

Ombudsman's Determination

Applicant	Mrs N
Scheme	The People's Pension (the Scheme)
Respondents	The People's Pension Trustee Limited (TPP) Bramwell-Griffiths Limited (the Employer)

Outcome

1. I do not uphold Mrs N's complaint and no further action is required by TPP or the Employer.

Complaint summary

2. Mrs N has complained that:-
 - The employer deducted employee contributions from her salary but delayed setting up an automatic enrolment pension for around 22 months.
 - TPP informed her that it would be possible to opt-out of the Scheme while retaining the Employer's contributions in her pension but subsequently withdrew that option.
 - The general service provided by TPP in response to the concerns she raised was poor.

Background information, including submissions from the parties

3. Section 3(2) of the Pensions Act 2008 (**the 2008 Act**), provides that: "The employer must make prescribed arrangements by which the jobholder becomes an active member of an automatic enrolment scheme with effect from the automatic enrolment date."
4. To qualify for a pension under the 2008 Act, eligible jobholders are defined as workers who meet the following criteria:-
 - Aged between 22 years old and the state pension age.
 - Receiving wages in excess of £10,000 a year.

- Working in the UK.
5. The Pensions Regulator requires an employer to pay contributions that have been deducted from an employee's salary to the pension scheme concerned by the 22nd day of the following month unless the payment is by cheque.
 6. Regarding a refund of contributions to an eligible jobholder who has elected to opt out of an automatic enrolment pension scheme, the Pensions Regulator has said:

“When an employer is given a valid opt-out notice, they must refund to the jobholder any contributions that have been deducted from pay (less any tax due) by the refund date, which is either:

within one month of being given the valid opt-out notice, or

if the payroll arrangements closed before they were given the notice, by the last day of the second applicable pay reference period following the date on which the valid opt-out notice was given. This means that the employer should pay the refund in the next available payroll run after they were given the notice.”
 7. In October 2018, Mrs N, on checking her payslip, noticed that an employee contribution had been deducted from her salary.
 8. Mrs N asked the Employer for information regarding the investment of her contributions and was told that her pension was with the Scheme.
 9. On 2 July 2020, Mrs N sent an online message to TPP, the Scheme's administrator, via its website stating that the Employer had set up a pension for her, but no written confirmation had been received.
 10. On 3 July 2020, TPP emailed Mrs N and said no record had been found for her but once enrolled in the Scheme, she would receive a welcome pack.
 11. On 4 July 2020, Mrs N emailed TPP to enquire about her enrolment to the Scheme.
 12. On 10 July 2020, TPP emailed Mrs N and said no record had been found for her, meaning that the Employer had not yet sent it a file containing her enrolment details. TPP said it would only be able to confirm her membership once that information was received.
 13. On 16 July 2020, Mrs N telephoned TPP and was told that no pension details had been recorded for her.
 14. On 17 July 2020, Mrs N telephoned TPP to check if an automatic enrolment pension record had been created and was told that no records were held for her.
 15. On 21 July 2020, the Employer enrolled Mrs N to the Scheme and notified TPP that her enrolment date was 6 June 2020.

16. On the same day TPP sent a welcome pack to Mrs N, confirming that she had been enrolled into the Scheme. The letter included a form (**the Opt Out Form**) that Mrs N could sign and return to TPP by 20 August 2020 if she had elected to opt out of the Scheme.
17. On 25 July 2020, Mrs N received the welcome pack.
18. On 27 July 2020, at around 10.44am, Mrs N telephoned TPP and complained that the welcome pack was dated 21 July 2020, but employee contributions had been deducted from her salary since October 2018.
19. According to a transcript of the conversation, TPP explained that Mrs N could opt out of the Scheme within one calendar month of the date on which the welcome pack was sent. She would then receive a refund of her own contributions, and the Employer would receive a refund of its contributions.
20. TPP also told Mrs N that an alternative option was to retain all the contributions in her pension fund until age 55, when she would be eligible to claim retirement benefits as a one-off lump sum.
21. Mrs N has said that she made a further telephone call to TPP, in the afternoon of 27 July 2020, when she was told that it would be possible to opt out of the Scheme by 25 August 2020, so that the employee contributions could be paid to the Employer who would then refund them to her. Mrs N has also said TPP explained that the Employer's contributions would then remain invested in her pension until she retired.
22. On 3 August 2020, Mrs N signed the Opt Out Form and sent it to TPP confirming that she had elected to opt out of the Scheme. A declaration in the summary section of the form stated:-
 - I wish to opt out of pension saving.
 - I understand that if I opt out, I will lose the pension contributions from my employer.
23. On 5 August 2020, TPP received the Opt Out Form and sent Mrs N a letter confirming her election to opt out of the Scheme had been processed and that all of the contributions would be returned to the Employer. Mrs N would need to contact the Employer for a refund her contributions.
24. On 11 August 2020, TPP received a payment from the Employer totalling £3,059.77, which consisted of £1,382.83 in employer contributions and a further £1,676.94 of Mrs N's employee contributions.
25. On 5 September 2020, TPP refunded these contributions to the Employer.
26. On 7 September 2020, Mrs N telephoned TPP and complained that she had opted out of the Scheme and, having checked her online account, noticed that all of the contributions, including those previously paid by the Employer, had been withdrawn.

27. A transcript of the conversation shows TPP replied that all the contributions had been correctly returned to the Employer as part of normal procedures, and it was for the Employer to refund the employee contributions to Mrs N. TPP also said that there was no requirement for the Employer to refund its contributions to Mrs N, but it could do so as a good will gesture.
28. On 10 September 2020, Mrs N emailed TPP and complained about the delay in allocating her contributions then refunding them. Mrs N said that she had also expected the Employer's contributions to remain invested in her pension, and she raised three questions as follows:-
- Why had TPP told her on 3 occasions in July 2020 that no record of her pension had been found when she had been automatically enrolled to the Scheme in June 2020?
 - Why was she automatically enrolled on 6 June 2020 when she had been paying contributions since October 2018?
 - Why had TPP accepted a lump sum of employee and employer contributions totalling £3,059.77 as a single payment when this was obviously more than a month's worth of contributions?
29. On 18 September 2020, TPP emailed Mrs N and said:-
- In July 2020 the Employer informed TPP that Mrs N had been enrolled to the Scheme from 6 June 2020. TPP relies on the Employer to provide information regarding enrolment to the Scheme. TPP does not see the Employer's payroll, so the Employer has responsibility for the correct assessment and application of automatic enrolment. Mrs N should contact the Pensions Regulator if she felt that the Employer had failed in its responsibility to automatically enrol her.
 - Mrs N was entitled to opt out of the Scheme within 30 days of the welcome pack being sent to her on 21 July 2020. The signed Opt Out Form was received on 5 August 2020, so the sum total of the combined employee and employer contributions was returned to the Employer on 5 September 2020. It was then for the Employer to refund the employee contributions to Mrs N.
30. On 5 October 2020, Mrs N complained to the Employer and said:-
- Employee contributions had been deducted from her salary since October 2018, when she was informed that her pension was with the Scheme. However, she had telephoned TPP on 16 July 2020 and was told that she did not, in fact, have a pension in the Scheme.
 - she received a welcome pack on 25 July 2020 confirming she had subsequently been enrolled to the Scheme.
31. Mrs N received no response from the Employer to this complaint.

32. On 8 October 2020, Mrs N complained under the Scheme's Internal Dispute Resolution Procedure (**IDRP**) and said:-

- In October 2018 she noticed that the first employee contribution had been deducted from her salary and the Employer said that her pension was with the Scheme. During July 2020 she made several enquiries to TPP regarding her pension and was repeatedly told that no record had been found until she eventually received a welcome pack from TPP on 25 July 2020.
- On the afternoon of 27 July 2020, she had telephoned TPP to ask why there had been a delay in processing her new pension and to enquire about opting out of the Scheme. A named call handler said she could elect to opt out of the Scheme, and her contributions would then be refunded to the Employer before being returned to her.
- The named call handler also explained that the Employer's contributions would remain in her pension fund and that she could claim the resulting benefits as a lump sum at age 55. At the time of the call, contributions had been deducted from her salary for over 20 months but had still not been allocated to her pension.
- The opt-out process should normally be processed within one month of joining an automatic enrolment pension scheme. By July 2020, she had been paying employee contributions for around 22 months but until then, none of the funds had been allocated to her pension in the Scheme.

33. On 26 October 2020, Mrs N emailed TPP and confirmed she had received a payment of £3,059.77, which was the sum total of her contributions and those that had been made by the Employer before she had opted out of the Scheme.

34. On 24 November 2020, TPP wrote to Mrs N in response to her complaint under stage one of the IDRP and said:-

- During the telephone call on 16 July 2020, Mrs N said that the Employer had deducted pension contributions from her salary since October 2018 that had not been allocated to her pension. At that time, TPP was unable to locate Mrs N's pension details as she had not yet been automatically enrolled to the Scheme. So, Mrs N was advised to speak to the Employer.
- The Employer automatically enrolled Mrs N to the Scheme on 21 July 2020. Before that date TPP was unaware of the Employer's requirement to do so. TPP was also not aware that the Employer had deducted employee contributions from Mrs N's salary then failed to forward them within the permitted timescale.
- The letter of 21 July 2020 explained that Mrs N could elect to opt out of the Scheme and receive a refund of her own contributions. A lump sum totalling £3,059.77 was subsequently received from the Employer, consisting of Mrs N's employee contributions of £1,676.94 and employer contributions of £1,382.83

- Mrs N's email of 26 October 2020 confirmed she had received a payment of £3,059.77 representing the total of the employee and employer contributions that had previously been allocated to her pension. This payment meant that the matter of the unpaid refund of contributions was resolved. Government regulations provide that Mrs N was only entitled to a refund of her own contributions, less any income tax due.
 - Having reviewed all telephone conversations with Mrs N, it was established that there was only one call on 27 July 2020, where TPP confirmed that, rather than opting out of the Scheme, Mrs N could leave the contributions invested until age 55. This would have enabled Mrs N to claim a single pension lump sum resulting from both employer and employee contributions. The call handler also correctly confirmed that if Mrs N elected to opt out of the Scheme, she would only receive a refund of her own contributions.
 - Mrs N's complaint was not upheld.
35. On 23 December 2020, Mrs N appealed under stage two of the IDRP and said that TPP had incorrectly stated it had reviewed all telephone calls with her. She had also not received the requested transcripts of all her telephone calls with TPP.
36. On 2 February 2021, TPP emailed Mrs N transcripts of its telephone conversations it had had with her.
37. On 5 February 2021, Mrs N emailed TPP and complained that the transcripts provided did not correspond with her own records. She said that TPP had omitted details of a call she made in the afternoon of 27 July 2020, in which the call handler confirmed that she could claim a refund of employee contributions, while retaining the Employer's contributions in her pension.
38. On 19 February 2021, the Scheme's trustee, The People's Pension Trustee Limited, **(the Trustee)**, wrote to Mrs N in response to her complaint under stage two of the IDRP and reiterated TPP's findings in the email of 24 November 2020.
39. In summary, the Trustee also said TPP had no record of the telephone call in the afternoon of 27 July 2020 that Mrs N referred to. All the call transcripts sent to Mrs N were written independently of her information request under the IDRP; the person who transcribed those conversations had no knowledge of the complaint.

Mrs N's position

40. The first contribution deducted from her salary was in October 2018 but, on 27 July 2020 when she telephoned TPP, no contributions had been allocated to her pension. It was not until 11 August 2020 that a lump sum of contributions totalling £3,059.77 was paid into her pension by the Employer, around 22 months after the first contribution deduction from her salary.
41. During a telephone call in the afternoon 27 July 2020, TPP explained that she could elect to opt out of the Scheme by 25 August 2020, and that she would then receive a

refund of her own contributions, while the Employer's contributions would remain invested in her pension.

42. Having then elected to opt-out of the Scheme, she expected her employee contributions to be refunded and the Employer's contributions to remain in her pension. However, TPP subsequently informed her that all the contributions had been returned to the Employer.
43. During a telephone call with TPP on 7 September 2020, she was told that the missing employer contributions could only be reinvested in her pension if the Employer returned all the contributions, but TPP took no action to do so. Consequently, she made a complaint to TPP on 10 September 2020 that included several questions, none of which were answered.
44. In 2020, TPP received a lump sum of £3,059.77 as if it was a first payment into a newly created pension policy. That sum should have been identified as abnormal since she was paid on a weekly basis. So, following her automatic enrolment to the Scheme, TPP provided misleading information regarding the period that those contributions covered. So, the general service provided by TPP in response to the concerns she raised was poor.

TPP's position

45. Mrs N made an enquiry on 17 July 2020 regarding her automatic enrolment arrangement. It was not possible to provide the requested information, as Mrs N had not been enrolled to the Scheme by the Employer at the time. The Employer eventually enrolled Mrs N to the Scheme on 21 July 2020 and confirmed that this should be backdated to 6 June 2020.
46. Mrs N elected to opt out of the Scheme on 5 August 2020 and the payments allocated to her pension totalling £3,059.77 were returned to the Employer. This consisted of employer's contributions of £1,382.83 plus employee contributions of £1,676.94. The Employer did not then refund the employee contributions to Mrs N within the required timescale of one month after receiving the Opt Out form on 5 August 2020.
47. On 7 September 2020, Mrs N complained that she had not received a refund of her employee contributions. TPP confirmed that all the contributions had been returned to the Employer in accordance with TPP's standard procedures. On 26 October 2020, Mrs N eventually confirmed that she had received a refund totalling £3,059.77 including both the employee and employer contributions.
48. On 2 February 2021, Mrs N was provided with transcripts of all her telephone calls with TPP. In response Mrs N questioned a missing telephone call from the afternoon of 27 July 2020. There is no record of that call or of the named call handler that Mrs N referred to ever having worked for TPP.

The Employer's position

49. The Employer was asked to respond to Mrs N's complaint to the Pensions Ombudsman but failed to do so.

Adjudicator's Opinion

50. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by TPP or the Employer. The Adjudicator's findings are summarised below:-

- In the Adjudicator's view, the Employer failed to enrol Mrs N into the Scheme in accordance with the 2008 Act. It informed Mrs N that she had been automatically enrolled to the Scheme in October 2018, but this was not the case. TPP has confirmed that it was not, in fact, until 21 July 2020 that the Employer enrolled Mrs N to the Scheme with effect from 6 June 2020. This in turn delayed allocation of the contributions to Mrs N's pension until August 2020.
- The Employer also breached The Pensions Regulator's guidance that contributions deducted from an employee's pension should be paid into a pension scheme by the 22nd day of the following month after the deduction. In the Adjudicator's opinion, these failures to comply with the 2008 Act and The Pensions Regulator's guidelines amount to maladministration by the Employer.
- TPP has no record of the telephone call in the afternoon of 27 July 2020 that Mrs N has referred to, nor of the named call handler. So, in the Adjudicator's view it is not possible to reach any conclusions or make any findings on that call with any certainty.
- A declaration in the summary section of the Opt Out Form that Mrs N signed on 3 August 2020 states "I understand that if I opt out, I will lose the pension contributions from my employer". So, Mrs N ought to have been aware that she was not entitled to a refund of the Employer's contributions once she had opted out of the Scheme.
- In the email of 26 October 2020, Mrs N confirmed that the Employer had paid her a lump sum of £3,059.77. This figure included £1,382.83 of employer contributions, plus a refund of the employee contributions totalling £1,676.94. So, in the Adjudicator's opinion Mrs N has not suffered any financial detriment resulting from the Employer's maladministration previously identified.
- A transcript of the telephone call, during the morning of 7 September 2020, shows TPP informed Mrs N that it was for the Employer to refund her employee contributions but there was no requirement for the Employer's contributions to be paid to her. In the Adjudicator's view this response ought to have made it clear to Mrs N that no further action was needed by TPP for her to receive a refund of her own contributions.

- Mrs N could immediately have contacted the Employer to hasten the refund of contributions, as she was advised to do so in TPP's letter of 5 August 2020. However, it was not until 5 October 2020 that Mrs N wrote to the Employer complaining about the delay, prompting it to make the payment of £3,059.77 to her.
- In response to the questions Mrs N raised in her complaint of 10 September 2020, TPP has stated that it was not until 21 July 2020 that the employer confirmed she had been enrolled to the Scheme on 6 June 2020. So, TPP would not have been aware of Mrs N's enrolment at the time she made the enquiries about it from early in July 2020.
- TPP also said it did not see the Employer's payroll, so it was for the Employer to ensure correct assessment and application of Mrs N's automatic enrolment entitlement. In the Adjudicator's opinion, TPP appropriately informed Mrs N that it had no access to the Employer's payroll to check the enrolment details provided by the Employer.
- So, it would not have been clear to TPP that the lump sum of contributions totalling £3,059.77 received from the Employer on 11 August 2020 covered any period earlier than 6 June 2020. There is no evidence that the service TPP provided to Mrs N was poor, or that there was any maladministration by TPP.
- In the Adjudicator's view the Employer's maladministration previously identified would have caused Mrs N significant distress and inconvenience. The Employer has paid Mrs N the £1,382.83 of employer contributions that had previously been allocated to her pension, even though there was no requirement to do so.
- In the Adjudicator's opinion that £1,382.83 payment is ample recognition of the distress and inconvenience caused to Mrs N and has offset any requirement for an award that would otherwise have been due.

51. TPP and the Employer accepted the Adjudicator's Opinion, Mrs N did not, and the complaint was passed to me to consider. Mrs N provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mrs N.

Mrs N's additional comments.

52. She did not ask for a pension, and it was only following her enquiry of 2 July 2020 that she received confirmation that the Employer had not set up an automatic enrolment pension. The Employer then enrolled her into the Scheme within three weeks. However, by that time the Employer had been deducting contributions from her salary for almost two years, without allocating them to a pension, in breach of the 2008 Act.
53. On 3 July 2020, TPP had no record of a Pension for her. So, it was not possible for the Employer to have enrolled her to the Scheme on 21 July 2020, with effect from 6

June 2020. This shows that TPP has provided misleading information regarding her enrolment date.

54. TPP has no records of the telephone call in the afternoon of 27 July 2020. However, she has kept accurate records including details of this call during which she was told that the Employer's contributions would remain invested in her pension after electing to opt out of the Scheme.
55. On 5 August 2020, TPP received the Opt Out Form and sent her a letter confirming her instruction had been processed, and that all the contributions would be returned to the Employer. So, she would need to contact the Employer for a refund of her contributions. However, on 5 August 2020 the contributions had not been received by TPP, so there were no contributions for TPP to return.
56. It was not until 5 September 2020, more than 30 days after she had opted out of the Scheme that TPP repaid the contributions to the Employer. She did not then receive a payment covering all the contributions from the Employer until 26 October 2020, around 12 weeks after she had elected to opt out of the Scheme. So, the Employer exceeded the time limit for doing so as set out in The Pensions Regulator's guidance.
57. It was not her responsibility to ensure that the Employer followed pensions legislation and TPP failed in its duty to help in that regard. Mrs N did write to the Employer on 5 October 2020 and again 2 weeks later to hasten a refund of contributions.
58. She was entitled to a refund of the Employer's contributions since this was suggested by TPP. The eventual payment that she received, which included the Employer's contributions, did not fully recognise the distress and inconvenience she has suffered in the five years from 2018 to the present time.

Ombudsman's decision

59. Mrs N has complained that the Employer deducted employee contributions from her salary but delayed setting up an automatic enrolment pension for around 22 months.
60. Mrs N submits that she did not ask for a pension before the Employer advised that she had been automatically enrolled to the Scheme. Mrs N said it was only following her enquiry of 2 July 2020 that she received confirmation that the Employer had not, in fact, set up an automatic enrolment pension. The Employer then enrolled her into the Scheme within three weeks.
61. The 2008 Act required the Employer to automatically enrol Mrs N into a suitable pension arrangement in October 2018, since she met the criteria of an eligible jobholder at that time. There was no requirement under the 2008 Act for the Employer to seek Mrs N's approval before doing so. However, it was not until 21 July 2020 that the Employer contacted TPP to confirm that Mrs N should be automatically enrolled to the Scheme with effect from 6 June 2020.

62. I find that TPP could only act in accordance with these instructions since it was for the Employer to assess and apply Mrs N's eligibility for automatic enrolment. There is no evidence that TPP intended to provide misleading information to Mrs N regarding her automatic enrolment date in the welcome pack sent to her on 21 July 2020. I find that the Employer's delay of almost two years from October 2018 in fulfilling its responsibility to automatically enrol Mrs N to the Scheme, and the resulting delay in allocating her contributions until 11 August 2020 amounts to maladministration.
63. Mrs N has also complained that TPP has no records of the telephone call in the afternoon of 27 July 2020, but her own records show that TPP said the Employer's contributions would remain invested in her pension after electing to opt out of the Scheme. I find that there was no requirement for TPP to retain the Employer's contributions in Mrs N's pension fund after she elected to opt out of the Scheme on 3 August 2020.
64. The declaration section of the Opt Out Form that Mrs N signed stated, "I understand that if I opt out, I will lose the pension contributions from my employer". On that basis, Mrs N ought to have been aware that there was no entitlement for her to retain the Employer's contributions in any way after electing to opt out of the Scheme. Further, Mrs N has provided no evidence in support of her assertion that TPP advised her to the contrary during a telephone call in the afternoon of 27 July 2020.
65. Mrs N contends that on 5 August 2020, TPP sent a letter confirming that her election to opt out of the Scheme had been processed and that all the contributions would be returned to the Employer. So, she would need to contact the Employer for a refund of her own contributions. However, on 5 August 2020 the contributions had not been received from the Employer, so there were no funds for TPP to return.
66. I consider that TPP would naturally have anticipated receiving contributions from the Employer to be invested in Mrs N's pension after her automatic enrolment. Further, there was no requirement for the Employer to wait for TPP to return the £3,059.77 lump sum of contributions paid on 11 August 2020, before refunding Mrs N's employee contributions of £1,676.94 to her. If necessary, the Employer was required to make this payment from its other available funds, within 30 days of the signed Opt Out Form being received from Mrs N, or by the next available payroll. I find that there is no evidence TPP sought to mislead Mrs N in the letter of 5 August 2020.
67. Mrs N has also complained that she did not receive the payment of £3,059.77 until 26 October 2020, around 12 weeks after she had elected to opt out of the Scheme. So, the Employer exceeded the time limit under the Pensions Regulator's guidance for making that payment. I find that the Employer's failure to provide a refund of contributions to Mrs N until 26 October 2020 amounts to maladministration, having exceeded the timescales set out in the Pension Regulator's guidance. TPP cannot be held responsible for the Employer failing to refund Mrs N's contributions in accordance with the regulatory guidelines.

68. Mrs N submits that she was entitled to a refund of the Employer's contributions since this was suggested by TPP. She contends that the eventual payment of £3,059.77 she received, which included the Employer's contributions, did not fully recognise the distress and inconvenience she has suffered in the five years since 2018.
69. I note that during the telephone calls with Mrs N on the morning of 27 July 2020, and then on 5 August 2020 and 7 September 2020, TPP consistently maintained that Mrs N would be entitled to a refund of her own contributions, after electing to opt out of the Scheme. I do not agree TPP suggested that Mrs N was also entitled to a refund of the Employer's contributions.
70. However, I find that the Employer has prudently paid its contributions of £1,382.83 to Mrs N in recognition of the serious distress and inconvenience caused to her by the episodes of maladministration identified in paragraphs 62 and 67 above. No further award to Mrs N is warranted as the additional £1,382.83 payment, to which she was not automatically entitled, is sufficient recognition of the non-financial injustice she has suffered.
71. I do not uphold Mrs N's complaint.

Anthony Arter

Pensions Ombudsman
20 November 2022