

## Ombudsman's Determination

Applicant	Mr T
Scheme	True Potential Investment Personal Pension ( <b>the Plan</b> )
Respondent	Ash Contracts Ltd ( <b>the Employer</b> )

## Outcome

1. Mr T's complaint is upheld and, to put matters right, the Employer shall pay £4,464.57 into the Plan. The Employer shall ensure that Mr T is not financially disadvantaged by its maladministration. So, it shall arrange for any investment loss to be calculated and paid into the Plan.
2. In addition, the Employer shall pay Mr T £1,000 for the serious distress and inconvenience it has caused him.

## Complaint summary

3. Mr T has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Plan.
4. The available evidence shows that the missing contributions amounted to £4,464.57.

## Background information, including submissions from the parties

5. The sequence of events is not in dispute, so I have only set out the salient points.
6. On 18 October 2021, Mr T began his employment with the Employer.
7. On 1 November 2021, the Employer began deducting pensions contributions from Mr T's salary.
8. On 1 November 2022, Mr T was enrolled into the Plan. This was despite the fact he had contributions deducted from his salary since 1 November 2021.
9. Between 1 November 2021 and 19 December 2022, the Employer failed to pay pension contributions into the Plan.

10. On 24 November 2022, Mr T contacted the Employer's accountant (**Clydegrove**) and asked where his pension contributions were going as he had never received any information from the Employer.
11. On 25 November 2022, Clydegrove emailed Mr T and confirmed that he was in a pension scheme and would email him further information.
12. On 28 November 2022, Mr T was forwarded an email that Clydegrove had previously sent to the Employer. Clydegrove said that a pension had not been set up for Mr T and that no contributions had been paid into a pension scheme. It said that it would set up the Plan and upload the outstanding contributions but would require authorisation from the Employer as the payments would be taken from the Employer's account. Clydegrove confirmed that the employee contributions amounted to £2,627.12 and employer contributions amounted to £1,576.38.
13. On 12 December 2022, Mr T received confirmation that Clydegrove had enrolled him into the Plan.
14. On 13 December 2022, Mr T complained to the Employer.
15. On the same day, Mr T received an email from the Plan administrator which showed he had been enrolled into the Plan on 1 November 2022.
16. On the same day, Clydegrove emailed the Employer and said it was going to arrange the payment of five months of pension contributions for Mr T, with the total amount being £1,616.65. It also said it would pay a further five months in January 2023.
17. On 14 December 2022, Mr T emailed Clydegrove for an update. He said he was aware he had not been enrolled correctly into the Plan and enquired about the implications of the delayed set up.
18. On 15 December 2022, the Employer told Clydegrove that it was not in a position to pay the contributions and enquired about the potential investment loss.
19. On 19 December 2022, Mr T left his employment with the Employer.
20. On 15 February 2023, Mr T complained to The Pensions Ombudsman (**TPO**)
21. On 9 July 2024, Mr T provided a screenshot from his online account with the Plan. This showed no contributions had been paid into the Plan by the Employer for the entire period of his employment.
22. Mr T provided copies of the payslips that he held for the period from October 2021 to December 2022, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These deductions amounted to £3,858.27. A breakdown of the deductions has been included in the Appendix.
23. The payslips provided between November 2021 and March 2022 do not show the corresponding employer pension contributions. However, most other payslips

provided by Mr T with the same gross monthly salary show employer contributions of £121.26.

24. On 11 July 2024, TPO asked the Employer for its formal response to Mr T's complaint. This request was repeated on 25 July 2024. Although the Employer acknowledged TPO's communication it did not provide a full response to the points raised.

## **Adjudicator's Opinion**

25. Mr T's complaint was considered by one of our Adjudicators who concluded that further action was required by the Employer as it had failed to remit the contributions that were due to the Plan. The Adjudicator's findings are summarised below:-
- The Adjudicator stated that TPO's normal approach, in cases such as these, was to seek agreement from all parties on the facts of the complaint, including the dates and amounts of contributions involved. He said that, as the Employer had not responded to any of TPO's communications, he had to base his Opinion solely on the information provided by Mr T.
  - Based on the information provided by Mr T £3,858.27 had not been remitted to the Plan. Mr T' payslips did not show the employer contributions in respect of Mr T's pay between November 2021 and March 2022, even though he was still enrolled in the Plan.
  - Mr T's gross salary for November 2021 to March 2022 was £4,041.67. Payslips provided by Mr T with the same gross monthly salary of £4,041.67 between April 2022 and November 2022 showed employer contributions of £121.26. It was the Adjudicator's view, on the balance of probabilities that £606.30 in employer contributions had also not been remitted into the Plan for these months.
  - The Adjudicator said that he had no reason to doubt the information provided by Mr T. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Mr T's salary but had not been paid into the Plan. In addition, the Employer had not paid any of the employer contributions that were due over the same period. As a result of its maladministration, Mr T was not in the financial position he ought to be in.
  - In the Adjudicator's view, Mr T had suffered serious distress and inconvenience due to the Employer's maladministration. The Adjudicator was of the opinion that an award of £1,000 for non-financial injustice was appropriate in the circumstances.
26. The Employer disagreed with the Adjudicator's Opinion and said it had agreed a payment plan and was making payments to clear the pension debt. The Adjudicator asked the Employer to provide evidence of the payment plan, however this was not

provided. The complaint was passed to me to consider. I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

27. Mr T has complained that the Employer has not paid all the contributions due to the Plan.
28. I find that employee contributions were deducted but held back by the Employer and not paid into the Plan. The Employer failed to rectify this and did not engage with TPO or Mr T.
29. Based on the payslips provided by Mr T, I find that the amount of £3,858.27 has not been remitted to the Plan. Mr T's payslips do not show the employer contributions for the period November 2021 to March 2022, however his monthly gross salary remained at £4,041.67. Other payslips provided by Mr T with the same monthly gross salary of £4,041.67 show employer contributions of £121.26. I therefore agree with the Adjudicator that on the balance of probabilities, the employer contributions would have remained at £121.26 per a month for this period, so a total of £606.30 in employer contributions have also not been remitted to the Plan.
30. The Employer's failure to pay employee and employer contributions into the Plan amounts to unjust enrichment and has caused Mr T to suffer a financial loss. The Employer shall take remedial action to put this right.
31. Mr T is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which he has suffered. This was exacerbated by its failure to respond during TPO's investigation into Mr T's complaint.

### **Directions**

32. To put matters right, the Employer shall, within 28 days of the date of this Determination:
  - (i) pay Mr T £1,000 for the serious distress and inconvenience he has experienced;
  - (ii) pay £4,464.57 into the Plan. This figure represents the amount that, according to the figures provided by Mr T, have been deducted from his pay, but not paid into the Plan account. It also includes the employer contributions for the relevant period which should have also been paid but have not been to date;
  - (iii) establish with the Plan administrator whether the late payment of contributions has meant that fewer units were purchased in Mr T's Plan account than he would have otherwise secured, had the contributions been paid on time; and
  - (iv) pay any reasonable administration fee should the Plan administrator charge a fee for carrying out the above calculation.

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33. Within 14 days of receiving confirmation from the Plan administrator of any shortfall in Mr T's units, pay the cost of purchasing any additional units required to make up the shortfall.

**Anthony Arter CBE**

Deputy Pensions Ombudsman

16 September 2024

**Appendix**

Date	Employee contributions	Employer contributions	Salary
29/10/2021	£0	£0	£1,862.49
26/11/2021	£202.08		£4,041.67
31/12/2021	£202.08		£4,041.67
28/01/2022	£202.08		£4,041.67
25/02/2022	£202.08		£4,041.67
25/03/2022	£202.08		£4,041.67
30/04/2022	£202.09	£121.26	£4,041.67
31/05/2022	£202.09	£121.26	£4,041.67
30/06/2022	£202.09	£121.26	£4,041.67
31/07/2022	£202.09	£121.26	£4,041.67
31/08/2022	£202.09	£121.26	£4,041.67
30/09/2022	£202.09	£121.26	£4,041.67
31/10/2022	£202.09	£121.26	£4,041.67
30/11/2022	£202.09	£121.26	£4,041.67
31/12/2022	£163.17	£97.90	£3,263.21
	£2,790.29	£1,067.98	
<b>Total Unpaid Contributions</b>	<b>£3,858.27</b>		