

Ombudsman's Determination

Applicant	Miss S
Scheme	Capital Media Newspapers AE (Aviva) – (the Plan)
Respondent	The Sunday Independent Limited

Outcome

1. Miss S' complaint is upheld and to put matters right, The Sunday Independent Limited shall backdate Miss S' pension for the period in question. Further, The Sunday Independent Limited will pay Miss S £500 in recognition of the significant distress and inconvenience caused to her by its maladministration.

Complaint summary

2. Miss S has complained that The Sunday Independent Limited failed to direct pension contributions into the Plan.

Background information, including submissions from the parties

3. Miss S was an employee of View From, a newspaper company owned by Capital Media Newspapers Limited (**Capital Media**).
4. On 9 March 2017, Aviva sent Miss S a letter saying that she had recently joined her workplace pension scheme. Under the 'About your plan' section of this letter, the following details were recorded:

"Scheme name: Capital Media Newspapers AE

Your employer has enrolled you with the following payment details.

Your employer will pay £43.35 each month.

You'll pay £54.19 each month."
5. On 14 July 2017, an individual, who I will refer to as Mr R, purchased the View From company, which at that point was in administration. Mr R placed this business into The Sunday Independent Limited. Employees in the View From business, which

included Miss S, transferred to The Sunday Independent Limited under the Transfer of Undertakings (Protection of Employment) Regulations 2006.

6. Miss S has provided payslips for the period July to December 2017, during which she says pension deductions were taken from her salary, but not paid into the Plan (or any other pension plan). The respective payslips show the following information:

Process date	Employee Pension	Employer pension
16 August 2017	£43.35	£43.35
30 September 2017	£43.35	£43.35
31 October 2017	£43.35	£43.35
30 November 2017	£43.35	£43.35
31 December 2017	£43.35	£43.35

7. The July 2017 payslip is in a different format to the above but includes a deduction of £43.35 for "Aviva Pre Staging."
8. On 4 January 2018, The Sunday Independent Limited closed down the office where Miss S and other employees were based. A letter was handed to all employees confirming the termination of each employee's employment on the grounds of redundancy.
9. On 16 January 2018, Mr R subsequently sold his entire shareholding of The Sunday Independent Limited to an individual who I will refer to as Mr M.
10. On 26 March 2018, Aviva sent Miss S a letter which said the following:

"Quantama LLP have told us that Capital Media Newspapers went into administration on 14 July 2017.

The last payment we received from your employer was for the June 2017 contributions. The 1-13 July 2017 contributions have now been received from the Insolvency Service and an amount of £18.18 for employee contributions and £18.18 for employer contributions have now been applied to your plan in respect of these contributions.

Your plan is now 'paid up' which means we're not receiving any payments into it at the moment."

11. On 11 March 2018, Miss S' representative complained to Mr R about a number of perceived failures which had taken place since he took ownership of the View From business. In respect to pension contributions, he said:

"Eight of us have had all of our pensions contributions go missing, from the time you took the titles over in July through to our final payment in December 2017.

Time and time again [named individual not party to this complaint] said he was working on setting up a new workplace pension scheme but clearly had no intention of doing so. In fact, he never fully explained why contributions couldn't have just continued to be made to our Aviva pension scheme, which was set-up by the titles' previous owners, Capital Media Newspapers."

12. Mr R's reply was that he was no longer involved with The Sunday Independent Limited.
13. A case was subsequently brought about the same issue (and other ones) in an employment tribunal by Miss S' colleagues against a number of respondents including The Sunday Independent Limited. Miss S instead, directed her concerns to this Office. In the case before the tribunal, the Judge decided that The Sunday Independent Limited was the correct respondent with regard to their claims concerning pension contributions.
14. The Judge subsequently upheld these claims, headed unlawful deductions and breach of contract relating to pension payments, against The Sunday Independent Limited. The Judge determined that the claim for breach of contract, in respect of The Sunday Independent Limited's failure to pay the 3% employer contributions from July to December 2017 inclusive, succeeded. The Judge also decided that the purported employee pension contributions deducted were unauthorised deductions in that these payments were only authorised for the purpose of being paid to a relevant pension provider.
15. Miss S was not party to these claims, but the findings by the tribunal are relevant in that it has been established that The Sunday Independent Limited is liable for the missing pension contributions claim and has directed a remedy against it.

Adjudicator's Opinion

16. Miss S' complaint was considered by one of our Adjudicators who upheld it. The Adjudicator's findings are summarised below:-
 - Miss S' payslips showed that deductions were taken from her salary on a monthly basis between July to December 2017, labelled respectively as 'Ee Pension' and 'Er Pension', suggesting that these would be paid towards a pension plan.
 - Aviva's letter of 26 March 2018 proved that these amounts were never actually paid into the Plan.
 - It had been suggested that the owner for the period in question intended to eventually set up a new pension plan. However, the reasons for the pension payments lapsing were largely irrelevant. Essentially, Miss S had payments deducted from her salary for the purposes of a pension, which were not

forthcoming. It was unclear where exactly these pension contributions were directed to.

- The fact that both Miss S' employee and employer contributions were not paid into a pension plan amounted to an administrative error on the part of The Sunday Independent Limited. Miss S should be placed back into the position she would have been in had these purported pension contributions been paid into the Plan.
- Further, Miss S would have been caused significant distress and inconvenience by this matter, in particular the uncertainty of where her contributions were directed and whether these would be recovered. Therefore, it would also be appropriate for Miss S to be paid a non-financial injustice award of £500 in recognition of this.

17. Miss S accepted the Adjudicator's Opinion. The Sunday Independent Limited did not accept the Adjudicator's Opinion and made the following comments:-

- Miss S' family's involvement in this matter ought to be questioned. Miss S was the daughter of the General Manager of The Sunday Independent Limited at the time in question. Miss S' father had complete control of the Lyme Regis, Dorset office and had for many years. It was questionable why he had not identified this pension fund error and flagged it up much earlier. Further investigation of this matter was required; concerns regarding Miss S' family's involvement in the dispute that followed had previously been expressed to a HMRC representative.
- Miss S and her father set up their own rival newspaper just days after the View From offices closed. They then channelled advertiser revenues from this previous venture direct to their current one.
- Further, both were aware that there are no bank statements or accounts available for the company during this time. These do not exist because the Director and Owner during this turbulent period of time, Mr R, had refused to provide these. There was no active bank account currently linked to The Sunday Independent Limited.
- The police had been informed of this, as had the employment tribunal court services and the appeals court.
- A third-party order had been requested early on to insist Mr R disclosed the equity and all available capital held by the company during his period as owner and, importantly, during the exact time any pension contributions went astray.
- The Adjudicator ought to review the case with recourse to evidence provided to and by the police and courts.

18. The complaint has now been passed to me to consider. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by The Sunday Independent Limited for completeness.

Ombudsman's decision

19. The Sunday Independent Limited has made several points which purport to cast doubt on the good faith of Miss S in this matter. I make no comment on the legitimacy of any of these claims. My role is to consider the specific pension dispute at hand and establish whether an administrative error has taken place.
20. I also take into account that, Mr M has concerns about the sale of The Sunday Independent Limited, which he considers was done fraudulently. I believe he has referred his concerns to the police.
21. The key facts which I have taken into account in reaching my decision are that: on 9 March 2017, Aviva confirmed that Miss S had recently joined her company pension scheme. This set out that contributions would be made into the Plan by Miss S and her employer. From July to December 2017, the evidence indicates that deductions were taken from Miss S' pay for the purpose of being paid towards a pension plan, but these monies were not paid into the Plan. Similarly, no employer contributions were received into the Plan for the period in question.
22. Accordingly, I find that an administrative error has taken place in respect to these contributions.
23. Therefore, I uphold Miss S' complaint.

Directions

24. Within 28 days of the date of this Determination The Sunday Independent Limited shall calculate the total value of the employee and employer contributions deducted from Miss S' salary. It shall apply the investment growth that would have applied had these amounts been invested in the Plan at the relevant time up to the date of calculation, then augment the Plan with this amount.
25. Should it be the case the Aviva does not accept the augmentation payment, The Sunday Independent Limited shall pay the above calculated amount directly to a pension arrangement of Miss S' choosing.

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26. Lastly, in addition, The Sunday Independent Limited will pay Miss S a sum of £500 in recognition of the significant distress and inconvenience caused by its maladministration.

Anthony Arter

Pensions Ombudsman
8 July 2019