

Ombudsman's Determination

Applicant	Miss H
Scheme	Aviva Pension Plan (the Plan)
Respondent	Boardworks Limited (the Employer)

Outcome

1. Miss H's complaint is upheld and, to put matters right, the Employer shall pay the missing contributions and make good any shortfall in units. In addition, the Employer shall pay Miss H £1,000 for the serious distress and inconvenience it has caused her.

Complaint summary

2. Miss H has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Plan.
3. Miss H has said that the missing contributions amounted to £958.50.

Background information, including submissions from the parties

4. On 1 October 2020, Miss H joined the Plan.
5. Between October 2020 and May 2021, the Employer failed to pay pension contributions into the Plan.
6. In early June 2021, Miss H became aware that contributions were not being paid to the Plan and raised the issue with the Employer.
7. On 15 June 2021, the Employer called Miss H to discuss payment options and agreed that payment of contributions for February 2021 to September 2021 would be made monthly during the period June 2021 to October 2021. However, no payments were ever made.
8. On 30 September 2021, Miss H discussed payment options again with the Employer who agreed that weekly payments would be made from 18 October 2021 to 20 December 2021. It said that these payments would cover the period from February 2021 to November 2021.

9. On 26 October 2021, Miss H raised her concerns over the unpaid pension contributions with the Employer and requested copies of her payslips from September 2020 to February 2021.
10. Later that day, the Employer responded and provided copies of most of the requested payslips.
11. On 28 October 2021, Miss H brought her complaint to The Pensions Ombudsman (**TPO**).
12. Miss H provided copies of the payslips that she held for the period from October 2020 to May 2021, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. The employee deductions amounted to £547.53 and the corresponding employer contributions equalled £1,368.78. A breakdown of the deductions has been included in the Appendix.
13. On 24 November 2021, Miss H agreed an adjustment to the payment agreement with the Employer so that weekly payments would be made from 26 November 2021 to 16 February 2022. The payment agreement would cover the period from February 2021 to January 2022.
14. On 14 December 2021, Miss H agreed a “more structured agreement” with the Employer so monthly, and sometimes twice monthly, payments would be made from 14 January 2022 to 23 September 2022 to cover the period from February 2021 to March 2022.
15. On 16 December 2021, the Employer sent an email and apologised to all employees as it was behind with paying pension contributions. The Employer said it had notified the Plan administrator, Aviva, and the Pensions Regulator (**TPR**). It said that Aviva has not closed the Plan and is awaiting payment of the contributions.
16. The Employer said that TPR has advised it to catch up with paying the contributions as quickly as possible but that TPR “will end up issuing notices which come with penalties and critical deadlines.” The Employer said it would ask Aviva to calculate the investment loss and once it had the figures it would pay them into the Plan.
17. On 17 January 2022, Aviva told Miss H that the Employer had failed to pay the first instalment of the most recent payment plan.
18. On 27 January 2022, Miss H spoke to the Employer and agreed to delay the agreement for one month so the first payment would be made in February 2022.
19. On 3 May 2022, TPO asked the Employer for its formal response to Miss H’s complaint. This request was repeated on 27 May 2022, but, no response was received.
20. On 15 June 2022, TPO chased the Employer again.
21. Later that day, the Employer contacted TPO and said that the business was experiencing financial difficulties which resulted in the late payment of pensions. The

Employer said it is pursuing a company voluntary arrangement (**CVA**) with all its creditors with the assistance of Greenfield Recovery (**GR**), a restructuring and insolvency service.

22. The next day, TPO requested contact details for GR from the Employer. On 8 July 2022, TPO chased the Employer for a response. This was repeated on 17 August 2022.
23. On 22 August 2022, the Employer provided the contact details for GR.
24. On 7 September 2022, TPO contacted GR and the Employer regarding the outstanding contributions.
25. The next day, GR responded stating “It is correct we have been instructed to act in respect of a CVA for the above-named Company, however the proposal is not yet prepared, lodged in Court or progressed further at this juncture.”
26. On 16 September 2022, TPO contacted the Employer and said that, because the Employer is still trading, TPO would expect the Employer to respond to Miss H’s complaint. TPO requested the payment of the outstanding contributions. A deadline for response of 6 October 2022 was given but, the employer failed to respond.

Caseworker’s Opinion

27. Miss H’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 Plan. 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 on the facts of the complaint, including the dates and amounts of contributions involved. She said that, as the Employer had not provided a detailed response to TPO’s communications, she had to base her Opinion solely on the information provided by Miss H.
 - The Caseworker said that she had no reason to doubt the information provided by Miss H. So, in the Caseworker’s Opinion, on the balance of probabilities, contributions had been deducted from Miss H’s salary, that had not been paid into the Plan. 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 H was not in the financial position she ought to be in.
 - In the Caseworker’s view, Miss H had suffered serious distress and inconvenience due to the Employer’s maladministration. In the opinion of the Caseworker an award of £1,000 for non-financial injustice was appropriate in the circumstances.
28. The Employer did not accept the Caseworker’s Opinion and the complaint was passed to me to consider. The Employer said that:-

- It thinks that the Opinion is one-sided and hasn't taken into consideration the stresses it has experienced.
- It had been severely impacted by the Covid-19 pandemic and is struggling financially.
- It is an "exaggeration" to describe the distress and inconvenience as serious.
- It will pay the unpaid contributions and any associated financial loss. So, there was no need to make an additional award of £1,000. Especially given it is struggling to manage as it is.

29. Miss H provided further comments in response to the Employer's arguments. She said that:-

- The Employer has been unresponsive throughout the process, so any concerns about their side not being heard are of its own making. The Employer did not refute the facts upon which the Opinion was based.
- The Employer made non-payment of pensions its standard practice.
- The distress and inconvenience caused by this issue is due to the attitude of the Employer, which is demonstrated in its response. She had tried to resolve the matter informally, but she had been ignored.
- The Employer has said it will pay the unpaid contributions on multiple occasions. However, it has always failed to do so.

Ombudsman's decision

30. Miss H has complained that the Employer has not paid all the contributions due to her Plan account.
31. I find that employee contributions were deducted but held back by the Employer and not paid into the Plan.
32. The Employer's failure to pay employee and also employer contributions into the Plan amounts to unjust enrichment and has caused Miss H to suffer a financial loss. The Employer shall take remedial action to put this right.
33. Miss H is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice she has suffered. The Employer has, on multiple occasions, promised, but failed, to pay the unpaid contributions. This would have caused serious distress and inconvenience, which was exacerbated by the Employer's failure to respond in a meaningful way during my Office's investigation into Miss H's complaint.

Directions

34. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Miss H £1,000 for the serious distress and inconvenience she has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Miss H's pay in respect of the period of her employment. The Schedule shall also include the corresponding employer contributions that were due to the Plan; and
 - (iii) forward the Schedule to Miss H.
35. The Employer shall, within 14 days of receiving a request by Miss H, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.
36. Within 14 days of receiving confirmation from Miss H that she agrees with the information on the Schedule, the Employer shall:
- (i) pay the missing contributions to the Plan;
 - (ii) establish with the Aviva whether the late payment of contributions has meant that fewer units were purchased in Miss H's Plan account than she would have otherwise secured, had the contributions been paid on time; and
 - (iii) pay any reasonable administration fee should Aviva charge a fee for carrying out the above calculation.
37. Within 14 days of receiving confirmation from Aviva of any shortfall in Miss H's units, pay the cost of purchasing any additional units required to make up that shortfall.

Anthony Arter

Pensions Ombudsman
1 December 2022

Appendix

Pay for month of	Employee contributions	Employer contributions	Date due	Date paid
May 2021	£53.95	£134.87	22 June 2021	Not paid
April 2021	£83.18	£207.94	22 May 2021	Not paid
March 2021	£79.76	£199.40	22 April 2021	Not paid
February 2021		£199.40	22 March 2021	Not paid
February 2021	£79.76		22 March 2021	1 April 2022
January 2021	£65.82	£164.55	22 February 2021	8 November 2021
December 2020	£70.50	£176.24	22 January 2021	8 February 2021
November 2020	£57.28	£143.19	22 December 2020	9 February 2021
October 2020	£57.28	£143.19	22 November 2020	14 January 2021
Total contributions payable	£547.53	£1,368.78		
Total contributions paid	(£330.64)	(£627.17)		
Total contributions outstanding	<u>£216.89</u>	<u>£741.61</u>		