

Ombudsman's Determination

Applicant	Mr N
Scheme	The People's Pension (the Scheme)
Respondent	Sloan Architectural Limited (the Employer)

Outcome

1. Mr N's complaint is upheld and, to put matters right, the Employer shall pay the missing contributions in respect of his pension and make good any shortfall in units. In addition, the Employer shall pay Mr N £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

2. Mr N has complained that the Employer, despite deducting contributions from his pay, has failed to pay contributions into the Scheme.
3. Mr N has said that the missing contributions amounted to £1,405.79.

Background information, including submissions from the parties

4. Mr N says he was originally enrolled into a workplace pension with The People's Pension. Mr N has said that despite pension contributions being deducted from his pay, between March 2021 and September 2021, none of these were actually paid into the Scheme. The Employer also failed to pay its own due contributions into the Scheme.
5. Mr N has provided copies of some payslips from February, March and April 2021. These showed that his monthly employee pension contributions amounted to £140.67, and his monthly employer pension contributions were £84.40. Mr N has said that he has been unable to obtain full payslips as the Employer has ignored his requests.
6. On 12 August 2021, the Scheme contacted Mr N to inform him that payments from the Employer were unpaid for March 2021.
7. Mr N left the Employer in September 2021 due to the instability of his basic pay and unpaid pension contributions.

8. On 1 October 2021, Mr N contacted the Employer and asked them to investigate the issue.
9. On 25 October 2021, the Employer asked Mr N for his address so it could send his payslips and P45. The Employer also advised that it was trying to sort out the pension, but the Scheme administrator was not the easiest company to deal with.
10. On 2 November 2021, Mr N confirmed his address to the Employer.
11. On 26 November 2021, Mr N chased the Employer as he had still not received payslips but, received no further reply.
12. Mr N referred the case to The Pensions Ombudsman (**TPO**) on 27 November 2021.
13. On 29 April 2022, a Caseworker from TPO (**the Caseworker**) contacted the Employer and requested that the missing payments be made.
14. On 13 May 2022, the Employer replied stating that it would pay the missed contributions but wanted the case dealt with formally. The Employer also stated that the payslips had been sent that day.
15. On 16 May 2022, the Caseworker advised the Employer that, as it had agreed to make payment, there was no need for a formal investigation. However, the Employer should confirm what steps it would be taking to make good the shortfall and any investment loss.
16. On 31 May 2022, the Employer again stated that it would make payment of the missed contributions but wanted the case dealt with formally.
17. On 18 June 2022, Mr N confirmed that he had still not received the requested payslips.

Caseworker's Opinion

18. Mr N'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 on the facts regarding the complaint, including the dates and amounts of contributions involved. He said that while the Employer has not disputed that not all contributions had been paid, it had not fully engaged with Mr N or the Caseworker.
 - Mr N has provided some payslips and has said that the missing contributions are estimated to be £1,405.79. These payslips that are consistent with this amount as they show monthly employee pensions contributions amounted to £140.67, and his monthly employer pension contributions were £84.40.

- The Caseworker said that he had no reason to doubt the information provided by Mr N. In the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr N'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, Mr N was not in the financial position he ought to be in.
 - In the Caseworker's view, Mr N 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.
19. 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 the level of award for maladministration.

Ombudsman's decision

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

Directions

24. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mr N £1,000 for the serious distress and inconvenience he has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr N's pay in respect of the period of his employment. The Schedule shall also include the corresponding employer contributions that were due to the Scheme; and
 - (iii) forward the Schedule to Mr N.

25. The Employer shall, within 14 days of receiving a request by Mr N, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.
26. Within 14 days of receiving confirmation from Mr N that he agrees with the information on the Schedule, the Employer shall:
 - (i) pay the missing contributions to the Scheme;
 - (ii) pay an additional £144.20 into the Scheme, provided the Schedule shows that the unpaid contributions amount to £1,405.79. This represents interest at a rate of 8% per annum due on the unpaid contributions. Please note that a court would typically require the calculation and payment of an amount representing the investment return on the outstanding contributions, but, given the amounts involved, we consider the better approach is to use an interest calculation for this purpose. If the Schedule does not equal £1,405.79, the Employer shall calculate and pay interest at a rate of 8% per annum due on the unpaid contributions.

Anthony Arter

Pensions Ombudsman
12 September 2022