

Ombudsman's Determination

Applicant	Mrs N
Scheme	Teddy Bear Corner Ltd Pension Scheme (the Scheme)
Respondent	Teddy Bear Corner Limited (Teddy)

Outcome

1. Mrs N's complaint is upheld and to put matters right Teddy should establish whether the contributions deducted from Mrs N's salary were paid into the Scheme. If they were not, Teddy should ensure all of the unpaid contributions are paid into the Scheme. It should also pay an amount equal to the notional fund value had the contributions been paid when they should have been. Teddy should also pay Mrs N £2,500 for the significant distress and inconvenience caused by its maladministration.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs N's complaint is that Teddy, her former employer, failed to pay pension contributions into the Scheme.

Background information, including submissions from the parties

4. On 3 August 2015, Teddy sent Mrs N a letter which told her she had been auto-enrolled into the Scheme on 1 August 2015.
5. Teddy deducted pension contributions from Mrs N's monthly salary from September 2015 until August 2016, when her employment ceased.
6. However, Mrs N did not receive any correspondence from the Scheme administrators (NEST) confirming that a pension scheme had been set up and contributions were being paid in by Teddy. This resulted in her becoming concerned that Teddy had not paid any contributions into the Scheme, even though it had deducted them from her salary.
7. On 10 July 2016, Mrs N wrote to Teddy to request details of the Scheme. She followed this up with a telephone call on 14 September 2016.

8. On 2 October 2016, Mrs N wrote to Teddy to complain that she had not received a response to her request for details of the Scheme, following this up with a telephone call on 17 October 2016.
9. On 16 November 2016, Mrs N emailed Teddy to complain that it had still not provided her with any details of the Scheme.
10. Mrs N contacted The Pensions Advisory Service (**TPAS**) for assistance on 1 December 2016. The TPAS adviser wrote to Teddy's Director on 18 April 2017, as follows:

"You'll hopefully appreciate the seriousness of failing to pass contractual contributions to a plan provider. Employers can face sanctions by The Pensions Regulator and awards of sanctions by The Pensions Ombudsman.

Please let me have an update on what's happening with Mrs N's pension contributions".

11. As no response had been received by 15 May 2017, the TPAS adviser sent a chaser letter.
12. There was still no response by 19 June 2017, and so the TPAS adviser telephoned Teddy's Director. The file note records:

"Called [Teddy's Director]. She's aware of the problem but is trying to sort it out. I offered to help but she didn't need it".

13. The TPAS adviser followed this up with an email to Mrs N, as follows:

"[Teddy's Director] seems genuinely concerned that this problem hasn't been resolved and you've been affected.

I've asked her to contact you directly, which she says she'll do very soon. And she'll step up her efforts to get the problem resolved so the payments can be made".

14. On 24 July 2017, Mrs N emailed the TPAS adviser saying:

"It is now five weeks since you last emailed me and as expected, I have heard nothing from [the Teddy Director]".

15. Further call notes state:

"31/7 at 09:50.

Called [the Teddy Director]. She's looking into it again. I should call back on 3/8.

3/8 at 09:05. Called again. Not in yet. Left a message to call me back. They said she'd just popped out".

16. No further response was received from Teddy's Director and so Mrs N referred the complaint to this office.

Adjudicator's Opinion

17. Mrs N's complaint was considered by one of our Adjudicators. The Adjudicator wrote to Teddy on 4 October 2017, to request an account of what had gone wrong and a timeline of the actions taken to resolve the issue. Despite follow up letters sent on 6 November and 12 December 2017, and an email to Teddy's Director on 2 December 2017, he did not receive a reply. As such, in order to progress the complaint, the Adjudicator formed an Opinion on the basis of the information submitted by Mrs N. The Adjudicator's findings are summarised briefly below:-
- Teddy agreed that the pension contributions deducted from Mrs N's monthly salary were not paid into the Scheme, so there was no dispute that a problem had occurred and that Mrs N had been disadvantaged as a result.
 - There is a regulatory requirement, under the Personal Pension Schemes (Payments by Employers) Regulations 2000, for Teddy to pay pension contributions into the Scheme on the due dates. Despite several requests for it to do so, Teddy failed to provide a reason as to why this was not done in Mrs N's case. This amounts to maladministration.
 - It was now 18 months since Mrs N's employment at Teddy ceased and the issue has not been resolved, even though she has written and telephoned several times. In addition to this, Teddy failed to respond to requests for information, despite several chasers.
 - The Adjudicator concluded that Mrs N suffered significant distress and inconvenience as a result of Teddy's maladministration.
18. Teddy did not respond to the Adjudicator's Opinion, despite several chasers, by telephone and email on 22 January 2018, and a further email on 29 January 2018, and so the complaint was passed to me to consider. Mrs N has not provided any further substantive comments.

Ombudsman's decision

19. Teddy has accepted that the pension contributions deducted from Mrs N's monthly salary were not paid into the Scheme. As such, there is no dispute that a problem has occurred and that Mrs N has been disadvantaged as a result.
20. Despite multiple requests, starting in July 2016, for it to provide information, from Mrs N, the TPAS adviser and the Adjudicator, Teddy failed to provide a substantive response. This constitutes maladministration.
21. It is now 18 months since Mrs N's employment with Teddy ended and the issue with her pension contributions has not been resolved. Teddy failed to respond to requests

for information, despite several chasers. I find that Mrs N has suffered significant distress and inconvenience as a result of Teddy's maladministration.

22. Therefore, I uphold Mrs N's complaint. I shall also report Teddy to The Pensions Regulator.

Directions

23. Within 21 days of the date of this Determination, Teddy will:-

- Pay Mrs N £2,500 for the very significant distress and inconvenience caused by its maladministration.
- Establish whether the contributions deducted from Mrs N's salary were paid into the Scheme.
- If they were not, Teddy should obtain Mrs N's authority to contact NEST and ask it to calculate the Scheme's notional value as at the reference date (for the purposes of this calculation, this is the date on which NEST completes the calculations for Teddy). This calculation should be based on the assumption that all the regular contributions had been paid on the correct dates up until the reference date.
- Teddy should pay the difference between the notional value and the current total value as a lump sum (if positive) to NEST to be invested in the Scheme, within 21 days of receiving the calculations from NEST. If the difference between these values is negative, Teddy should simply pay the contributions deducted from Mrs N's salary into the Scheme.
- If NEST charges an administrative fee for the calculations, this should be paid by Teddy.

Anthony Arter

Pensions Ombudsman
21 February 2018