

Ombudsman's Determination

Applicant	Mrs A
Scheme	AVIVA Group Pension Plan (the Plan) Policy No: P5212648A
Respondent	PR Manufacturing Ltd (the Firm)

Outcome

1. Mrs A's complaint is upheld and to put matters right the Firm should now pay:
 - into the Plan the redress amount calculated by AVIVA, the Plan administrator, required to put Mrs A back in the position she would have been if all the regular pension contributions had been paid at the correct time; and
 - £500 compensation to Mrs A in recognition of the distress and inconvenience which they have caused her.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs A complains that the Firm failed to pay all the regular (employee and employer) contributions due into the Plan on a timely basis. She says that she has consequently suffered an actual financial loss in the Plan and also considerable distress and inconvenience for which she would like to be suitably compensated.

Background information, including submissions from the parties

4. The Firm accepts that they had failed to pay all the regular contributions due from 2002 to 2013 which they had collected for Mrs A into the Plan at the correct time.
5. They tried to address the problem by paying regular monthly contributions totalling £2,187 even after Mrs A had left the Firm at the end of December 2013 into the Plan.
6. The Firm appointed Mr T, an independent financial adviser (**IFA**), in 2015 to mediate an acceptable settlement.

7. In an e-mail dated 13 May 2015 to Mrs A, Mr T wrote:

“I feel some sympathy with... (the Firm)...due to their current situation but this is no excuse for the lack of progress.”

“I agree that your complaint appears to have been the subject of inexcusable delay (by the Firm)...”

8. Furthermore in an e-mail dated 10 May 2016 to the Firm, Mr T wrote:

“One of my undertakings to you was to spin the process out for as long as possible. As the first anniversary approaches, I think I can be said to have achieved that!”

9. Originally the Firm did not consider that Mrs A had been disadvantaged as a result of their error because Mrs A's husband, one of their directors, had withheld a £5,800 director's loan in order to offset the missing contributions and if he had paid this amount over to AVIVA for investment in the Plan, this dispute would have been settled a long time ago.

10. The Firm subsequently accepted the view of one my Adjudicators during the course of his investigation into Mrs A's complaint, i.e.:

- I could not disregard the fact that if they (and AVIVA) had adhered to the Pensions Regulator's codes of practice concerning payment of pension contributions then there would not now be a contribution shortfall in the Plan;
- Mrs A's husband would then not have made an improper proposal to offset the missing Plan contributions against his outstanding director's loan of £5,800; and
- if they wished to pursue Mr A for the outstanding director's loan, they should use other legal means.

11. AVIVA has calculated (with Mr T's assistance) that, as at 23 June 2016, if all the regular Plan contributions for Mrs A had been paid on time by the Firm, the current fund value of the Plan would be £11,402.68. As the actual Plan fund value was £4,590, the Firm therefore has to make an additional payment of £6,812.68 to cover the shortfall.

12. AVIVA says that they will refund the £2,187 which the Firm already paid into the Plan because current company policy does not permit this amount to be offset against the outstanding payment of £6,812.68.

13. The Firm has apologised to Mrs A for “a genuine regrettable oversight” and agreed to pay the amount calculated by AVIVA required to put her back in the position she would have been had all the contributions been paid at the correct time. They are not, however, prepared to accede to her request for an additional payment of £400 to

compensate her for the distress and inconvenience which she says she has suffered because :

- there were mitigating circumstances at the time the mistake occurred, i.e.:
 - a) a catastrophic fire in 2006 at the factory destroyed most of the paper and electronic documents held there and left the Firm in a difficult financial position; and
 - b) the temporary suspension of two family directors in 2011 “during which time they were unable to guide the actions and policies of the Firm”;
 - c) the external managers brought in ran the Firm “into the ground with mounting annual losses”; and
 - d) the external managers also “misled and bullied” Mrs A’s husband whilst they were under his supervision at the Firm.
- despite receiving regular statements from AVIVA showing that no contributions had been paid into the Plan for several years, she did not bring this oversight to their attention until 2011;
- her husband had proposed to make up the contribution shortfall in the Plan from his outstanding director’s loan of £5,800 and pay the balance into the business but failed to do this;
- it was only after Mrs A left the Firm in December 2013 that she raised this issue again (despite her husband having previously agreed that it had been settled by actions as detailed above);
- they have handled Mrs A’s complaint properly by appointing Mr T and have had to pay his fees;
- although Mrs A initially cooperated with Mr T, she then decided to refer her complaint to me at which point, they retained Mr T’s services to represent them;
- Mrs A has not been able to provide evidence of any major delays on their part;
- the distress which Mrs A has suffered can be attributable mainly to other matters including an “unfortunate family argument”;
- Mrs A was “economical with the truth” concerning her employment history with the Firm and their investigation of her employment record and pension contributions payable (during a period of extended and unpaid maternity leave) has been time consuming and costly to them; and
- she (and her husband) have caused them a great deal of distress over this and other matters.

14. Mrs A says that:

- the Firm's failure to pay contributions due into the Plan began in 2003 which was before the external managers were appointed;
- there have been many incidences when her enquiries about her pension contributions have been "overlooked and not taken seriously" by the Firm, in particular:
 - a) she sent a letter dated 5 September 2014 to the Firm (and a copy to their legal representative at the time) concerning her missing pension contributions;
 - b) although the Firm confirmed receipt of this letter on 10 September, neither they (nor their legal representative) acted on it until the end of February 2015 (according to a letter dated 3 March 2015 from Mrs V's husband to the Firm); and
 - c) she sent at least 22 e-mails to the Firm's "appointed accounts provider" between 12 August and 5 September 2014 to raise issues about the irregularities with her pension contributions but the Firm only began "a full and thorough investigation" in February 2015.
- Mr T confirmed that there were deliberate delays on the part of the Firm dealing with this matter; and
- she has suffered considerable distress and inconvenience trying to settle her protracted pension dispute with the Firm.

Adjudicator's Opinion

15. Mrs A's complaint was considered by one of our Adjudicators who concluded that further action was required by the Firm. The Adjudicator's findings are summarised briefly below:

- although the Firm wanted to put matters right with Mrs A on an amicable basis, there is clear evidence showing that there had been unnecessary delays on their part;
- Mrs A has had to spend a significant amount of time sorting things out during this protracted dispute and that this has been a difficult time for her; and
- the Firm's actions caused Mrs A distress and inconvenience to a degree which warrants the minimum compensation payment which I would award under such circumstances.

16. The Firm did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. The Firm provided their further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by the Firm for completeness.

Ombudsman's decision

17. There is no dispute that the Firm failed to pay all the regular contributions due into the Plan on a timely basis and Mrs A has consequently suffered an actual financial loss in the Plan. This error, in my view, constitutes maladministration on the part of the Firm.
18. I note however that the Firm is willing to take the appropriate remedial action to put Mrs A back in the position she would have been in if it had not made this mistake.
19. It therefore remains for me to decide whether the Firm has caused Mrs A distress and inconvenience to a degree which warrants at least the minimum payment of £500 which I would award. I accept that there was distress surrounding the conduct of the family business which is unconnected with the maladministration identified above. However, the delay in remedying it has in my view caused significant inconvenience to Mrs A.
20. I can see that a very considerable amount of time was spent by Mrs A dealing diligently with the problems caused as a direct result of the maladministration identified above. The contributions had been outstanding for many years. That the Firm was being run by external managers at the time does not absolve them from investigating this issue on a timely basis. Mrs A raised the issue of the missing pension contributions with the Firm and its accountants in August/September 2014. The Firm, however, did not commence their full investigation into the matter until the end of February 2015. I therefore agree with the view expressed by Mr T in his e-mail of 13 May 2015 to Mrs A that there had been unnecessary delays on the Firm's part dealing with this matter prior to his involvement.
21. Moreover, I cannot disregard the contents of Mr T's e-mail dated 10 May 2016 to the Firm. It has been suggested that this email must have meant something less concerning than it appears to say. However it is in plain terms and I consider that on the balance of probabilities it confirms that the Firm was prepared to prolong the resolution process unnecessarily. Therefore I uphold Mrs A's complaint and make a direction below aimed at remedying the injustice, including that caused by failure to provide a remedy promptly.

Directions

22. The Firm should, within 14 days of the date of this Determination;

- pay into the Plan the redress amount calculated by AVIVA required to put Mrs A back in the position she would have been if all the regular pension contributions had been paid at the correct time; and
- pay Mrs A £500 for the significant non-financial injustice she has suffered.

Karen Johnston

Deputy Pensions Ombudsman
24 August 2016