

Ombudsman's Determination

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| Applicant | Mrs G |
| Scheme | Aviva |
| Respondents | Zoyo Capital Limited (Zoyo) |

Outcome

1. Mrs G's complaint is upheld and to put matters right Zoyo shall:-
 - Pay to Mrs G's pension plan with Aviva £16,430.46.
 - Establish with Aviva whether the late payment of contributions has meant fewer units were purchased than would have been bought if the contributions had been paid on time. If a unit shortfall is identified, Zoyo shall cover the cost of correcting it.
 - Pay Mrs G £500 for the distress and inconvenience which she has suffered.

Complaint summary

2. Mrs G's complaint is that following the Employment Tribunal's (**ET**) December 2020 judgment her former employer has failed to pay pension contributions to her pension plan with Aviva.

Background information, including submissions from the parties

3. This is Mrs G's (nee Ms C's) second complaint concerning the non-payment of pension contributions by Zoyo. Mrs G's first complaint, *CAS-45334-Z3T1*, was upheld in September 2020 (the **Determination**) because Zoyo had failed to pay contributions, of 17.391% of her gross pay, to a pension plan nominated by her.
4. Paragraph 35 of the Determination said:

"Once the ET claim is determined, further employer pension contributions may (or may not) be due in respect of the period of Ms C's employment from 20 February 2019 until the termination of her employment. This will depend on what the ET decides but this does not impact on the matters I am investigating presently. If, the ET decides that Ms C is entitled to higher earnings during the

period she was put on SSP¹, and the appropriate pension payment is not made, it may be open to Ms C to make a further complaint to my Office regarding any failure to pay any additional contributions which are found to be due under Section 20.2 of her contract.”

5. In December 2020, the ET upheld Mrs G’s unauthorised deduction from wages claim “because there was clear evidence that she was well enough to work from 20 February 2019 to 23 July 2019 [**the Period**] and Zoyo had no contractual right to cease paying her in those circumstances”.
6. In respect of the Period, Mrs G duly requested Zoyo to pay to her pension plan with Aviva the difference between the pension contributions that it had paid as directed in the Determination and the pension contributions payable based on her full contractual gross pay.
7. The payment was not made. Ms G then complained to the Pensions Ombudsman’s Office.
8. While in Zoyo’s employment Mrs G’s daily gross pay was £884.62. Prior to the ET judgment, in respect of the Period, Mrs G received gross SSP of £1,946.76.

Adjudicator’s Opinion

9. Mrs G’s complaint was considered by one of our Adjudicators who concluded that further action was required by Zoyo. The Adjudicator’s findings are summarised below:-

- Following the ET judgment, Zoyo was liable to pay employer pension contributions to Mrs G’s Aviva pension plan of £16,430.46, calculated as follows:

Mrs G’s gross pay for the Period = £96,423.58²

Less SPP = (£ 1,946.76)

Total gross pay = £94,476.82

Total pension contributions payable = £16,430.46³

- To put matters right Zoyo should:-
 - Calculate simple interest at the applicable Bank of England base rate from time to time from the due date of contributions payable for the Period up to the date of payment to Mrs G’s pension plan with Aviva (the **Interest Sum**) and notify Mrs G of the calculated sum.

¹ Statutory sick pay.

² 109 working days x £884.62.

³ £94,476.92 x 0.17391.

- Pay £16,430.46 plus the Interest Sum to Mrs G's pension plan with Aviva.
 - If the payment of the above amounts resulted in an additional tax liability on Mrs G, then Zoyo should pay Mrs G the equivalent amount.
10. Zoyo and Mrs G agreed the calculation of £16,430.46, but to date Zoyo has not provided the interest calculation or confirmed when it will pay the sum to Mrs G's pension plan with Aviva.
 11. Mrs G has requested that the matter be now determined. Mrs G has also requested a payment for distress and inconvenience caused.
 12. I agree with the Adjudicator's Opinion, except, I have substituted the payment of simple interest to a calculation of any investment return lost as a result of the late payment of the contributions in order to put Mrs G back into the position she would have been in had the contributions been paid on time. I also note Mrs G's requests.

Ombudsman's decision

13. While Zoyo has agreed the calculation of pension contributions, it has failed to pay this with interest to Mrs G's pension plan with Aviva. This amounts to maladministration.
14. I have considered whether an award should be made for distress and inconvenience. I consider that this whole matter merits a payment of £500 for the significant distress and inconvenience which Mrs G has suffered.
15. I uphold Mrs G's complaint.

Directions

16. Within 21 days of the date of this Determination, Zoyo shall:
 - pay £16,430.46 to Mrs G's pension plan with Aviva;
 - establish with Aviva whether the late payment of contributions for the Period has meant fewer units were purchased than would have been bought if the contributions had been paid on time. If a unit shortfall is identified, Zoyo shall cover the cost of correcting it; and
 - pay Mrs G £500 for significant distress and inconvenience caused.

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I further direct that if the payment of any of the above sums results in an additional tax liability on Mrs G, then Zoyo shall pay Mrs G the equivalent amount.

Anthony Arter

Pensions Ombudsman
28 May 2021