

Ombudsman's Determination

Applicant	Mr N
Scheme	Scottish Widows Group Personal Pension Plan (the Plan)
Respondent	Border Steelwork Structures Limited (BSSL)

Outcome

1. Mr N's complaint is upheld and, to put matters right, BSSL shall comply with the Directions set out in paragraphs 22 to 23 below.

Complaint summary

2. Mr N complains that pension contributions have not been paid into his Plan. He would like a reconciliation of the Plan to be carried out so that its value reflects the value it would have been, had the contributions been paid and allocated on time.

Background information, including submissions from the parties

3. In 2009, Mr N received a "Statement of Main Terms of Employment" from BSSL. This said that BSSL would make a financial contribution of 8% of Mr N's pensionable salary into the "Scheme", which was BSSL's occupational pension scheme at the time with a previous provider.
4. In 2012, Mr N became a member of the Plan, a defined contribution occupational pension scheme, administered by Scottish Widows. Shortly, following his membership of the Scheme, BSSL experienced problems with paying contributions to Scottish Widows. This resulted in irregular employer and employee contributions being paid into the Plan, which continued over a number of years.
5. On 8 June 2015, BSSL wrote to Mr N and said that it had "an arrangement with Scottish Widows" and that any arrears would be "satisfied by 14th October 2015". It appears that BSSL did not issue any further correspondence after that.
6. On 29 March 2018, BSSL issued a letter to Mr N. It said that due to the recession, it had not been possible to maintain the employer contributions and so apologised. It also noted that it had not kept up to date with the employee contributions, which at that point were fully paid up to January 2016. The employer contributions were fully paid up to September 2014. BSSL said that employee contributions would be brought

up to date with a portion of the employer contributions by the end of June 2018. Following this, regular monthly contributions would recommence in July 2018.

7. On 18 September 2018, Mr N wrote to BSSL and asked for a breakdown of all the employee and employer contributions paid into the Plan. He also asked BSSL to ensure that any outstanding payments, and "projected interest lost", would be paid into the Plan by his final day of employment, 26 October 2018.
8. After several months of pension contributions remaining outstanding, in September 2018, Mr N contacted our Early Resolution Service (**ERS**). To try and resolve the complaint, ERS contacted BSSL on 23 October 2018 and asked for:
 - a payment schedule detailing the correct level of pension contributions that BSSL believed should have been paid into the Plan, and when these should have been paid, since the Plan's inception;
 - confirmation of whether BSSL would be willing to take certain steps to try and reconcile the Plan; and
 - confirmation of the award BSSL was prepared to offer to Mr N for the distress and inconvenience he had suffered.
9. On 6 November 2018, BSSL issued a letter to Mr N (**the November 2018 Letter**) that said it had paid all employee and "statutory" employer contributions. It explained that regular employee and employer contributions had recommenced, with September's payments being paid on the due date, that is, 22 October.
10. On 15 November 2018, ERS wrote to BSSL and asked it for information supporting the claims made in the November 2018 Letter. ERS also re-iterated its suggestion of a distress and inconvenience award, as BSSL had not responded on this point.
11. On 30 November 2018, ERS received information from Scottish Widows about the payments it had received from BSSL. (This information has been collated in Appendix A.)
12. On 3 January 2019, ERS contacted BSSL again, as it was clear that the employer contributions had not been made in accordance with those required under Mr N's employment contract. Further, no attempt had been made to calculate any loss resulting from late payment of contributions.
13. BSSL did not respond to ERS' requests or correspondence, so my Office began a formal investigation. We contacted BSSL on the following dates:-
 - 18 March 2019;
 - 30 September 2019;
 - 16 October 2019 – at this point we were told that BSSL would be responding the following week and that it intended to make all contributions by 1 November 2019.

BSSL stated that it would not be offering an award for the distress and inconvenience caused;

- 29 October 2019;
- 1 November 2019;
- 13 November 2019; and
- 22 November 2019.

14. As at the date of my Determination, we have received no further information from BSSL, despite assurances that this would be sent. (A table of the contribution information we have received from Mr N can be found in Appendix B.)

Adjudicator's Opinion

15. Mr N's complaint was considered by one of our Adjudicators, who concluded that the complaint should be upheld against BSSL. The Adjudicator's findings are summarised below:-

- Based on the information provided, it was clear that BSSL had failed to:
 - pay employer contributions to Scottish Widows when required to do so;
 - transfer Mr N's employee contributions to Scottish Widows when required to do so;
 - meet a number of The Pension Regulator's requirements, concerning the payment of employee/employer contributions;
 - keep Mr N adequately informed;
 - resolve the compounded errors in a timely manner;
 - adhere to its own timescales;
 - understand the impact that this has had on Mr N, both in terms of his pension and the distress caused; and
 - respond to and cooperate with us for over a year.
- Despite our involvement, it appeared that BSSL had not tried to expedite the reconciliation of Mr N's Plan. Nor had it responded to any of our requests for information. So, the Adjudicator's findings were based solely on the information then available from Mr N and Scottish Widows.
- The information from Scottish Widows demonstrated that apart from one payment, the contributions were made late, with the majority of these being significantly delayed. From 13 July 2015 to 15 October 2018, employer contributions were either missing or significantly reduced.

- According to BSSL's terms of employment, it should have been making contributions at a rate of 8% of Mr N's pensionable salary. So, it appeared that approximately £8,000 in employer contributions had not been paid into Mr N's Plan.
 - There was a possibility that Mr N had also been disadvantaged by late contribution payments. Had they been made on time, more units might have been bought, depending on the unit prices of the applicable funds. So, a profit and loss exercise was required.
 - The Adjudicator did not doubt that this situation had been frustrating for Mr N, as it appeared that over a number of years, little information had been provided about BSSL's position and what would be happening with the contributions. In the Adjudicator's view, BSSL had exacerbated the situation by setting false expectations, as she could not see that the arrears had been satisfied.
 - BSSL had had over a year to reconcile Ms N's Plan and the Adjudicator thought that BSSL had hindered the complaints process. So, in her view, the level of distress and inconvenience that Mr N had suffered was serious.
16. As BSSL did not respond to the Adjudicator's Opinion, the complaint was passed to me to consider.

Ombudsman's decision

17. Having reviewed the information available, I agree with the Adjudicator's findings as outlined at paragraph 15 above. Mr N has accepted the Adjudicator's Opinion. However, BSSL has not provided a response, despite having had opportunities on numerous occasions to do so.
18. Based on the available evidence, I find that maladministration has occurred; and, that both financial loss and non-financial injustice have occurred as a result; specifically:
- contributions have been either significantly delayed or missed entirely, which has rendered Mr N's Plan inaccurate;
 - BSSL had impeded an early reconciliation and resolution for Mr N, despite having been given multiple opportunities, by both our ERS and the Adjudicator, to rectify this; and
 - Mr N has suffered an exceptional level of distress and inconvenience as a result of BSSL's various errors and inaction.
19. The errors need to be corrected and the injustice addressed, so that Mr N's Plan benefits are accurate and up to date; in accordance with what they would have been had all employee and employer contributions been made at the correct levels and at the correct times.

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20. Although The Pensions Regulator appears to be aware of the matter, I will be formally reporting BSSL to The Pensions Regulator.
21. I uphold Mr N's complaint.

Directions

22. Within 28 days of the date of this Determination, BSSL shall:-
 - Pay £3,000 to Mr N in recognition of the exceptional distress and inconvenience he has suffered.
 - Create a document confirming the following:-
 - the contribution rates that should have been paid by BSSL and Mr N for each month from the beginning of 2012, up to and including October 2018;
 - when the contributions should have been paid; and
 - whether each contribution has already been paid.
 - Send a copy of the completed document to Scottish Widows.
 - Compare what BSSL has paid for both sets of contributions to Scottish Widows with the totals as set out in the completed document.
 - Pay to Scottish Widows, the difference found from the comparison.
23. Once the data and payments outlined in paragraph 22 above have been reconciled, BSSL shall:-
 - Make any required additional payments so that Mr N's Plan reflects the units that would have been bought, had the payments been made on time.

Anthony Arter

Pensions Ombudsman
20 March 2020

Appendix A

Table containing the payments Scottish Widows received from BSSL and when they were due

Due date	Date received	Late?
28 Jul 2012	1 Aug 2012	Yes
28 Aug 2012	3 Sep 2012	Yes
28 Sep 2012	21 Sep 2012	No
28 Oct 2012	6 Nov 2012	Yes
28 Nov 2012	7 Dec 2012	Yes
28 Dec 2012	16 Jan 2013	Yes
28 Jan 2013	22 Apr 2013	Yes
28 Feb 2013	17 Jun 2013	Yes
28 Mar 2013	18 Jun 2013	Yes
28 Apr 2013	12 Aug 2013	Yes
28 May 2013	13 Aug 2013	Yes
28 Jun 2013	6 Sep 2013	Yes
28 Jul 2013	9 Sep 2013	Yes
28 Aug 2013	11 Nov 2013	Yes
28 Sep 2013	18 Nov 2013	Yes
28 Oct 2013	17 Feb 2014	Yes
28 Nov 2013	25 Mar 2014	Yes
28 Dec 2013	26 Mar 2014	Yes
28 Jan 2014	1 May 2014	Yes
28 Feb 2014	13 Jul 2014	Yes
28 Mar 2014	10 Jul 2015	Yes
28 Apr 2014	10 Jul 2015	Yes
28 May 2014	10 Jul 2015	Yes
28 Jun 2014	10 Jul 2015	Yes
28 Jul 2014	13 Jul 2015	Yes
28 Aug 2014	13 Jul 2015	Yes
28 Sep 2014	13 Jul 2015	Yes
28 Oct 2014	4 Oct 2016	Yes
28 Nov 2014	4 Oct 2016	Yes
28 Dec 2014	4 Oct 2016	Yes
28 Jan 2015	4 Oct 2016	Yes
28 Feb 2015	9 Nov 2016	Yes
28 Mar 2015	9 Nov 2016	Yes
28 Apr 2015	9 Nov 2016	Yes
28 May 2015	9 Nov 2016	Yes
28 Jun 2015	6 Dec 2016	Yes
28 Jul 2015	6 Dec 2016	Yes
28 Aug 2015	6 Dec 2016	Yes
28 Sep 2015	6 Dec 2016	Yes
28 Oct 2015	17 Jan 2017	Yes
28 Nov 2015	18 Jan 2017	Yes
28 Dec 2015	18 Jan 2017	Yes
28 Jan 2016	18 Jan 2017	Yes
28 Feb 2016	10 Apr 2018	Yes

Due date	Date received	Late?
28 Mar 2016	10 Apr 2018	Yes
28 Apr 2016	10 Apr 2018	Yes
28 May 2016	10 Apr 2018	Yes
28 Jun 2016	10 Apr 2018	Yes
28 Jul 2016	10 Apr 2018	Yes
28 Aug 2016	10 Apr 2018	Yes
28 Sep 2016	10 Oct 2018	Yes
28 Oct 2016	10 Oct 2018	Yes
28 Nov 2016	10 Oct 2018	Yes
28 Dec 2016	10 Oct 2018	Yes
28 Jan 2017	10 Oct 2018	Yes
28 Feb 2017	11 Oct 2018	Yes
28 Mar 2017	11 Oct 2018	Yes
28 Apr 2017	11 Oct 2018	Yes
28 May 2017	11 Oct 2018	Yes
28 Jun 2017	11 Oct 2018	Yes
28 Jul 2017	12 Oct 2018	Yes
28 Aug 2017	12 Oct 2018	Yes
28 Sep 2017	12 Oct 2018	Yes
28 Oct 2017	12 Oct 2018	Yes
28 Nov 2017	12 Oct 2018	Yes
28 Dec 2017	12 Oct 2018	Yes
28 Jan 2018	15 Oct 2018	Yes
28 Feb 2018	15 Oct 2018	Yes
28 Mar 2018	15 Oct 2018	Yes
28 Apr 2018	15 Oct 2018	Yes
28 May 2018	15 Oct 2018	Yes
28 Jun 2018	15 Oct 2018	Yes
28 Jul 2018	15 Oct 2018	Yes
28 Aug 2018	15 Oct 2018	Yes
28 Sep 2018	6 Nov 2018	Yes

Appendix B**A table of the contributions made to the Plan, using information from pension statements**

Date received	'EE contribution	Tax relief	'ER contribution	Total
31 May 2012	£120.46	£30.12	£200.76	£351.34
18 Jun 2012	£120.46	£30.12	£200.76	£351.34
01 Aug 2012	£120.46	£30.12	£200.76	£351.34
03 Sep 2012	£120.46	£30.12	£200.76	£351.34
21 Sep 2012	£120.46	£30.12	£200.76	£351.34
06 Nov 2012	£120.46	£30.12	£200.76	£351.34
07 Dec 2012	£120.46	£30.12	£200.76	£351.34
16 Jan 2013	£120.46	£30.12	£200.76	£351.34
22 Apr 2013	£120.46	£30.12	£200.76	£351.34
17 Jun 2013	£120.46	£30.12	£200.76	£351.34
18 Jun 2013	£120.46	£30.12	£200.76	£351.34
12 Aug 2013	£120.46	£30.12	£200.76	£351.34
13 Aug 2013	£109.49	£27.37	£182.48	£319.34
06 Sep 2013	£109.49	£27.37	£182.48	£319.34
09 Sep 2013	£109.49	£27.37	£182.48	£319.34
11 Nov 2013	£109.49	£27.37	£182.48	£319.34
18 Nov 2013	£109.49	£27.37	£182.48	£319.34
17 Feb 2014	£109.49	£27.37	£182.48	£319.34
25 Mar 2014	£109.49	£27.37	£182.48	£319.34
26 Mar 2014	£109.49	£27.37	£182.48	£319.34
01 May 2014	£109.49	£27.37	£182.48	£319.34
10 Jul 2015	£109.26	£27.32	£182.11	£318.69
10 Jul 2015	£109.26	£27.32	£182.11	£318.69
10 Jul 2015	£109.49	£27.37	£182.11	£318.97
10 Jul 2015	£163.90	£40.98	£182.48	£387.36
13 Jul 2015	£109.49	£27.37	£182.11	£318.97
13 Jul 2015	£163.90	£40.98	£182.11	£386.99
13 Jul 2015	£163.90	£40.98	£182.11	£386.99
13 Jul 2015	£163.90	£40.98	£182.48	£387.36
04 Oct 2016	£163.90	£40.98		£204.88
04 Oct 2016	£163.90	£40.98		£204.88
04 Oct 2016	£163.90	£40.98		£204.88
04 Oct 2016	£163.90	£40.98		£204.88
09 Nov 2016	£163.90	£40.98		£204.88
09 Nov 2016	£163.90	£40.98		£204.88
09 Nov 2016	£170.32	£42.58		£212.90
09 Nov 2016	£170.32	£42.58		£212.90
06 Dec 2016	£170.32	£42.58		£212.90
06 Dec 2016	£170.32	£42.58		£212.90
06 Dec 2016	£170.32	£42.58		£212.90
06 Dec 2016	£170.32	£42.58		£212.90
17 Jan 2017	£170.32	£42.58		£212.90
18 Jan 2017	£170.32	£42.58	£18.80	£231.70
18 Jan 2017	£170.32	£42.58	£18.80	£231.70

Date received	'EE contribution	Tax relief	'ER contribution	Total
18 Jan 2017	£170.32	£42.58	£18.80	£231.70
10 Apr 2018	£170.32	£42.58	£18.80	£231.70
10 Apr 2018	£170.32	£42.58	£18.80	£231.70
10 Apr 2018	£175.25	£43.81	£18.80	£237.86
10 Apr 2018	£175.25	£43.81	£18.80	£237.86
10 Apr 2018	£175.25	£43.81	£18.80	£237.86
10 Apr 2018	£175.25	£43.81	£18.80	£237.86
10 Apr 2018	£175.25	£43.81	£18.80	£237.86
10 Oct 2018	£175.25	£43.81		£219.06
11 Oct 2018	£175.25	£43.81		£219.06
11 Oct 2018	£175.25	£43.81		£219.06
11 Oct 2018	£166.22	£41.56		£207.78
11 Oct 2018	£166.22	£41.56		£207.78
11 Oct 2018	£166.22	£41.56		£207.78
12 Oct 2018	£166.22	£41.56		£207.78
12 Oct 2018	£166.22	£41.56		£207.78
12 Oct 2018	£166.22	£41.56		£207.78
12 Oct 2018	£166.22	£41.56		£207.78
12 Oct 2018	£36.94	£9.24		£46.18
12 Oct 2018	£36.94	£9.24		£46.18
15 Oct 2018	£36.94	£9.24		£46.18
15 Oct 2018	£36.94	£9.24		£46.18
15 Oct 2018	£36.94	£9.24		£46.18
15 Oct 2018	£36.73	£9.18		£45.91
15 Oct 2018	£36.73	£9.18		£45.91
15 Oct 2018	£36.73	£9.18		£45.91
15 Oct 2018	£36.73	£9.18		£45.91
15 Oct 2018	£36.73	£9.18		£45.91
29 Oct 2018			£633.78	£633.78
6 Nov 2018	£36.73	£9.18	£183.63	£229.54