

Ombudsman's Determination

Applicant	Miss N
Scheme	Scottish Widows Personal Pension Plan (the Plan)
Respondent	Topmove Estate Agents Ltd (Topmove)

Outcome

1. Miss N's complaint is upheld and to put matters right Topmove shall remedy any financial loss she has suffered. In addition, it shall pay Miss N a distress and inconvenience award in respect of the serious distress and inconvenience she has suffered.

Complaint summary

2. Miss N has complained that her former employer, Topmove, has failed to pay all the pension contributions due to the Plan. Also, several of the payments that were made were paid late. She says that she should be compensated for these administrative errors.

Background information, including submissions from the parties and timeline of events

3. 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 all the parties.
4. On 5 June 2000, Miss N established the Plan with Scottish Widows.
5. On 16 July 2018, Miss N's employment with Topmove commenced.
6. In July 2018, Topmove wrote to Miss N to notify her that, while she was not eligible to join its workplace pension scheme with NEST (**the Scheme**) as of right, she could request to join it.
7. Miss N asked whether Topmove would be prepared to contribute to the Plan, as an alternative to her joining the Scheme. Topmove agreed to this request.

8. On 27 July 2018, Miss N advised Topmove of the information that Scottish Widows would require when remitting contributions for investment in the Plan. This included the split between employee and employer contributions.
9. On 11 September 2018, Topmove wrote to Scottish Widows to confirm that it would be making contributions to the Plan on behalf of Miss N.
10. On 19 December 2018, Scottish Widows confirmed to Topmove that it had received a contribution of £29.88 and that this had been invested as an employee contribution.
11. On 22 January 2019, Scottish Widows confirmed to Topmove that it had received a contribution of £78.12. It said that £16.92 had been invested as an employee contribution and £61.20 had been invested as an employer contribution.
12. Miss N said that she was concerned that Topmove was not remitting contributions to Scottish Widows on time and that the split between employee and employer contributions was incorrect. She maintained that, in early 2019, she verbally agreed with Topmove to have an account set up for her in the Scheme and for future contributions to be remitted to this account.
13. On 12 February 2020, Miss N's employment with Topmove ended.
14. On 14 February 2020, Miss N wrote to Topmove. She said that she had not received any written information concerning her pension. She asked for details of the pension arrangement she had been enrolled in and a history of the contributions that had been made on her behalf.
15. On 21 February 2020, Miss N wrote to Topmove to confirm the information she had requested. This included a breakdown of the contributions Topmove had made, showing the split between the employee and employer contributions.
16. On 22 February 2020, Miss N reminded Topmove that she was waiting for a response to the request she made on 14 February 2020. On the same day, Topmove responded to say it would aim to provide the information by the end of March 2020, at the latest.
17. On 23 March 2020, Miss N wrote to Topmove. She said she had concerns that the monies invested on her behalf had not been split correctly between employee and employer contributions.
18. On 27 March 2020, Miss N reiterated that she required information on the split of employee and employer contributions and details of any outstanding payments that were due in respect of her pension.
19. On the same day, Topmove advised Miss N that it was hoping to provide an update the following week.
20. On 20 April 2020, Miss N sent a follow up email in respect of the request she made on 27 March 2020. On the same day, she also wrote to Topmove and referred to the outstanding information she had requested in her letter of 14 February 2020. Miss N

asked for any overdue contributions to be paid to her pension, plus interest for late payment.

21. On 1 May 2020, Miss N contacted Topmove for an update.
22. On 13 May 2020, Miss N sent a further request for a response to the questions she had raised. She asked Topmove to confirm whether it had set up an account for her in the Scheme or whether it had made payments to the Plan.
23. On the same day, Topmove responded to Miss N to confirm that her pension contributions were up to date and had been paid to the Plan. It said that this included the employee contributions shown on her payslips that had been deducted from her pay.
24. On 21 May 2020, Scottish Widows notified Topmove that a contribution it had received of £625.88 had been recorded as an employer contribution.
25. On 1 June 2020, Miss N wrote to Topmove to reiterate the information Scottish Widows would require when remitting contributions. She referred to the payment of past contributions where this information had not been provided, resulting in the split between employee and employer contributions being incorrect. She asked Topmove to provide the correct splits so that a correction could be made.
26. On 13 July 2020, Miss N emailed Topmove to raise a complaint under its internal dispute resolution procedure (**IDRP**). In summary, she said:-
 - She has been chasing Topmove for several months for a breakdown of the employee and employer contributions paid to the Plan. She was told that the contributions were up to date; she has not received any information to support this.
 - Topmove has not acknowledged that it has an obligation to pay the employer contributions to her pension.
 - The Plan showed only three payments made by Topmove during her employment; a further £625.88 was received by Scottish Widows on 13 May 2020. The payment was not initially allocated to her account because Topmove had not supplied the employee/employer split. It was then allocated as an employer contribution despite it appearing to be an employee contribution.
 - Due to the late payment of the contributions, she missed out on potential investment returns. Furthermore, the tax relief due on those contributions was not applied correctly.
27. On 24 July 2020, Miss N requested a response to her complaint.
28. On 4 August 2020, Miss N reminded Topmove that it had not responded to her complaint. Topmove asked Miss N to forward a copy of her complaint by post as it may not receive emails sent to it. Miss N has said that, in light of a medical condition,

and the potential risk of contracting Covid-19, she considered Topmove's request to be unreasonable. Consequently, no resolution was reached between the parties.

29. On 19 April 2021, Topmove provided The Pensions Ombudsman (**TPO**) with a breakdown of the employee contributions deducted from Miss N's pay which it had remitted to Scottish Widows. A summary of the information, together with the employer contributions calculated by Miss N, can be found in Appendix 1. Topmove said that it had made no employer contributions as it had been incorrectly advised by its accountants.
30. On 26 August 2021, TPO asked Topmove to confirm whether it agreed with Miss N's calculation of the employer contributions that were due. Miss N had calculated that a total sum of £116.52 was outstanding.
31. On 20 September 2021, TPO had a telephone conversation with Topmove to discuss whether there were any outstanding issues in relation to Miss N's complaint. Topmove suggested that the problem was caused by Miss N's request to have her contributions paid into the Plan, rather than the Scheme. It did not consider that Miss N had suffered any distress and inconvenience as a result of its actions.
32. On 30 September 2021, Topmove made a payment of £116.52 to Scottish Widows in respect of the employer contributions calculated by Miss N. Scottish Widows acknowledged receipt of this payment and advised that the employee/employer contribution split had not been provided.
33. On 19 October 2021, Topmove requested a loss calculation from Scottish Widows in respect of the payment of £116.52, which it subsequently provided.
34. On 4 July 2022, TPO wrote to Topmove to request its formal response to Miss N's complaint and some additional information regarding the issues she had raised. Despite several reminders, not all of the information requested has been received.
35. On 18 May 2023, TPO wrote to Topmove and requested that it provide Scottish Widows with a payment schedule showing the correct split between employee and employer contributions so that it could correct its records. Scottish Widows has not received this information.
36. Miss N has confirmed that the total contributions due have now been paid to the Plan. However, she would like the split between employee and employer contributions to be corrected.
37. Miss N considers that she has lost out on investment growth due to the late payment of the contributions and that she has also suffered distress and inconvenience as a consequence of Topmove's administrative errors.

Adjudicator's Opinion

38. Miss N's complaint was considered by one of our Adjudicators who concluded that further action was required by Topmove, as it had not remitted the contributions on time and had failed to provide correct details in respect of the split between the employee and employer contributions. The Adjudicator's findings are summarised in paragraphs 39 to 50 below.
39. The Adjudicator noted that since Miss N made her complaint to TPO in May 2020, Topmove had made a further payment to Scottish Widows and Miss N was now happy that all the contributions had been remitted to the Plan. So, the Adjudicator restricted his investigation to:
- the issue Miss N had raised concerning the split of contributions between employee and employer;
 - whether Miss N had incurred any investment loss as a result of the late investment of the contributions; and
 - whether she had suffered any distress and inconvenience as a result of Topmove's maladministration.
40. The Adjudicator noted that when Topmove agreed that contributions could be made to the Plan, Miss N notified it of the information that Scottish Widows would require in order to invest the contributions. This included information on the split between employee and employer contributions in respect of each payment. The Adjudicator also noted that Miss N provided the same details to Topmove in June 2020. However, Scottish Widows did not receive the information.
41. Furthermore, when Scottish Widows received the contributions, Scottish Widows wrote to Topmove to confirm how it intended to split the payments between employee and employer contributions, as it had not been provided with this information. The Adjudicator had seen no evidence that Topmove wrote to Scottish Widows to correct the position; the Adjudicator said that most of the splits Scottish Widows was proposing were incorrect.
42. The Adjudicator highlighted that in June 2020, Miss N informed Topmove that Scottish Widows required a breakdown of the contributions covering the entire period of her employment, showing the employee/employer contribution splits. This was so that Scottish Widows could correct the information on its records. In May 2023, TPO asked Topmove to provide the details to Scottish Widows. There was no evidence that Topmove had provided this information.
43. In the Adjudicator's opinion, Topmove's lack of action in this respect amounted to maladministration. The Adjudicator's view was that Topmove was responsible for the fact that the employee and employer contributions had been incorrectly recorded by Scottish Widows.

44. Miss N was employed by Topmove from July 2018 to February 2020. The Adjudicator noted that during this time, Topmove only made two payments to Scottish Widows, both of which related to employee contributions. It was only after Miss N left Topmove's employment that it made two further payments, including a payment of £625.88 which was equivalent to over 70% of the total contributions that were due.
45. The majority of the contributions due to the Plan were paid late. In the Adjudicator's opinion this amounted to maladministration on the part of Topmove; it was responsible for any investment loss that Miss N had suffered as a result.
46. The Adjudicator acknowledged that Miss N's request to have contributions paid to the Plan, rather than the Scheme, would have resulted in Topmove having to undertake additional steps. In the Adjudicator's opinion, having agreed to this request, Topmove was responsible for ensuring that the contributions were remitted to the Plan in a timely manner.
47. The Adjudicator said Topmove was slow in responding to Miss N's requests for a breakdown of the contributions and for further information on where her contributions had been invested. The request was initially made on 14 February 2020. Despite several reminders from Miss N, it was not until 13 May 2020 that Topmove provided a response. Further, the response was incomplete.
48. The Adjudicator noted that Topmove did not provide Miss N with details of the employer contributions it was paying into the Plan. As a result, Miss N calculated the figures herself. In the Adjudicator's view, Miss N should not have been placed in a position where she considered she had no alternative but to take on that responsibility.
49. The Adjudicator had seen no evidence that Topmove responded to Miss N's complaint that she raised under the IDRP. The Adjudicator said there was no reasonable justification for Topmove insisting that the complaint should be submitted by post. Particularly, given the concerns over Covid-19 at the time.
50. In the Adjudicator's view, Miss N had suffered serious distress and inconvenience as a result of Topmove's maladministration and an award of £1,000 was appropriate in the circumstances.
51. Topmove did not respond to the Adjudicator's Opinion and the complaint was passed to me to consider.
52. I agree with the Adjudicator's Opinion.

Ombudsman's decision

53. I note that the employee contribution figures in Appendix 1 reconcile with the contributions deducted from Miss N's pay, as shown on her payslips.

54. In relation to the employer contributions, the figures were provided by Miss N and accepted by Topmove. As Topmove has failed to respond to TPO's requests for additional information in connection to Miss N's case, and both parties agree that the figures are correct, I have not investigated the accuracy of the employer contribution figures any further.
55. Topmove has shown a disregard of its responsibilities by remitting contributions late to the Plan. It also failed to provide Scottish Widows with the necessary information to enable it to correctly record the split between employee and employer contributions. While Topmove has on occasions engaged with Miss N and TPO, it has not responded to recent communications from TPO. In particular, it failed to respond to the Adjudicator's Opinion and has not remedied matters, as recommended by the Adjudicator.
56. Topmove's failure to pay the employee and employer contributions across to the Plan in a timely manner, in respect of the period from July 2018 to February 2020, has potentially caused Miss N to suffer a financial loss. Consequently, it shall remedy any financial loss Miss N has incurred.
57. Miss N is also entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice Topmove has caused her. As well as the issues set out in paragraph 55 above, despite a number of requests, Topmove did not provide Miss N with details of the employer contributions that were due. This resulted in Miss N feeling it necessary to undertake these calculations herself, which is not something I would have expected her to have had to do. Miss N's distress was likely compounded by Topmove's failure to respond to the Adjudicator's Opinion.
58. I uphold Miss N's complaint.

Directions

59. Within 28 days of the date of this Determination, Topmove shall:-
 - Pay Miss N £1,000, for the serious distress and inconvenience it has caused her.
 - Forward copies of Appendices 1 and 2 to Scottish Widows. Ask it to adjust its records so that the contributions and units in the Plan remitted to it by Topmove, as documented in Appendix 2, are allocated correctly between employee and employer contributions based on the information in Appendix 1.
 - Request that Scottish Widows notify Miss N, and HM Revenue & Customs, of any corrective action that it subsequently undertakes in respect of any tax relief due on the employee contributions.
 - Establish with Scottish Widows whether the late payment of contributions has meant fewer units were purchased in the Plan than would have been bought if the contributions had been paid on time. Ask it to confirm, if there is such a shortfall, the cost of purchasing the missing units.

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- Pay any reasonable administration fee should Scottish Widows charge a fee for carrying out the above calculation.
- Stress to Scottish Widows that Miss N made regular contributions to the Plan before she was employed by Topmove, and these should not be adjusted or taken into account in any calculations.

60. If a shortfall in units is identified, within 14 days of receiving a response from Scottish Widows, Topmove shall meet the cost of purchasing any additional units required to make up the shortfall. It shall also notify Miss N in writing of the additional units that have been purchased.

Anthony Arter CBE

Deputy Pensions Ombudsman
17 November 2023

Appendix 1**Summary of contributions**

The employee contribution figures below have been taken from Miss N's payslips and information supplied by Topmove. The employer contribution figures have been agreed between Miss N and Topmove and are based on Miss N's calculations.

Payslip date	Employee contributions (£)	Employer contributions (£)	Total (£)
31 July 2018	0.00	0.00	0.00
31 August 2018	10.15	6.76	16.91
30 September 2018	8.03	5.35	13.38
31 October 2018	11.70	7.79	19.49
30 November 2018	16.92	4.83	21.75
31 December 2018	61.20	6.12	67.32
31 January 2019	61.20	6.12	67.32
28 February 2019	41.88	4.19	46.07
31 March 2019	61.20	6.12	67.32
03 May 2019	62.58	9.39	71.97
31 May 2019	56.01	8.40	64.41
30 June 2019	56.01	8.40	64.41
31 July 2019	62.58	9.39	71.97
31 August 2019	62.58	9.39	71.97
30 September 2019	42.88	6.43	49.31
01 November 2019	56.01	8.40	64.41
04 December 2019	29.74	4.46	34.20
31 December 2019	29.74	4.46	34.20
01 February 2020	3.47	0.52	3.99
29 February 2020	0.00	0.00	0.00
Total	733.88	116.52	850.40

Appendix 2**Summary of how payments made to the Plan by Topmove were invested by Scottish Widows**

Date paid	Employee contributions (£)	Employer contributions (£)	Total (£)
8 November 2018	29.88	0.00	29.88
2 January 2019	16.92	61.20	78.12
12 May 2020	0.00	625.88	625.88
30 September 2021	0.00	116.52	116.52
Total	46.80	803.60	850.40