

## Ombudsman's Determination

Applicant	Mr R
Scheme	State Street Group Personal Pension Plan ( <b>the Plan</b> )
Respondents	State Street Bank and Trust Company ( <b>the Employer</b> )

### Outcome

1. Mr R's complaint against the Employer is partly upheld. To put matters right, the Employer shall pay Mr R £500 in recognition of the distress and inconvenience he suffered.

### Complaint Summary

2. Mr R has complained that the Employer failed to make an agreed 9% employer pension contribution in his first month of employment.
3. He wants the Employer to make right the missing contribution of £1,085.19 and any potential investment loss due to late payment. He also wants to be compensated for the distress and inconvenience caused.

### Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points.
5. On 12 October 2020, Mr R started working for the Employer as a Pay As You Earn (**PAYE**) contingent worker via an agency.
6. In late 2021, Mr R was invited to become a permanent employee by the Employer.
7. On 17 February 2022, the Employer's new employee onboarding team, Talent Acquisition (**TA**), sent Mr R an email confirming the details of his employment offer. The email "outlined the main details" of Mr R's offer and confirmed that he would receive a "[formal] offer of employment/contract [by] email within the next 10 – 12 days". It also said his core benefits would include:-

"Non-contributory pension scheme (we will pay 6% into your pension if you are 30 and 9% if you are 30+. The pension does not require a contribution from you)"

8. On 21 February 2022, Mr R sent an email to TA with further questions regarding his pension arrangement with the Employer.

9. On the same day, TA responded to Mr R's query regarding matched employee pension contributions. It confirmed that:-

"Employer Contribution = 9% of Reference Base Salary, up to salary cap of £129,600. Employees can contribute up to 70% of salary into pension, and up to 100% of bonus. Any voluntary contributions will be topped up with an additional 5% by State Street. Employees impacted by the lifetime allowance or annual allowance rules, can receive their pension value via salary instead (less employer NI costs)"

10. On 23 February 2022, TA sent Mr R his employment contract to be signed and returned.

11. On 24 February 2022, Mr R received a 'My Benefits' brochure from TA. The brochure stated:

"Let State Street invest in your future and help build up your fund through the Group Personal Pension Scheme. Your pension is the best way to ensure a reliable income when you retire. Head to My Benefits to find out more about your employer funding, or to manage your contributions.

...

Disclaimer: As a My Benefits member, you'll be subject to provider conditions and the scheme rules."

12. As of 28 February 2022, Mr R was provided with access to his onboarding documents through "MyWorkday". It also included an explanatory document about his pension which stated:-

"Employees are automatically enrolled into the State Street Group Personal Pension plan with effect from the first day of the following month. State Street will make a non-contributory contribution to your pension plan on a monthly basis."

13. On 4 March 2022, Mr R signed the employment contract. The contract contained the following terms:-

"Details of the pension arrangements and other benefits for which you are eligible are set out in the benefits information that you will receive on joining the Company. Your participation in any pension arrangement and other benefit plans will be subject to the rules of the relevant plan or policy from time to time in force. The Company reserves the right to amend or withdraw these pension arrangements and other benefits at its discretion from time to time.

...

This Agreement sets out the entire agreement between you and the Company and shall be in substitution for, and shall supersede, all previous agreements, arrangements and understandings between us relating to your employment. You acknowledge that you have not entered into this Agreement in reliance upon any representation, warranty or undertaking which is not set out in this Agreement.”

14. On 7 March 2022, Mr R started working as a permanent employee for the Employer.
15. On 10 March 2022, Mr R accessed the explanatory document about his pension he was given access to on 28 February 2022.
16. On 21 March 2022, Mr R accessed the My Benefits portal, which showed key information about his pension arrangement, including the start date of 1 April 2022.
17. On 31 March 2022, the Employer made Mr R’s first salary payment in respect of the period from 7 March 2022 to 31 March 2022. Mr R did not receive the 9% employer contribution in his first month of employment.
18. On 1 April 2022, Mr R was enrolled into the Plan to receive employer pension contributions.
19. The Plan administrator, Fidelity, sent Mr R a welcome pack shortly after he was enrolled. The welcome pack contained the following:-
  - The Policy Conditions, which are generally applicable and which define “Commencement Date” as “the commencement date of the Policy set out in the Policy Schedule”; and
  - A Policy Schedule, specific to each employee, which in respect of Mr R set out that his Commencement Date was 1 April 2022, and that contributions would begin from 1 April 2022.
20. On 21 July 2022, Mr R initiated the Employer’s Grievance Procedure. He was unhappy that he did not receive employer pension contributions for the first month of his employment.
21. On 15 August 2022, Mr R had an initial meeting with the Employer as part of the Grievance Procedure.
22. On 8 December 2022, the Employer responded to Mr R’s grievance complaint. It did not uphold Mr R’s complaint regarding his benefits commencing the following month after his start date.
23. On 15 December 2022, Mr R raised a formal appeal to the outcome of the investigation into his complaint.
24. On 7 February 2023, Mr R attended an appeal hearing with the Employer.

25. On 26 May 2023, the Employer shared the outcome of the appeal. It did not uphold Mr R's appeal.
26. Following the complaint being referred to The Pensions Ombudsman (**TPO**), Mr R and the Employer have made further submissions that have been summarised below.

**Summary of Mr R's position:-**

- The only information about pension arrangements that he received upon joining the Employer was the information in the offer email of 17 February 2022 and subsequent email of 21 February 2022, which therefore formed binding contractual terms.
- He did not receive the 9% employer's pension contribution with his first salary payment which was promised by TA in his offer of 17 February 2023 and subsequent email of 21 February 2022.
- The Employer was thereby in breach of contract. To remedy this breach of contract, the Employer should pay him the missing £1,085.19 employer's pension contribution.
- He was misled by TA as he was not informed in his offer letter of 17 February 2022 that the 9% employer's pension contribution would not apply to the first month's payroll.
- If the Employer had informed him that it does not make employer's pension contributions in the first month's payroll, then he would have arranged to transition from contractor to permanent employee one week earlier so that his first calendar month of employment would have been February 2022, given the considerable mutual flexibility on his transition date. This way, he would have lost only one day or possibly eight days of employer's pension contribution.
- The onus was on the Employer to state explicitly that the 9% employer's pension contribution only starts in the second month of employment. The lack of any such statement is a misleading omission. In view of this misleading omission and the legal doctrine of contra proferentem, the contract and TA's words as contractual terms can only be interpreted to mean that 9% employer's pension contributions start on day one in line with the salary.
- He was only able to log into the Benefits portal weeks after he started his employment due issues with the email address which was used as his user ID. The Benefits portal did not indicate that the employer's pension contribution was not made in the first month of the employment.
- He considers that his pension arrangements were changed retrospectively, as it was not communicated to him that his pension contributions would start in the second month of employment.

- The Employer's grievance process was deficient as it took an unreasonably long period to conclude. In addition, his complaint and appeal were not fully addressed.

### **Summary of the Employer's position:-**

- It is not disputed by the Employer that Mr R did not start to receive employer pensions contributions until 1 April 2022. This is in accordance with the terms of the agreement between the Employer and Mr R (as well as being compliant with pension auto-enrolment requirements).
- The Employer's and Fidelity's documentations, both contractual and non-contractual, are clear that employees are only enrolled into the pension scheme from the first day of the month following the commencement of employment and it was made clear that Mr R would be enrolled from 1 April 2022. Those terms have been fully met. Mr R has therefore not suffered any breach of contract or any loss at all.
- The email on 17 February 2022 purports to set out the "main details" of the offer being "outlined" and explicitly informs Mr R that he would receive a "form [sic] offer of employment/contract in an email within the next 10-12 working days". This email was clearly not contractual in any way, nor was it misleading.
- The email on 21 February 2022 was a response to a query sent by Mr R regarding matched employee pensions contributions. This response was not part of any negotiation of terms and attempts only to clarify and summarise the Employer's existing pensions offering.
- Regardless of what was said in these emails, Mr R subsequently signed his employment contract on 4 March 2022, which contained an entire agreement clause making clear the relevant terms in respect of pensions and that any discussions that had taken place prior to the contract were superseded and could not be relied upon.
- In regard to Mr R's complaint about the Employer's grievance process, it considers that it did not fail to address any elements of Mr R's complaint.
- The time it took to provide a grievance outcome and appeal outcome to Mr R was due to resource challenges in the Employee Relations Team, along with the availability of the parties who participated in providing information regarding the matters under investigation and a handover of responsibilities within that team. The delays have not caused Mr R any financial loss.

### **Adjudicator's Opinion**

27. Mr R's complaint was considered by one of our Adjudicators who concluded that further action was required by the Employer. The Adjudicator was of the opinion that

the Employer should recognise the distress and inconvenience Mr R suffered and pay him £500. The Adjudicator's findings are summarised below: -

- It was the Adjudicator's view that the wording used in the employment contract prevented Mr R from successfully arguing that the statements made to him outside the employment contract by TA on 17 and 21 February 2022 formed binding contractual terms.
- Mr R also relied on the section of the contract which stated "details of the pension arrangements and other benefits for which you are eligible are set out in the benefits information that you will receive on joining the Company." The Adjudicator said that Mr R's argument appeared to be that the statements made by TA constitute this information and, by extension, are incorporated terms of the contract.
- The Adjudicator did not agree with this argument. She said the key phrase in the employment contract was "you will receive on joining the Company", and she considered that the use of the word "on" denoted that the information would be provided at the same time as, or after, the contract had been signed.
- It was clear to the Adjudicator that the contract, which Mr R received on 23 February 2022, referred to the benefit portal. Mr R also received a benefit brochure on 24 February 2022 which referred to the benefit portal. Mr R was unable to log into the benefit portal or "MyWorkday" until after he started his employment. However, the Adjudicator considered that this was the Employer's standard process and Mr R was given access to explanatory documents about his pension which stated the start date of his pension policy. The Adjudicator did not agree that the Employer made a retrospective change to Mr R's pension arrangement.
- In the Adjudicator's view, Mr R did not have a contractual right to receive an employer contribution in relation to his first month of employment. This is because the statements Mr R identified did not form binding contractual terms. The principle of contra proferentem in interpreting those statements was not applicable.
- The Adjudicator was also of the view that the Employer did not have a positive duty to advise Mr R of the most advantageous time for him to have joined as a permanent employee in order to minimise the period in which employer contributions would not be paid. At the point that the alleged obligation arose, Mr R was not yet an employee because he had not signed the contract so the Adjudicator said that there could be no implied term that the employer should have brought this to Mr R's attention.
- Mr R also had complaints about the grievance procedure. The Adjudicator agreed with Mr R that his complaint about employer contributions was not dealt with in the 8 December 2022 letter, and that his argument about the employer's positive duty

to inform him was also not dealt with in the appeal outcome letter dated 26 May 2023.

- It was the Adjudicator's view that the time taken to address Mr R's grievance complaint was unreasonable and the Employer's actions amounted to maladministration. She considered that the degree of non-financial injustice which Mr R has suffered due to maladministration by the Employer was significant, and it should pay Mr R £500 for the distress and inconvenience caused.

28. The Employer accepted the Adjudicator's opinion and did not provide any additional comments.

29. Mr R did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr R provided his further comments as follows:-

- He agreed that he accessed the benefits portal on 21 March 2021. However, it was only in relation to making voluntary employee pension contributions. He specifically asked for log in details to configure voluntary employee contributions.
- The benefit portal did show a start date of 1 April 2022 multiple times, but only in respect of the voluntary employee contributions and other non-pension benefits which he opted into.
- He does not consider that the start date appearing on the benefit portal related to the employer pension contributions, as the start date appeared when he chose to opt in or make changes to a benefit. The employer pension contribution cannot be changed or be opted into.
- As the benefits portal did not contain any information which stated that the 9% employer contribution would start only in the second month of employment, the natural meaning is that the employer contribution was contractually bound to have started on the same date as the employment, which was on 7 March 2022.

## **Ombudsman's decision**

30. Mr R has stated that the information provided to him by TA on 17 and 21 February 2022 during his onboarding process, formed binding contractual terms which entitled him to receive an employer contribution of £1,085.19 in respect of his first month of employment.

31. I find that the statements made to Mr R by TA on 17 and 21 February 2022, outside of the employment contract do not form binding contractual terms of his employment.

32. In any event, the employment contract between Mr R and the Employer, which Mr R signed on 4 March 2022, contained a whole agreement clause making clear the relevant terms in respect of his pension and that any discussions that had taken place prior to the contract were superseded and could not be relied upon. I agree with the

Adjudicator that this wording prevents Mr R from successfully arguing that the statements by TA formed binding contractual terms.

33. Mr R has further claimed that he was not informed of when the employer pension contributions would start, and that the natural meaning would therefore be that the employer contribution was contractually bound to have started on the same date as the employment, which was on 7 March 2022.
34. The employment contract stated that Mr R would receive benefits information “on joining the Company”, which would detail his pension arrangements. The Employer’s records show that Mr R accessed an explanatory document about his pension on 10 March 2022 on ‘MyWorkday’. This document specifically stated that employees would automatically be enrolled into the Plan with effect from the first day of the following month.
35. Mr R also accessed information about his pension arrangement on 21 March 2022 through the benefits portal, which showed a start date of 1 April 2022. I recognise that Mr R considered that the start date on the benefits portal did not relate to the employer pension contributions, as it only appeared in relation to changes he was making to his voluntary employee contributions and other benefits. However, the Employer has stated that the start date related to both the employer and employee contributions, as it could also update if employer contributions were amended with changes to salary.
36. It is clear to me that the information Mr R accessed on ‘MyWorkday’ and the benefits portal on 10 March and 21 March 2022 respectively, were the benefits information the employment contract was referring to. I appreciate that Mr R understood the start date to only be relevant to the voluntary employee pension contributions and the other benefits he was opting into. However, I still find that the Employer sufficiently provided Mr R with information on his pension arrangements “on joining the Company” as the employment contract had promised.
37. Furthermore, Mr R was provided with enrolment information from Fidelity shortly after 1 April 2022, when he was enrolled into the Plan. It contained a Policy Schedule which specifically informed Mr R that the commencement date of his policy was 1 April 2022. Although I recognise that Mr R was provided with the enrolment information after 1 April 2022, this was the standard procedure. I do not find that the Employer retrospectively changed the start date of the employer contributions that were due to Mr R.
38. Whilst I acknowledge that Mr R might have inferred from the information he was given that employer contributions would be made in his first month of employment, I do not find that Mr R had a contractual right to receive an employer contribution in relation to his first month of employment. Mr R was also subject to the Policy Conditions of the Plan, which stated that the pension policy would start on the commencement date set out in the Policy Schedule. In Mr R’s case, the commencement date was 1 April 2022.



39. I also do not find that the Employer had a positive duty to advise Mr R of the most advantageous time for him to have joined as a permanent employee in order to minimise the period in which employer contributions would not be paid.
40. Mr R has also complained about the Employer's grievance procedure. I find that there were significant delays in addressing Mr R's complaints at both stages of the procedure, and I agree with the Adjudicator and Mr R that some parts of his complaint were not dealt with in the first instance. This amounts to maladministration.
41. I find that the degree of non-financial injustice which Mr R has suffered due to maladministration by the Employer is significant, and it shall pay Mr R £500 for the distress and inconvenience caused.
42. I partly uphold Mr R's complaint.

### **Directions**

43. Within 28 days of the date of this Determination, the Employer shall:-
- pay Mr R £500 in recognition of the distress and inconvenience he suffered.

**Dominic Harris**

Pensions Ombudsman  
1 May 2025