

Ombudsman's Determination

Applicant	Miss N
Scheme	B&CE (the Scheme)
Respondent	Hedone Bakery (the Employer)

Outcome

1. Miss N's complaint is upheld and, to put matters right, the Employer shall pay £2,083.84 into her Scheme account. The Employer shall ensure that Miss N is not financially disadvantaged by its maladministration. So, it shall arrange for any investment loss to be calculated and paid into the Scheme.
2. In addition, the Employer shall pay Miss N £1,000 for the serious distress and inconvenience it has caused her.

Complaint summary

3. Miss N has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
4. The available evidence shows the missing contributions amounted to £2,083.84.

Background information, including submissions from the parties

5. The sequence of events is not in dispute, so I have only set out the salient points.
6. In July 2018, Miss N began her employment with the Employer.
7. Between November 2018 and February 2020, the Employer failed to pay pension contributions into the Scheme.
8. On 4 January 2022, Miss N brought her complaint to The Pensions Ombudsman (**TPO**).
9. Miss N provided copies of the payslips that she held for the period from November 2018 to February 2020, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. These deductions amounted to £2,083.84. A breakdown of the deductions has been included in the Appendix.

10. On 3 April 2023, TPO emailed the Employer for a response to Miss N's complaint. TPO received a bounce back notification on the same day.
11. TPO also wrote to the default address listed on Companies House and received no response. This request was repeated on 24 January 2024 and 31 January 2024. TPO has written to the address provided by Miss N and the default address on Companies House. None of these requests received a response.

Caseworker's Opinion

12. Miss 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 of the complaint, including the dates and amounts of contributions involved. She said that, as the Employer had not responded to any of TPO's communications, she had to base her Opinion solely on the information provided by Miss N.
 - The Caseworker said that she had no reason to doubt the information provided by Miss N. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Miss N's salary but 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, Miss N was not in the financial position she ought to be in.
 - In the Caseworker's view, Miss N had suffered serious distress and inconvenience due to the Employer's maladministration. The Caseworker was of the opinion that an award of £1,000 for non-financial injustice was appropriate in the circumstances.
13. 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.

Ombudsman's decision

14. Miss N has complained that the Employer has not paid all the contributions due to her Scheme account.
15. I find 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 engage with either TPO or Miss N. It has also failed to respond to the Caseworker's Opinion.
16. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Miss N to suffer a financial loss. The Employer shall take remedial action to put this right.

17. Miss N is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which she has suffered. This was exacerbated by its failure to respond during TPO's investigation into Miss N's complaint.

Directions

18. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Miss N £1,000 for the serious distress and inconvenience she has experienced;
 - (ii) pay £2,083.84 into Miss N's Scheme account. This figure represents the amount that, according to the figures provided by Miss N, have been deducted from her pay, but not paid into the Scheme account. It also includes the employer contributions for the relevant period which should also have been paid but have not been paid to date;
 - (iii) establish with the Scheme administrator whether the late payment of contributions has meant that fewer units were purchased in Miss N's Scheme account than she would have otherwise secured had the contributions been paid on time; and
 - (iv) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.
19. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Miss N's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman

29 April 2024

Appendix

Date	Employee contributions	Employer contributions
09/11/2018	£25.35	£16.90
16/11/2018	£25.35	£16.90
07/12/2018	£25.35	£16.90
21/12/2018	£25.35	£16.90
04/01/2019	£25.35	£16.90
18/01/2019	£25.35	£16.90
12/04/2019	£49.74	£29.84
26/04/2019	£49.74	£29.84
10/05/2019	£49.74	£29.84
20/05/2019	£49.74	£29.84
03/06/2019	£49.74	£29.84
17/06/2019	£49.74	£29.84
01/07/2019	£49.74	£29.84
15/07/2019	£49.74	£29.84
29/07/2019	£49.74	£29.84
12/08/2019	£49.74	£29.84
26/08/2019	£49.74	£29.84
09/09/2019	£49.74	£29.84
23/09/2019	£49.74	£29.84
07/10/2019	£49.74	£29.84
21/10/2019	£49.74	£29.84
04/11/2019	£49.74	£29.84
18/11/2019	£49.74	£29.84
02/12/2019	£49.74	£29.84
16/12/2019	£49.74	£29.84

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30/12/2019	£49.74	£29.84
13/01/2020	£49.74	£29.84
27/01/2020	£49.74	£29.84
10/02/2020	£49.74	£29.84
Total amount £2,083.84	£1,296.12	£787.72