

## Ombudsman's Determination

Applicant      Mr Y

Scheme        True Potential Pension (**the Scheme**)

Respondent    Wolverhampton Lifting Ltd (**the Employer**)

## Outcome

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

## Complaint summary

2. Mr Y has complained that the Employer, despite deducting contributions from his pay, has failed to pay the contributions into the Scheme.
3. Mr Y has said that the missing contributions amounted to £2,747.60.

## 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. I acknowledge there were other exchanges of information between the parties.
5. On 1 July 2017, Mr Y began his employment with the Employer.
6. At some point in the 2017/2018 tax year, pension contributions began to be deducted from his pay.
7. Mr Y provided copies of payslips he held covering the period from March 2018 to September 2019 which detailed the pension contributions deducted from his pay and the corresponding employer contributions. Mr Y said that the contributions, which

were never paid into his pension, amounted to £2,747.60. A breakdown of the contributions has been included in the Appendix.

8. On 6 July 2021, The Pensions Ombudsman (**TPO**) asked the Employer for its formal response to Mr Y's complaint. This request was repeated on 26 August 2021 and 29 October 2021.
9. On 30 October 2021, the Employer responded as below:

"Mr Y like all my other employees was told we didn't want to pursue the pension scheme and to opt out, this is still ongoing with my accountant and he's also had correspondence with Fivos in your department. It's their responsibility to do so to opt out of the said pension scheme. It's their choice."
10. There was not an employee at TPO known as Fivos at this time.
11. In May 2022, TPO chased the Employer again. But the Employer failed to respond by the deadline.
12. On 8 July 2022, the Scheme administrator provided Mr Y with a valuation of his benefits. This showed that no units had been purchased in his name.

## **Caseworker's Opinion**

13. Mr Y 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 as to the facts of the case, including the dates and amounts of contributions involved. She said that, as the Employer has not provided a satisfactory response to any of TPO's communications, her Opinion was based solely on the information provided by Mr Y.
  - The Caseworker said that she had no reason to doubt the payslips and pension valuation provided by Mr Y. So, in the Caseworker's Opinion, it was likely that the contributions, that had been deducted from Mr Y's salary, 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, Mr Y had suffered a financial loss.
  - In the Caseworker's view, Mr Y had experienced significant distress and inconvenience due to the Employer's maladministration. The Adjudicator was of the view that an award of £500 for non-financial injustice was appropriate in the circumstances.
14. The Employer did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

15. The Employer provided its further comments which do not change the outcome. It said:-
- It was prepared to pay all of the unpaid contributions.
  - However, it was not willing to make a payment in recognition of the distress and inconvenience caused. It said that Mr Y had not conducted himself correctly when working for the Employer. It also said that Mr Y owed it money because he took paid holiday that he was not entitled to. So, it was not willing to make the additional payment.
16. I agree with the Adjudicator's Opinion except the level of award for maladministration.

### **Ombudsman's decision**

17. Mr Y has complained that the Employer has not paid all the contributions due to his Scheme account.
18. The available evidence supports the view 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 my Office or Mr Y. The Employer has disagreed with the Adjudicator's Opinion.
19. The Employer's failure to pay employee and employer contributions into to the Scheme amounts to unjust enrichment and has caused Mr Y to suffer a financial loss. The Employer shall take remedial action to put this right.
20. The Employer has argued that it should not be required to make a payment in recognition of the distress and inconvenience it has caused Mr Y. It argued that Mr Y took more holiday than he was entitled to, so it was him that owed it money. This is an employment issue that falls outside of my jurisdiction. So, I will not look into these allegations any further.
21. Mr Y is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which he has suffered. This was made worse by the Employer's failure to respond fully to my Office's investigation into Mr Y's complaint.
22. I am also very concerned that contrary to the auto enrolment regulations the Employer is telling its employees to opt out of the auto enrolment scheme. (see paragraph 9 above). My Office will be reporting the additional breach of the auto enrolment regulations to The Pensions Regulator.

### **Directions**

23. To put matters right, the Employer shall, within 14 days of the date of this Determination:
- (i) pay Mr Y £1,000 for the serious distress and inconvenience he has experienced;

(ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr Y'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 Mr Y.

24. The Employer shall, within 14 days of receiving a request by Mr Y, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.

25. Within 14 days of receiving confirmation from Mr Y that he 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 Mr Y's Scheme account than he would have otherwise secured, had the contributions been paid on time; and

(iii) pay any reasonable administration fee should the Scheme charge a fee for carrying out the above calculation.

26. Within 14 days of receiving confirmation from the Scheme of any shortfall in Mr Y's units, pay the cost of purchasing any additional units required to make up the shortfall.

**Anthony Arter**

Pensions Ombudsman  
16 September 2022

**Appendix**

Date	Employee contributions	Employer contributions
March 2018 to 5 April 2018	£64.99	£81.25
6 April 2018 to 5 April 2019	£805.19	£670.82
6 April 2019 to 27 September 2019	£643.04	£482.31