

Ombudsman's Determination

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

Outcome

1. Mr S' complaint is upheld and to put matters right, BSSL shall comply with the Directions set out in paragraphs 21 to 23 below.

Complaint summary

2. Mr S complains that pension contributions have not been paid into his Plan. He says that as a result of this, he has been unable to claim his pension and has relied on his savings instead. He would like all contributions and tax relief to be applied to his Plan, and for this to reflect what he would have received, had the contributions been allocated on time.

Background information, including submissions from the parties

3. In 2012, Mr S became a member of the Plan, a defined contribution occupational pension scheme, which is administered by Scottish Widows. Shortly, following his membership of the Scheme, BSSL experienced problems with ensuring pension contributions were paid to Scottish Widows. This resulted in irregular employer and employee contributions being paid into the Plan, which continued over a number of years.
4. On 8 June 2015, BSSL wrote to Mr S to say that it had "an arrangement with Scottish Widows" and that any arrears would be "satisfied by 14th October 2015".
5. Mr S called Scottish Widows on 9 June 2015, to ask about the missing contributions. Scottish Widows issued a letter to him the same day, which, in summary, said:-
 - Scottish Widows had encountered some administrative difficulties which had resulted in a delay in fully allocating pension contributions. Scottish Widows had been working with BSSL to rectify the situation.

- Once this was resolved, all relevant contributions and tax relief would be applied to the Plan and units would be “purchased at the price applicable to the day on which these contributions would normally have been applied to [Mr S]’ policy.” This would ensure that there would be no loss of investment.
 - It was unable to confirm when Mr S’ contributions would be fully up to date. However, it assured Mr S that he would “not be financially disadvantaged in any way as a result of the processing delay.”
6. On 3 July 2017, Mr S wrote to Scottish Widows with reference to its letter of 9 June 2015. He said that contrary to the contents of that letter, it was his understanding that the problems were caused by BSSL not making employer contributions to the Plan, as well as failing to pass his contributions to Scottish Widows. So, he sought confirmation of whether this was correct. He also wanted to see supporting information that confirmed that the reconciliation was taking place.
7. Scottish Widows confirmed that:-
- The problems were caused by delayed contributions from BSSL, which was in discussion with The Pensions Regulator (**TPR**).
 - A basic profit/loss calculation showed that the Plan held approximately £1,929.25 less than it should have done. However, this was not completely accurate as Scottish Widows did not have the correct dates that payments should have been applied.
8. On 2 March 2018, Mr S wrote to BSSL to inform it of his intention to retire from 1 June 2018. He claims that this was after agreeing with BSSL that it could pay all of the overdue contributions by the end of June 2018.
9. After a number of months of the pension contributions remaining outstanding, in October 2018, Mr S contacted our Early Resolution Service (**ERS**). To try and resolve the complaint, ERS contacted BSSL on 7 January 2019, to ask for:
- details of the missing contributions and when these should have been paid;
 - confirmation of the contributions that had been paid to Scottish Widows and the dates that these should have been paid; and
 - BSSL to consider paying an award for the distress and inconvenience caused.
10. ERS chased a response on 22 January 2019, after which it was told that BSSL had been working on the contribution history. ERS highlighted that Mr S was unable to claim his pension benefits until the matter was resolved and so the matter was urgent.
11. On 5 February 2019, ERS contacted BSSL again with a deadline of 28 February 2019, to pay the missing contributions into the Plan.

12. BSSL did not respond to ERS' requests or correspondence, so the matter was passed for a formal investigation. We contacted BSSL on the following dates:-
- 19 June 2019
 - 19 July 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
 - 22 November 2019
13. As at the date of this Determination, we have received no information from BSSL, despite assurances that it would be sent. A table of the contribution information we have received from Mr S can be found in Appendix A. Information taken from his payslips has been collated in Appendix B.

Adjudicator's Opinion

14. Mr 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, BSSL had failed to do the following:
 - pay employer contributions to Scottish Widows when required to do so;
 - transfer Mr S' employee contributions to Scottish Widows when required to do so;
 - meet a number of TPR's requirements, concerning the payment of employee/employer contributions;
 - keep Mr S adequately informed;
 - resolve the compounded errors in a timely manner;
 - adhere to timescales that it had set itself;
 - understand the impact that this has had on Mr S, both in terms of his pension and the distress caused; and

- respond and cooperate with us for over a year.
 - A comparison between Mr S' payslips and the Scottish Widows statements demonstrated that since the beginning of Mr S' membership in the Plan, there were delays with his contributions being transferred to Scottish Widows. Following this, payments were irregular with several of the monthly contributions missing. Moreover, after 13 July 2015, there were no employer contributions for approximately a year and a half. They were then significantly reduced when they were reintroduced.
 - The difference between the Scottish Widows' statements and Mr S' payslips showed that £1,383.89 of Mr S' employee contributions had been collected but not paid into the Plan. This had impacted Mr S as he had been unable to claim his pension due to its inaccuracy. So, he had been using his savings to cover his living costs from June 2018. Despite BSSL being aware of this, the reconciliation of Mr S' Plan did not appear to have been expedited, nor had BSSL provided the information requested by us.
 - There had been an actual financial loss as Mr S had not been able to retire and claim his pension on or after 1 June 2018, when this should have been the case. In the Adjudicator's view, BSSL exacerbated the situation by setting false expectations and was she was satisfied, it was more likely than not, that BSSL assured Mr S that the overdue contributions could be paid by the end of June 2018. This was because we had received similar assurances from BSSL, but the set expectations were never met. So, Mr S had experienced non-financial injustice.
 - BSSL had had over a year to reconcile Mr S' Plan and in the Adjudicator's opinion, it had hindered the complaints process. Taking this into account, the level of distress and inconvenience Mr S had suffered was exceptional.
15. As BSSL did not respond to the Adjudicator's Opinion, the complaint was passed to me to consider.

Ombudsman's decision

16. Having reviewed the information available, I agree with the Adjudicator's findings outlined at paragraph 14 above. Mr S has accepted the Adjudicator's Opinion. However, BSSL has not provided a response, despite having had opportunities on numerous occasions to do so.
17. 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 S' Plan inaccurate;

- BSSL's acts and omissions have prevented Mr S from retiring and claiming his pension from June 2018;
 - BSSL had impeded an early reconciliation and resolution for Mr S, despite having been given multiple opportunities, by both our ERS and the Adjudicator, to rectify this; and
 - Mr S has suffered an exceptional level of distress and inconvenience as a result of BSSL's various errors and inaction.
18. The errors need to be corrected and the injustice addressed, so that Mr 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.
19. Although The Pensions Regulator appears to be aware of the matter, I will be formally reporting BSSL to the Pensions Regulator.
20. I uphold Mr S' complaint.

Directions

21. Within 28 days of the date of this Determination, BSSL shall:-
- Create a document confirming:
 - the contribution rates that should have been paid by BSSL and Mr S for each month from the beginning of 2012, up until June 2018;
 - when the contributions should have been paid; and
 - whether each contribution had already been paid.
 - Send a copy of the completed document to Scottish Widows.
 - Compare what BSSL has paid for both the employee and employer contributions to Scottish Widows with the totals as set out in the completed document.
 - Pay to Scottish Widows, the difference found from the comparison.
 - Pay Mr S £3,000 in recognition of the exceptional distress and inconvenience he has suffered
22. Once Scottish Widows has reconciled the data and payments outlined in paragraph 21 above, BSSL shall:-
- Make any required additional payments to Scottish Widows within 28 days of receipt of Scottish Widows' notification, so that Mr S' Plan reflects the units that would have been bought, had the payments been made on time.

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23. If Mr S claims his pension within 28 days of being notified in writing that his pension has been reconciled. BSSL shall:-

- Make any required additional payments to bring Mr S' pension options in line with what he would have received, had he been able to claim his pension from the end of June 2018. For example, if the annuity rates are different and Mr S could have received a higher sum in 2018, BSSL shall:
 - pay the amount required to meet the annuity rate from June 2018; and
 - pay the amount required to backdate the annuity so that it comes into payment from June 2018.
 - establish and pay the interest due from when the payments would have been paid to date of settlement, which shall be calculated at the base rate for the time being quoted by the Bank of England.

Anthony Arter

Pensions Ombudsman

20 March 2020

Appendix A**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	£222.23	£55.56	£295.79	£573.58
18 Jun 2012	£222.23	£55.56	£295.79	£573.58
01 Aug 2012	£222.23	£55.56	£295.79	£573.58
03 Sep 2012	£222.23	£55.56	£295.79	£573.58
21 Sep 2012	£222.23	£55.56	£295.79	£573.58
06 Nov 2012	£222.23	£55.56	£295.79	£573.58
07 Dec 2012	£222.23	£55.56	£295.79	£573.58
16 Jan 2013	£222.23	£55.56	£295.79	£573.58
22 Apr 2013	£222.23	£55.56	£295.79	£573.58
17 Jun 2013	£222.23	£55.56	£295.79	£573.58
18 Jun 2013	£222.23	£55.56	£295.79	£573.58
12 Aug 2013	£222.23	£55.56	£295.79	£573.58
13 Aug 2013	£222.23	£55.56	£291.82	£569.61
06 Sep 2013	£222.23	£55.56	£291.82	£569.61
09 Sep 2013	£222.23	£55.56	£291.82	£569.61
11 Nov 2013	£222.23	£55.56	£291.82	£569.61
18 Nov 2013	£222.23	£55.56	£291.82	£569.61
17 Feb 2014	£222.23	£55.56	£291.82	£569.61
25 Mar 2014	£222.23	£55.56	£291.82	£569.61
26 Mar 2014	£222.23	£55.56	£291.82	£569.61
01 May 2014	£222.23	£55.56	£291.82	£569.61
10 Jul 2015	£222.23	£55.56	£291.82	£569.61
10 Jul 2015	£222.23	£55.56	£282.15	£559.94
10 Jul 2015	£222.23	£55.56	£282.15	£559.94
10 Jul 2015	£222.23	£55.56	£282.15	£559.94
13 Jul 2015	£222.23	£55.56	£282.15	£559.94
13 Jul 2015	£222.23	£55.56	£282.15	£559.94
13 Jul 2015	£222.23	£55.56	£282.15	£559.94
13 Jul 2015	£222.23	£55.56	£282.15	£559.94
04 Oct 2016	£222.23	£55.56		£277.79
04 Oct 2016	£222.23	£55.56		£277.79
04 Oct 2016	£222.23	£55.56		£277.79
04 Oct 2016	£222.23	£55.56		£277.79
09 Nov 2016	£222.23	£55.56		£277.79
09 Nov 2016	£222.23	£55.56		£277.79
09 Nov 2016	£222.23	£55.56		£277.79
09 Nov 2016	£222.23	£55.56		£277.79
06 Dec 2016	£222.23	£55.56		£277.79
06 Dec 2016	£222.23	£55.56		£277.79
06 Dec 2016	£222.23	£55.56		£277.79
06 Dec 2016	£222.23	£55.56		£277.79
17 Jan 2017	£222.23	£55.56		£277.79
18 Jan 2017	£222.23	£55.56	£29.85	£307.64
18 Jan 2017	£222.23	£55.56	£29.85	£307.64

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Date received	'EE contribution	Tax relief	'ER contribution	Total
18 Jan 2017	£222.23	£55.56	£29.85	£307.64
10 Apr 2018	£222.23	£55.56	£29.85	£307.64
10 Apr 2018	£222.23	£55.56	£29.85	£307.64
10 Apr 2018	£54.65	£13.66	£29.85	£98.16
10 Apr 2018	£54.65	£13.66	£29.85	£98.16
10 Apr 2018	£54.65	£13.66	£29.85	£98.16
10 Apr 2018	£54.65	£13.66	£29.85	£98.16
10 Apr 2018	£54.65	£13.66	£29.85	£98.16
10 Oct 2018				£341.55
11 Oct 2018				£343.35
12 Oct 2018				£413.46
15 Oct 2018				£421.98
29 Oct 2018				£837.69

Appendix B**Contributions made by Mr S, according to his payslips**

Date of payslip	Pension contribution (£)	Does this seemingly match the Scottish Widows statements from Appendix A?
03 Feb 2012	222.23	No, the first contribution on the statements is from May 2012
02 Mar 2012	222.23	As above
30 Mar 2012	222.23	Yes, if it is considered as the 31 May 2012 contribution
29 Jun 2012	222.23	Yes, if following on from above. Dates may differ though
03 Aug 2012	222.23	As above
31 Aug 2012	222.23	As above
05 Oct 2012	222.23	As above
02 Nov 2012	222.23	As above
30 Nov 2012	222.23	As above
21 Dec 2012	222.23	As above
01 Feb 2013	222.23	No, there are no further contributions until 22 April 2013
01 Mar 2013	222.23	As above
05 Apr 2013	222.23	Yes, if it is the 22 Apr 2013 contribution
03 May 2013	222.23	Yes, but dates differ/it may have been paid late
31 May 2013	222.23	Yes
05 Jul 2013	222.23	Yes, but dates differ/it may have been paid late
02 Aug 2013	222.23	Yes
30 Aug 2013	222.23	Yes, but the following 9 Sep 2013 contribution does not seem to correspond to any of the payslip payments. It appears to be 'spare'.
04 Oct 2013	222.23	Yes, but dates differ/it may have been paid late
01 Nov 2013	222.23	Yes
20 Dec 2013	222.23	No, there are no further contributions until 17 Feb 2014
31 Jan 2014	222.23	Yes, if it is the 17 Feb 2014 contribution
28 Feb 2014	222.23	Yes, but the following 26 March 2014 contribution does not seem to correspond to any of the payslip payments. It appears to be 'spare'.
04 Apr 2014	222.23	Yes, if it is the 1 May 2014 contribution
02 May 2014	222.23	No
30 May 2014	222.23	No
04 Jul 2014	222.23	No
01 Aug 2014	222.23	No
05 Sep 2014	222.23	No
03 Oct 2014	222.23	No
31 Oct 2014	222.23	No
05 Dec 2014	222.23	No
23 Dec 2014	222.23	No
30 Jan 2015	222.23	Yes, if backdating the 10 Jul 2015 contributions
27 Feb 2015	222.23	As above
02 Apr 2015	222.23	As above
01 May 2015	222.23	As above
05 Jun 2015	222.23	As above

03 Jul 2015	222.23	As above
31 Jul 2015	222.23	As above
04 Sep 2015	222.23	As above
02 Oct 2015	222.23	No, the 2015 contributions have all been used/allocated
30 Oct 2015	222.23	No
04 Dec 2015	222.23	No
18 Dec 2015	222.23	Yes, if backdating 2016 contributions
05 Feb 2016	222.23	As above
04 Mar 2016	222.23	As above
01 Apr 2016	222.23	As above
29 Apr 2016	54.65	Yes, although Scottish Widows has been paid £222.23
03 Jun 2016	54.65	As above
01 Jul 2016	54.65	As above
05 Aug 2016	54.65	As above
02 Sep 2016	54.65	As above
30 Sep 2016	54.65	As above
04 Nov 2016	54.65	As above
02 Dec 2016	54.65	As above
23 Dec 2016	54.65	Yes, if backdating 2017 contributions, but paid £222.23
03 Feb 2017	54.65	As above
31 Mar 2017	54.65	As above
05 May 2017	55.13	As above
02 Jun 2017	55.13	No
30 Jun 2017	55.13	No
04 Aug 2017	55.13	No
01 Sep 2017	55.13	No
29 Sep 2017	55.13	No
03 Nov 2017	55.13	No
01 Dec 2017	55.13	No
22 Dec 2017	55.13	This is unclear as the 2018 contributions alter and we have not received a breakdown for some.
02 Feb 2018	55.13	As above
02 Mar 2018	55.13	As above
28 Mar 2018	55.13	As above
04 May 2018	57.40	As above
01 Jun 2018	57.40	As above
29 Jun 2018	57.40	As above