

Ombudsman's Determination

Applicant	Mr R
Scheme	London Sovereign section of The People's Pension (the Scheme)
Respondent	RATP Dev Transit London (the Employer)

Outcome

1. I do not uphold Mr R's complaint and no further action is required by the Employer.

Complaint summary

2. The complaint that has been accepted for investigation relates to Mr R's concerns that the Employer had failed to pay contributions to the Scheme.
3. There is a separate, ongoing issue relating to the Employer's decision to change the Scheme to a salary sacrifice arrangement. This is outside of the Pensions Ombudsman's remit because it is a matter of employment law.

Background information, including submissions from the parties

4. Broadly, the Pensions Act 2008 stipulates that employers must automatically enrol certain workers into a pension scheme with effect from the employer's staging date. Employers that are required to provide a pension scheme must:-
 - Set up a pension scheme.
 - Automatically enrol eligible workers into a qualifying pension scheme and deduct pension contributions from their pay.
 - Provide specific information to groups of their workers within prescribed time limits.
 - Complete a declaration of compliance using the Pensions Regulator's (**TPR**) online service within five months of the start date of their legal duties.
5. Employers must pay pension contributions deducted from an employee's pay to the pension provider by the 22nd day of the following month.
6. Mr R worked for London Sovereign, a subsidiary of the Employer.

7. Mr R was automatically enrolled into the Scheme by the Employer in December 2019. His pension pot was invested in the B&CE GI Fund and the B&CE Pre-Retirement Fund.
8. The Scheme was administered by The People's Pension (**TPP**).
9. Between December 2019 and February 2020, the Employer deducted employee contributions from Mr R's pay. Mr R was paid weekly, but the Employer paid contributions to TPP on a four-weekly basis along with the employer contributions that it was required to pay. The Employer used the "net pay arrangement" to apply tax relief on the employee contributions.
10. At the beginning of the coronavirus pandemic in March 2020, the Employer switched the Scheme to a salary sacrifice arrangement. Salary sacrifice is an agreement between the employer and member whereby the member forgoes part of their future earnings in return for a corresponding contribution by the employer to a pension scheme.
11. Between March and June 2020, the Employer paid contributions to TPP in respect of Mr R. This was shown as an employer contribution on Mr R's payslip. During this time, Mr R was placed on "furlough". Consequently, the contributions were based on the pay he received under the Coronavirus Job Retention Scheme.
12. On or around June 2020, Mr R's employment transferred to London United Busways, a subsidiary of the Employer, under the Transfer of Undertakings (Protection of Employment) Regulations (**TUPE Regulations**). Mr R was automatically enrolled into a pension scheme with Legal & General.
13. Between July 2020 and January 2021, Mr R contacted the Employer and expressed concerns regarding missing contributions and that his furlough pay was incorrect.
14. Mr R transferred his benefits out of the Scheme and subsequently received a statement from TPP which showed that employer contributions had been received between March and June 2020. Mr R then contacted TPP and was informed that the statement was correct.
15. Mr R also queried the contributions with the Employer and was informed that the correct level of contributions had been paid to the Scheme. When Mr R contacted TPP, it confirmed that:-
 - The contributions were paid at a rate of eight percent, which was the correct rate.
 - The contributions were paid in accordance with pensions legislation and met its requirements.
 - TPP could accept weekly contributions.
16. During his email exchanges with the Employer, Mr R copied in TPO. The Employer broke these email chains by replying on separate emails. It said that it would not

engage with Mr R in trying to resolve his pension complaint if he continued to copy in TPO to his emails which it considered to be an “external company”.

17. The Employer has explained that while London Sovereign and London United Busways were subsidiaries of the Employer, they were separate companies. Consequently, they were required to have separate pension arrangements
18. On 6 January 2021, Mr R complained to the Employer. He said it had misinformed him that TPP would only accept contributions on a monthly basis. Both TPP and Legal & General had advised him that they could accept contributions on a weekly basis; it was the Employer’s decision that the contributions should be paid monthly.
19. Mr R maintained that some of the contributions were missing while other contributions had been paid at the incorrect rate. He also said that the Employer had failed to answer his questions and had not complied with his request to keep a full chain of their email exchanges, in the event that the matter is referred to TPO.
20. On 19 January 2021, the Employer responded to Mr R’s complaint and said:-
 - Mr R’s pension contributions were paid to TPP on a four-weekly basis because TPP did not accept weekly payments. The contributions were paid on time.
 - It had responded to all of Mr R’s queries in a timely manner. He had requested a breakdown of his pension contributions from March to June 2020; this information was provided on his payslips.
21. The Employer explained that it had asked Mr R to confirm his personal information for security purposes on multiple occasions. As he had now supplied his personal information, and passed security, it had included a spreadsheet setting out his pension contributions.
22. Mr R maintains that the Employer did not respond to his complaint.

Adjudicator’s Opinion

23. Mr R’s complaint was considered by one of our Adjudicators who concluded that no further action was required by the Employer. The Adjudicator’s findings are summarised below:-
 - The Employer’s decision to pay the contributions to TPP on a four-weekly basis did not constitute maladministration.
 - The Employer changed the Scheme to a salary sacrifice arrangement from March 2020. Consequently, the contributions on Mr R’s statement were shown as employer contributions.
 - In the Adjudicator’s opinion, the available evidence did not support Mr R’s assertion that incorrect contributions had been paid to the Scheme. Based on the

contributions displayed on his payslips, the Employer had paid the correct level of contributions to the Scheme. TPP had confirmed the position.

- The Employer's decision to change the Scheme to a salary sacrifice arrangement, and any concerns Mr R had raised about "furlough pay" were matters of employment law and did not fall within the remit of TPO.
- The Employer had provided supporting evidence that it responded to Mr R's complaint on 19 January 2021. It was unfortunate that Mr R did not receive the response which was sent to the same email address that he had been using to correspond with the Employer. The fact that he did not receive the response did not constitute maladministration on the Employer's part.

24. Mr R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R provided his further comments which do not change the outcome.

25. In summary, Mr R said:-

- The Employer deliberately removed "email content" when responding to his emails.
- The Employer was unaware of the role of TPO and initially refused to engage with TPO. When he asked why it had removed TPO from email chains, it said that TPO had "no right to know what was happening", since it was a third party. It also said that he did not have the right to copy TPO into his email exchanges with the Employer or refer any issues to TPO.
- In his view, this constitutes maladministration.

26. I have taken into account the additional points raised by Mr R, but I agree with the Adjudicator's Opinion.

Ombudsman's decision

27. Having carefully considered all the available evidence, I am satisfied that the Employer paid the correct level of contributions to the Scheme and provided a satisfactory response to the queries Mr R raised at the time.

28. TPO accepted Mr R's complaint for investigation once he had exhausted the Employer's internal dispute procedure. It was open to Mr R to provide TPO with copies of the emails he had exchanged with the Employer. While I accept that the Employer's decision not to copy TPO into the email exchanges would have caused him some frustration, this does not warrant a finding of maladministration.

29. I do not uphold Mr R's complaint.

CAS-62281-J4S5

Anthony Arter CBE

Deputy Pensions Ombudsman
15 December 2023