

Ombudsman's Determination

Applicant	Miss R
Scheme	Aviva Master Trust (the Scheme)
Respondent	Right Choice Housing Association Community Interest Company (the Employer)

Outcome

1. Miss R'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 Miss R £1,000 for the serious distress and inconvenience it has caused her.

Complaint summary

2. Miss R has complained that the Employer, despite deducting contributions from her pay, has failed to pay the contributions into the Scheme.
3. Miss R has said that the missing contributions amounted to £469.53.

Background information, including submissions from the parties

4. In July 2018, Miss R began her employment with the Employer. Despite contributions being deducted from her pay none of these were paid into Miss R's Scheme account.
5. Miss R raised the issue regarding her unpaid contributions with the Employer on several occasions.
6. The Scheme provider repeatedly reported the Employer to the Pensions Regulator for failing to pay pension contributions on time.
7. On 20 March 2020, Miss R brought her complaint to The Pensions Ombudsman (**TPO**).
8. Miss R provided copies of the payslips that she held for the period from July 2018 to January 2019, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. These deductions amounted to £469.53. A breakdown of the deductions has been included in the Appendix.

9. On 16 July 2020, TPO asked the Employer for its response to Miss R's complaint.
10. On 27 July 2020, the Employer responded and offered to arrange payment of the unpaid contributions. It said that it could pay Miss R, or TPO, directly.
11. The next day, TPO responded to the Employer stating that the contributions would need to be paid to Miss R's Scheme account.
12. The same day, the Employer responded to TPO and said:

"I will contact Aviva tomorrow and see how they want me to do it. I know we don't have an account with them anymore. I will contact Aviva tomorrow and see how they want me to do it. I know we don't have an account with them anymore. I will let you know the progress when I have contact them [SIC]."
13. On 13 August 2020, Miss R advised that she tried to log into her Scheme account but it had been cancelled because no contributions had been paid. Consequently, she opened a new individual plan (**the Plan**) that would accept the outstanding contributions from the Employer.
14. On 7 September 2020, TPO chased the Employer for an update. This was repeated on 7 October 2020 and 21 October 2020. The Employer failed to respond.
15. On 6 July 2021, TPO asked the Employer for its formal response to Miss R's complaint. This request was repeated on 26 August 2021 and 10 October 2021. None of these requests received a response.
16. In April 2022, TPO chased the Employer again. But the Employer failed to respond by the deadline.

Caseworker's Opinion

17. Miss R'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 as to the facts of the case, including the dates and amounts of contributions that had not been paid. 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 Miss R.
 - The Caseworker said that she had no reason to doubt the information provided by Miss R. In her view, on the balance of probabilities, contributions had been deducted from Miss R's salary that 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, Miss R was not in the financial position she ought to be in.

- In the Caseworker's view, Miss R had suffered significant distress and inconvenience due to the Employer's maladministration. The Caseworker was of the view that an award of £500 for non-financial injustice was appropriate in the circumstances.

18. 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, except for the level of award for maladministration.

Ombudsman's decision

19. Miss R has complained that the Employer has not paid all the contributions due to her Scheme account.
20. 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 Miss R or my Office. It has also failed to respond to the Caseworker's Opinion.
21. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Miss R to suffer a financial loss. The Employer shall take remedial action to put this right.
22. Miss R is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice the Employer has caused her to suffer. This was made worse by its failure to fully respond during my Office's investigation into Miss R's complaint.
23. I uphold Miss R's complaint.

Directions

24. To put matters right, the Employer shall, within 14 days of the date of this Determination:
 - (i) pay Miss R £1,000 in recognition of the serious distress and inconvenience she has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Miss R'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 Miss R.

25. The Employer shall, within 14 days of receiving a request by Miss R, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.
26. Within 14 days of receiving confirmation from Miss R that she agrees with the information on the Schedule, the Employer shall:
 - (i) pay the missing contributions into the Plan;
 - (ii) establish with the Scheme administrator, Aviva, whether the late payment of contributions has meant that fewer units were purchased in the Plan account than she would have otherwise secured, had the contributions been paid on time to the Scheme; and
 - (iii) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.
27. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Miss R's units, pay the cost of purchasing any additional units required to make up that shortfall into her Plan.

Anthony Arter

Pensions Ombudsman
28 October 2022

Appendix

Date	Employee contributions	Employer contributions
1 July 2018 to 31 July 2018	£0	£0
1 August 2018 to 31 August 2018	£53.57	£44.64
1 September 2018 to 30 August 2018	£49.31	£41.10
1 October 2018 to 31 October 2018	£48.93	£40.78
1 November 2018 to 30 November 2018	£45.48	£37.90
1 December 2018 to 31 December 2018	£42.29	£35.24
1 January 2019 to 31 January 2019	£16.52	£13.77
Total unpaid employee contributions	£256.10	
Total unpaid employer contributions		£213.43