

Ombudsman's Determination

Applicant	Mrs H
Scheme	The People's Pension (the Scheme)
Respondent	Cherry Tree Care Limited (CTC)

Outcome

1. Mrs H's complaint is upheld and to put matters right, CTC shall ensure that:-
 - £242.80 of unpaid employee and employer contributions are paid into the Scheme.
 - An additional payment is made into the Scheme; this being the investment return that the contributions would have received had they been invested on time less the investment return on the contributions that were remitted during the period in question.
 - A payment of £500 is made direct to Mrs H for the significant distress and inconvenience caused to her.

Complaint summary

2. Mrs H has complained that her former employer, CTC, has failed to pay all the pension contributions that were due to her into the Scheme.

Background information, including submissions from the parties

3. Mrs H was employed by CTC in a care home.
4. Employee contributions were deducted from Mrs H's salary each month. On 30 August 2018 and 4 December 2018, CTC made payments to the Scheme for the periods April to September 2018 inclusive and November 2018. This money was invested in Mrs H's Scheme account. No further monies were invested in her Scheme account.
5. On 29 November 2018, CTC telephoned the administrators of the Scheme, B&CE The People's Pension (**TPP**). It said that, with the exception of Mrs H and one other

employee, it had updated TPP's online portal (**the Portal**) with leave dates for all employees. CTC expressed concern that the employees updated with leave dates were still visible and showing as active in the Portal. TPP told CTC that this would be resolved overnight.

6. On 28 February 2019, Mrs H left CTC's employment.
7. On 14 May 2019, CTC contacted TPP to say that the issue reported on 29 November 2018 had not been resolved. It said that this had resulted in CTC receiving arrears notices for outstanding pension contributions.
8. On 15 May 2019, TPP wrote to Mrs H to say that CTC had not paid contributions into her account for December 2018.
9. On 20 May 2019, CTC telephoned TPP. CTC was able to demonstrate that leave dates were not being picked up correctly. TPP's investigation into the issue discovered that, due to some employees being duplicated on its system, they were not being correctly marked as leavers.
10. On 19 June 2019, CTC emailed TPP. CTC thanked it for resolving the issue it had been having inputting information in relation to Mrs H's account. It expressed concern at the lack of response that it had received previously and noted that the issue with leavers still being on the system required a full investigation.
11. On 29 June 2019, TPP acknowledged CTC's communication of 19 June 2019.
12. Mrs H provided copies of the payslips that she held for the period from April 2018 to March 2019 which detailed the pension contributions deducted from her pay and the corresponding employer contributions. As the December 2018 payslip was missing, she provided confirmation from HMRC of the contribution figures for this month.
13. Mrs H also provided a statement from TPP listing the contributions that had been paid into her account. The amounts invested did not correspond to the contribution figures on Mrs H's payslips. A summary of this information can be found in the Appendix.
14. Between April 2020 and October 2020, my Office asked CTC for its response to Mrs H's complaint.
15. On 31 October 2020, CTC responded to the communications from my Office. It said that its staff were having to focus on the challenges presented by the Covid-19 pandemic. It asked for the deadline for it providing a response to be extended beyond January 2021.
16. In February and March 2021, my Office wrote to CTC on six occasions asking for its response to Mrs H's complaint.
17. On 29 March 2021, CTC responded to say that it would make Mrs H's complaint a priority and it would respond during the week commencing 5 April 2021.

18. In April 2021, my Office wrote to CTC on two occasions asking for its response to Mrs H's complaint. No response was received.

Adjudicator's Opinion

19. Mrs H's complaint was considered by one of our Adjudicators who concluded that the correct contributions had not been remitted to Mrs H's Scheme account. An error had occurred and CTC was responsible. The Adjudicator's findings are summarised below:-

- The Adjudicator noted that, while some responses had been received from CTC, a number of communications from my Office had been ignored. He was also disappointed that CTC had not been willing to engage with my Office to agree the reconciliation of the shortfall in Mrs H's contributions and to discuss a plan to remediate the issue.
- The Adjudicator agreed that the Covid-19 pandemic had undoubtedly had a major impact on CTC. However, he was of the opinion that it could not be used to fully excuse the delay of over a year since my Office first contacted CTC requesting a response to Mrs H's complaint.
- The Adjudicator said that my Office's normal approach for cases like this would be to seek agreement from all parties on the dates and amounts of contributions involved. However, he noted that CTC had not provided its input into this process. So, the contribution schedule in the Appendix had been produced based solely on the evidence provided by Mrs H. This included copies of her payslips and information provided by HMRC and TPP.
- Based on the information provided by Mrs H, there was a shortfall of £134.22 employee contributions and £108.58 employer contributions.
- The Adjudicator was of the opinion that contributions had been deducted from Mrs H's salary, but had not been paid into the Scheme. In addition, where contributions had been invested, incorrect amounts had been remitted. He took the view that, as a result of maladministration from CTC, Mrs H was not in the position she ought to have been with regard to her pension savings.
- The Adjudicator was of the opinion that Mrs H had suffered significant distress and inconvenience as a result of this maladministration from CTC. No attempt had been made by CTC to provide a detailed response to Mrs H's complaint since it was first contacted by my Office in April 2020, despite a number of requests. In addition, CTC had made no attempt to put the matter right.

20. CTC did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

21. CTC provided its further comments which do not change the outcome. It said:-

- My Office's first contact with it was in April 2020, at the peak of the first wave of the Covid-19 pandemic. Since that time, the care home had been presented with unprecedented challenges. It was not using Covid-19 as an excuse. However, it was not possible for it to respond during the course of the pandemic.
- While the vaccination program had eased some pressures on it, the pressures on the industry still remained. These included low staffing levels and financial issues caused by, for example, low occupancy. Continued last minute guideline changes from the Government and increased day-to-day and management requirements presented it with extra challenges.
- Mrs H had asked it for copies of her payslips in 2019. These were provided. However, she did not contact it either during or after her employment had ended to raise her concerns.
- It had made a number of overpayments to Mrs H's account.
- It had encountered a technical issue with the Portal which it reported to TPP in 2019. It did not initially get the assistance that it required and this had meant that it was unable to allocate the correct payments to Mrs H's account. It had subsequently received confirmation from TPP that the issue was resolved.
- The summary provided by the Adjudicator in respect of it not providing a detailed response and having not made any attempt to put the matter right, required amendment. It had provided information and indicated that it was willing to take corrective action.
- The £500 distress and inconvenience award was not in proportion to the amount of the contribution discrepancy in question. It had not caused any significant distress to Mrs H. Had Mrs H contacted it when she became aware of the discrepancy then her issue could have been addressed earlier.
- It offered to either wait for TPP to resolve any remaining system issues or pay the £242.80 direct to Mrs H together with an interest payment of £30.

22. TPP also provided its comments. It said that:-

- It provides employers with a number of approaches for entering data. CTC was typing in members' gross earnings each month into the Portal. The system then calculated the employee and employer contributions from the gross earnings figures.
- It produced a summary of the gross earnings figures that it had been provided with by CTC for the period in question. With the exception of June 2018, these figures did not agree with the information on Mrs H's payslips.
- It was told by CTC that, for the period from December 2018 to March 2019, there were no contributions owing to Mrs H. In addition, the issues CTC faced were solely that the leave dates CTC provided were not being picked up. There was no

issue with CTC continuing to invest contributions for Mrs H. In addition, any monies previously invested were not impacted.

- Should CTC wish to invest further contributions for Mrs H, this would be possible.

23. I note the additional points raised by CTC, but I agree with the Adjudicator's Opinion.

Ombudsman's decision

24. Mrs H's complaint concerns contributions that were deducted from her pay by CTC but were not fully invested in her Scheme account. She said that CTC also failed to invest some of the employer contributions that were due.

25. I note that Mrs H did not raise her concerns directly with CTC. It was not until April 2020 that CTC was made aware of her complaint when my Office contacted it. I also note that CTC has stated that it had provided information and indicated that it was willing to take corrective action. However, its first productive engagement with my Office was not until 23 May 2021, after the Adjudicator had issued his Opinion on Mrs H's complaint.

26. While CTC was not aware of Mrs H's complaint until April 2020, it was responsible for ensuring that the Portal was updated with details of Mrs H's gross earnings. The available evidence supports the view that, for the period under review, with the exception of one month, CTC had entered incorrect gross earnings figures or had made no submission.

27. Some of the incorrect figures resulted in Mrs H's Scheme account being credited with higher contributions than were deducted from her earnings. However, CTC should have been aware at the time that errors had been made which had caused Mrs H to suffer an overall financial loss.

28. I note that CTC experienced some technical issues with the Portal, which it first reported to TPP in November 2018. CTC has cited these issues as a reason for it having been previously unable to fully correct the contributions paid to Mrs H's Scheme account. It has also suggested that the technical issues may slow down any remedial action that it now needs to take. However, TPP has stated that the technical issues only affect leaving dates that had been updated for members via the Portal. It has also said that there are no barriers to stop CTC investing further contributions for Mrs H in the future.

29. I find that, if CTC believes that technical issues still exist, and have existed since 2018, that have prevented it from investing additional contributions in respect of Mrs H, it should have been more proactive in owning the issues and working with TPP to ensure that they were resolved. I have seen no evidence of it doing this since 2019 when TPP reported that the issues were resolved.

30. My Office's initial communication in April 2020 was a reminder to CTC that it was necessary to correct Mrs H's Scheme account. I acknowledge that the Covid-19

pandemic has had a major impact and that care homes were particularly affected. However, Mrs H was owed money and it was unreasonable for her to have to wait a further year for her Scheme account to be credited with the monies due to her.

31. Mrs H has suffered distress and inconvenience as a result of the maladministration by CTC. Our awards for non-financial injustice are not linked to the magnitude of the financial loss the applicant has suffered. They reflect the time and effort that an applicant has had to spend in pursuing their complaint and also the distress they have suffered. I find that Mrs H has suffered significant distress and inconvenience and a £500 payment is appropriate.
32. In conclusion, CTC made deductions from Mrs H's salary for the period from April 2018 to March 2019 which were not consistent with the submissions that it made to the Portal. As a result of this, the employee contributions invested in Mrs H's Scheme account were £134.22 lower than had been deducted from her earnings. In addition, she is owed a further £108.58 of employer contributions. Mrs H has also suffered distress and inconvenience as a result of the maladministration by CTC.
33. I uphold Mrs H's complaint.

Directions

34. Within 21 days of the date of this Determination, CTC shall:-
 - Pay £242.80 into Mrs H's Scheme account in respect of the total shortfall of contributions for the period April 2018 to March 2019.
 - Pay £500 direct to Mrs H for the significant distress and inconvenience she has experienced.
 - Request that TPP calculate any loss of investment gains that Mrs H has suffered. The investment gains on the due contributions as shown in the Appendix are to be calculated from the due date of each contribution to the date of calculation, on the assumption that the contributions were invested in Mrs H's chosen investment funds. Then, in respect of the contributions that were remitted over the period in question, TPP will calculate any gain from the date each contribution was invested to the date of calculation. This second calculated amount shall then be deducted from the first calculated amount.
 - Pay any reasonable administration fee charged by TPP for carrying out the above calculation.

CAS-29947-Q0H2

35. Within 7 days of receiving confirmation from TPP of any loss of investment gains, CTC shall pay an additional sum into Mrs H's Scheme account, this being the investment gains notified by TPP.

Anthony Arter

Pensions Ombudsman
27 August 2021

Appendix**Summary of contribution shortfall**

Month	Employee cbn due (£)	Employer cbn due (£)	Employee cbn remitted to Scheme (£)	Employer cbn remitted to Scheme (£)	Date remitted
April 2018	11.77	11.77	23.84	15.89	30 August 2018
May 2018	10.00	10.00	31.42	20.95	30 August 2018
June 2018	11.33	11.33	34.00	22.67	30 August 2018
July 2018	12.35	12.35	34.00	22.67	30 August 2018
August 2018	11.88	11.88	34.00	22.67	4 December 2018
September 2018	41.87	27.92	21.87	14.58	4 December 2018
October 2018	34.59	23.06			
November 2018	37.47	24.98	15.89	10.59	4 December 2018
December 2018	40.35	26.90			
January 2019	40.69	27.12			
February 2019	36.59	24.39			
March 2019	40.35	26.90			
Total	329.24	238.60	195.02	130.02	