

Ombudsman's Determination

Applicant	Mr Y
Scheme	Aviva (the Scheme)
Respondent	RDS Global Limited (the Employer)

Outcome

1. Mr Y'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 Y £500 for the significant distress and inconvenience it has caused him.

Complaint summary

2. Mr Y has complained that the Employer, despite deducting contributions from his pay, failed to pay into the Scheme.
3. Mr Y said that the missing contributions amounted to £4,952.94.

Background information, including submissions from the parties

4. Between February 2020 and July 2021, the Employer failed to pay pension contributions into the Scheme.
5. On 10 July 2022, Mr Y brought his complaint to The Pensions Ombudsman (**TPO**).
6. Mr Y provided copies of the payslips that he held for the period from April 2020 to June 2021 which detailed the pension contributions deducted from his pay and the corresponding employer contributions. A summary of the pension contributions showing on his payslips has been included in Appendix One.
7. In February 2023, the Employer told The Pensions Ombudsman (**TPO**) that it had been making payments to the Scheme and would continue to do so according to its proposed schedule. A copy of the schedule, including a breakdown of outstanding contributions has been included in Appendix Two. This was the last correspondence TPO received from the Employer.

8. On 24 February 2023, TPO asked the Employer for its formal response to Mr Y's complaint. This request was repeated on 23 May 2023 and 20 June 2023. None of these requests received a response.
9. In July 2023, TPO chased the Employer again. But the Employer failed to respond.
10. On 26 September 2023, Mr Y confirmed that his contributions appeared to have been paid up, in accordance with the Employer's schedule. However, the Employer did not confirm whether or not the financial loss had been considered.

Caseworker's Opinion

11. Mr Y'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, although initially engaging with the process, the Employer had not responded to all of TPO's communications.
 - The Caseworker said that she had no reason to doubt the information provided by Mr Y and, in February 2023, the Employer agreed that contributions were unpaid. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr Y's salary, but had not been paid into the Scheme on time. As a result of its maladministration, Mr Y was not in the financial position he ought to be in.
 - In the Caseworker's view, Mr Y had suffered significant distress and inconvenience due to the Employer's maladministration. The Caseworker was of the opinion that an award of £500 for non-financial injustice was appropriate in the circumstances.
12. 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

13. Mr Y has complained that the Employer has not paid all the contributions due to his Scheme account.
14. I find that employee contributions were deducted but held back by the Employer and not paid into the Scheme on time. Although the Employer has apparently now paid some contributions, it has failed to respond to TPO; so, I cannot be sure that all contributions have been paid.

15. The Employer's failure to pay employee and employer contributions into the Scheme on time amounts to unjust enrichment and has caused Mr Y to suffer a financial loss. The Employer shall take remedial action to put this right.
16. Mr Y is entitled to a distress and inconvenience award in respect of the significant ongoing non-financial injustice which he has suffered. In my view, Mr Y's distress and inconvenience was exacerbated by the Employer's failure to consistently respond during my Office's investigation into Mr Y's complaint.

Directions

17. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Mr Y £500 for the significant distress and inconvenience he has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr Y'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 Y.
18. The Employer shall, within 14 days of receiving a request by Mr Y, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.
19. Within 14 days of receiving confirmation from Mr Y that he agrees with the information on the Schedule, the Employer shall:
 - (i) pay any missing contributions to the Scheme;
 - (ii) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Mr Y's Scheme account than he would have otherwise secured, had the contributions been paid on time; and
 - (iii) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.
20. Within 14 days of receiving confirmation from Aviva of any shortfall in Mr Y's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman
24 October 2023

Appendix One

Date	Employee contributions	Employer contributions
Apr-20	£166.80	£100.08
May-20	£166.80	£100.08
Jun-20	£173.75	£104.25
Jul-20	£195.23	£117.14
Aug-20	£208.50	£125.10
Sep-20		£333.60
Oct-20		£333.60
Nov-20		£333.60
Dec-20		£333.60
Jan-21		£333.60
Feb-21		£333.60
Mar-21		£333.60
Apr-21		£386.67
May-21		£386.67
Jun-21		£386.67
Total unpaid contributions	£911.08	£4,041.86

Payroll Month	Contribution amount	Payment status
Nov-19	£333.60	Already Uploaded
Dec-19	£333.60	Already Uploaded
Jan-20	£333.60	Already Uploaded
Feb-20	£333.60	Already Uploaded
Mar-20	£333.60	Already Uploaded
Apr-20	£266.88	Already Uploaded
May-20	£266.88	Already Uploaded
Jun-20	£278.00	To Upload February 28th 2023
Jul-20	£312.37	To Upload March 16th 2023
Aug-20	£333.60	To Upload March 30th 2023
Sep-20	£333.60	To Upload April 16th 2023
Oct-20	£333.60	To Upload April 30th 2023
Nov-20	£333.60	To Upload May 16th 2023
Dec-20	£333.60	To Upload May 30th 2023
Jan-21	£333.60	To Upload June 16th 2023
Feb-21	£333.60	To Upload June 30th 2023
Mar-21	£333.60	To Upload July 16th 2023
Apr-21	£333.60	To Upload July 30th 2023
May-21	£333.60	To Upload August 16th 2023
Jun-21	£333.60	To Upload August 30th 2023
Total unpaid contributions	£6,461.73	Aviva to Calculate Growth %