2023, the Employer failed to pay pension contributions into the Scheme.
6. In May 2022, Ms N began receiving letters from the Scheme administrator informing her that the Employer had not been making contributions, Ms N subsequently raised a complaint with the Employer.
7. On 21 February 2023, Ms N brought her complaint to The Pensions Ombudsman (**TPO**).
8. Ms N told us that contributions were not paid between December 2021 and January 2023. However, she was only able to provide payslips for August 2022 to December 2022. A breakdown of the deductions has been included in the Appendix.

9. On 8 August 2023, TPO asked the Employer for its formal response to Ms N's complaint. This request was repeated on 22 August 2023. Neither of these requests received a response.

Caseworker's Opinion

10. Ms N's complaint was considered by one of our Caseworkers who concluded that further action was required by the Employer as it had failed to remit the contributions that were due to the Scheme. The Caseworker's findings are summarised below:-
 - The Caseworker stated that TPO's normal approach, in cases such as these, was to seek agreement from all parties on the facts of the complaint, including the dates and amounts of contributions involved. She said that, as the Employer had not responded to any of TPO's communications, she had to base her Opinion solely on the information provided by Ms N.
 - The Caseworker said that she had no reason to doubt the information provided by Ms N. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Ms N's salary but had not been paid into the Scheme. In addition, the Employer had not paid any of the employer contributions that were due over the same period. As a result of its maladministration, Ms N was not in the financial position she ought to be in.
 - In the Caseworker's view, Ms N had suffered serious distress and inconvenience due to the Employer's maladministration. The Caseworker was of the opinion that an award of £1,000 for non-financial injustice was appropriate in the circumstances.
11. The Employer did not respond to the Caseworker's Opinion and the complaint was passed to me to consider; I agree with the Caseworker's Opinion.

Ombudsman's decision

12. Ms N has complained that the Employer has not paid all the contributions due to her Scheme account.
13. I find that employee contributions were deducted but held back by the Employer and not paid into the Scheme. The Employer failed to rectify this and did not engage with either TPO or Ms N. It has also failed to respond to the Caseworker's Opinion.
14. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Ms N to suffer a financial loss. The Employer shall take remedial action to put this right.
15. Ms N is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which she has suffered. This was exacerbated by its failure to respond during TPO's investigation into Ms N's complaint.

Directions

16. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Ms N £1,000 for the serious distress and inconvenience she has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Ms N's pay in respect of the period of her employment. The Schedule shall also include the corresponding employer contributions that were due to the Scheme; and
 - (iii) forward the Schedule to Ms N.
17. The Employer shall, within 14 days of receiving a request by Ms N, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.
18. Within 14 days of receiving confirmation from Ms N that she agrees with the information on the Schedule, the Employer shall:
 - (i) pay the missing contributions to the Scheme;
 - (ii) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Ms N's Scheme account than she would have otherwise secured, had the contributions been paid on time; and
 - (iii) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.
19. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Ms N's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman
16 November 2023

Appendix

Date	Employer contributions	Employee contributions
August 2022	£35.10	£37.44
September 2022	£35.10	£37.44
October 2022	£35.10	£37.44
November 2022	£35.10	£37.44
December 2022	£35.10	£37.44