

Ombudsman's Determination

Applicant	Mr Y
Scheme	Scottish Life Individual Pension Plan (the pension plan)
Respondents	Littlebrook Power Services Ltd (Littlebrook)

Outcome

1. Mr Y's complaint is upheld and to put matters right Littlebrook should pay £4,201.36 into the pension plan.
2. Littlebrook should also pay £1000 to Mr Y as compensation for the distress and inconvenience caused.
3. My reasons for reaching this decision are explained in more detail below.

Complaint summary

4. The last two payments into the pension plan, prior to retirement in March 2014, were not taken by Scottish Life. The complaint is that it was agreed that the employer, Littlebrook, would make good the outstanding payments by sending a cheque for £4,201.36 to Mr Y's financial advisor. The employer has failed to do so.

Background information, including submissions from the parties

5. Mr Y was employed by Littlebrook from 2005 until his retirement on 31 March 2014.
6. Leading up to retirement, the pension plan was in receipt of £1,887.94 each month paid by Littlebrook and £212.74 paid by Mr Y. The last payments were credited on 2 January 2014.
7. On 1 April 2014, £7,000 was credited to the pension plan by Littlebrook.
8. On 23 July 2014, Mr Y wrote to Littlebrook and explained that Scottish Life had not requested the monthly payments for February and March through the direct debit mandate. Mr Y requested that his former employer send a cheque to his financial advisor to enable the two outstanding pension payments to be made.

9. On 5 September 2014, the Financial Controller of Littlebrook (the **Financial Controller**), sent an email to Mr Y, copying in the Managing Director of Littlebrook (the **Managing Director**), it states:

“As per our conversation by phone this afternoon, it was agreed that we would pay the Pension payment of £4,000 and send you a copy of The Revenue information letter sent to them.

I have spoken to [the Managing Director] and he has agreed to this being an acceptable solution.”

10. Littlebrook were contacted by the financial advisor, Mr Y and The Pensions Advisory Service concerning the payment as it was not made, without response.
11. Littlebrook did not respond to the adjudicator regarding the complaint; however, the Financial Controller copied him into an email sent to the Managing Director. The email states that the 1 April 2014 payment of £7,000 was to cover the £4,201.36 Mr Y is claiming.
12. The Adjudicator asked for documentary evidence that the £7,000 covered the missing payments. Despite chasing for a response none has been forthcoming.
13. Although not responding to the complaint, the Managing Director informed the Adjudicator that there was outstanding legal action between Mr Y and Littlebrook. The Adjudicator confirmed that he was aware of this and that Mr Y had informed him that both the legal action against Littlebrook and its counter claim against him were in relation to contract work undertaken after he left the company. It was not related to the missing pension payments. The Adjudicator asked the Managing Director to provide him with any documents if this was disputed; however, none has been forthcoming.

Adjudicator's Opinion

14. The Adjudicator asked Littlebrook to provide evidence that the £7,000, paid into the fund on 1 April 2014, was to cover the missing two payments to the pension plan of £4,201.36. None has been forthcoming.
15. Mr Y has stated that the £7,000, credited in April 2014, was for previous pension contributions not paid in 2012 whilst the company was undergoing some trading difficulties.
16. The Financial Controller confirmed on 5 September 2014, that a pension payment of £4,000 was to be made. This email was five months after the £7,000 had been credited to the pension fund. It was the Adjudicator's opinion that the £7,000 was therefore not to cover the missing two payments. In his opinion the “£4,000” referred to the £4,201.36 to cover the missing payments, which has yet to be paid.

17. The original error was that the correct payments were not taken by direct debit. This is not in dispute. To rectify the error the agreement was for the missing payments to be made by Littlebrook. This agreement was made on 5 September 2014. It was the Adjudicator's opinion that the £4,201.36 should have been paid.
18. The Adjudicator also considered the distress and inconvenience caused to Mr Y by Littlebrook. He concluded that the distress and inconvenience caused had been significant. He noted that Littlebrook had not once responded to Mr Y, his financial advisor, or The Pensions Advisory Service, since it was confirmed, in September 2014, that a payment of £4,000 was to be made. Littlebrook have not provided any documents in response to the complaint, or written to the Pensions Ombudsman Service regarding the complaint. The Adjudicator recommended that £500 be paid to Mr Y for the distress and inconvenience caused.
19. The Adjudicator recommended that to put things right Littlebrook should pay Scottish Life the required amount of money to purchase the same number of units in order to compensate Mr Y for any possible loss of investment growth.
20. Mr Y responded to the Adjudicator's Opinion, and although he agreed with the findings he has requested that the £4,201.36 equal to the two outstanding payments be paid directly into the pension plan without a calculation being made for a potential loss of investment growth. This was requested for speed and simplicity.
21. In response to the Adjudicator's opinion, Littlebrook asked for an extension to respond to the opinion. Littlebrook were informed that as Mr Y had disagreed with the opinion the case would go to an Ombudsman for a decision. Littlebrook have not responded to the request to submit evidence for an Ombudsman to consider.

Ombudsman's decision

22. I agree with the Adjudicator's Opinion, summarised above. I also note that Littlebrook have refused to respond to our request to submit any evidence in support of their position. Therefore, I uphold Mr Y's complaint.

Directions

23. I have taken into consideration Mr Y's request to have the £4,201.36 paid direct into his Scottish Life Pension Fund without any potential growth being calculated. To put matters right Littlebrook are directed to pay £4,201.36 into Mr Y's Scottish Life Pension Plan within 21 days of this determination.

PO-10543

24. For the significant distress and inconvenience caused Littlebrook are directed to pay £1,000 to Mr Y within 21 days of this determination.

Anthony Arter

Pensions Ombudsman
8 June 2016