

Ombudsman's Determination

Applicant	Mrs S
Scheme	IPM Personal Pension Plan (the Plan)
Respondents	Strategic Retail Marketing Ltd (SRM)

Outcome

1. Mrs S's complaint is upheld and to put matters right SRM should pay to the Plan £25,000 plus an amount representing the investment return that could reasonably have been obtained on that sum if it had been invested in the Plan in March 2016, and pay Mrs S £2,500 for her significant distress and inconvenience.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs S's complaint is that SRM failed to pay contributions to the Plan for her as had been agreed.

Background information, including submissions from the parties

4. Mrs S originally worked for DTZ. As part of her remuneration package, DTZ paid monthly pension contributions to the Plan calculated as a percentage of her basic salary.
5. On 5 February 2010 Mrs S was informed by DTZ that her employment was being transferred from DTZ to SRM (trading as Madison Soho) under a business transfer in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006.
6. Mrs S said that as SRM was a fledgling business she agreed with Mr W, a director of SRM, that its company pension contributions for her could be deferred.
7. In 2012 Mrs S asked her financial adviser and the Plan provider to calculate the deferred contributions.

8. On 20 January 2016 Mr W emailed Mrs S, after they had a discussion about amending her employment terms, to confirm several points agreed. Mr W's email (**the Email**) said:
- “1. Pension backlog amount agreed at 25k to Sept 2015. Interim months to be paid pro-rata. Payment to be made in two equal instalments, one end of Feb, one end of March;
2. Working days reduced starting Feb 1st to 2 days per week from 4 days. Salary and benefits reduced pro rata. New monthly pension contributions to start Feb 1st.”
9. Mrs S sent Mr W a reply later on the same day which said:
- “Thanks for this. I will advise on the pension payment process as this money has to be “verified” as pension to avoid taxation. The two payments of £12,500 to be made on 28/2/16 and 28/3/16.”
10. Mrs S left SRM's employment in March 2016. SRM failed to pay any contributions to the Plan for her.
11. Mrs S asked The Pensions Advisory Service to assist her. Mr W failed to respond in writing to its correspondence, although he acknowledged, in a telephone call on 17 October 2016, that contributions to the Plan had not been paid, and said he would discuss the matter with his lawyers.
12. As there were no further developments, Mrs S then contacted us. On 4 July 2017 we asked Mr W to provide a formal response to her complaint. On 2 August 2017 Mr W responded to our email reminder and asked for an electronic copy of our letter, which was emailed to him on the same day. Mr W did not respond further, despite us sending him several reminders.

Adjudicator's Opinion

13. Mrs S's complaint was considered by one of our Adjudicators who concluded that further action was required by SRM. The Adjudicator's findings are summarised briefly below:-
- SRM had not provided a formal response to the complaint, despite our reminders, but that did not preclude us from proceeding with our investigation and making findings.
 - Upon the business transfer, SRM was required to pay contributions to the Plan on the same basis as DTZ had. However, it was open to SRM and Mrs S to make an agreement to vary her contractual terms, and it seemed clear that for some time Mrs S was happy for payment of SRM's contributions to be deferred.

- It also seemed clear from the Email that by 2016 the position had changed and Mrs S wanted the agreed arrears of £25,000 to be paid in to the Plan. In the Email Mr W used the term “backlog” to acknowledge that SRM’s contributions to the Plan were still owing. As those contributions were still unpaid there was no dispute that a problem had occurred. Mrs S had been financially disadvantaged as a result.
 - Therefore, this complaint should be upheld because SRM had failed, without good reason, to make the contributions identified as due in the Email. This constituted maladministration.
 - Mrs S had also lost out on the investment return that those contributions would have generated since 2016, which her pension provider should be able to calculate.
 - Mrs S had also suffered serious distress and inconvenience as a consequence of SRM’s repeated failures to engage with her and other parties on this matter, and an award should be made in respect of this.
 - To put matters right, SRM should pay in to the Plan £25,000, plus the investment return that could reasonably have been obtained in the Plan had that amount been invested promptly in 2016, and also pay Mrs S £500 for her significant distress and inconvenience.
14. SRM did not comment on the Adjudicator’s Opinion, despite our letter to Mr W requesting SRM’s response and a subsequent telephone reminder. The complaint was then passed to me to consider. I agree with the Adjudicator’s Opinion.

Ombudsman’s decision

15. SRM has failed to pay the company contributions for Mrs S, as described in the Email, and has not put forward any reason for non-payment. Failure to pay contributions amounts to maladministration. I will report this to the Pensions Regulator.
16. As well as the missing contributions, Mrs S has also lost out on the investment return that those contributions would have generated for her in the Plan.
17. An award is also warranted in respect of the extremely significant distress and inconvenience which Mrs S has suffered through SRM’s repeated failures, since March 2016, to engage with other parties (including this office) on this matter. I consider that SRM’s conduct is unacceptable and the award suggested by the Adjudicator should be increased accordingly.
18. Therefore, I uphold Mrs S’s complaint.

Directions

19. I direct that SRM shall:

- within 14 days of the date of this determination, ask Mrs S's pension plan provider to calculate and inform SRM and Mrs S, in writing, of the investment return that could reasonably have been obtained in the Plan had £25,000 been invested in the Plan in March 2016;
- within 21 days of the date of this determination, pay £25,000 to the Plan;
- within 21 days of receiving the investment return information described above, pay that sum to the Plan; and
- within 21 days of the date of this determination, pay Mrs S £2,500 to reflect the severity of the distress and inconvenience caused to her by its continued maladministration.

Anthony Arter

Pensions Ombudsman
15 November 2017