

Ombudsman's Determination

Applicant	Mr N
Scheme	Standard Life Personal Pension Plan (the Plan)
Respondents	Campbell Meyer & Co Limited (the Employer)

Outcome

1. Mr N's complaint is upheld and to put matters right, the Employer shall pay £6,250 into the Plan. The Employer shall ensure that Mr N is not financially disadvantaged by its maladministration.
2. In addition, the Employer shall pay Mr N £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

3. Mr N has complained that the Employer has failed to pay employer contributions into the Plan.
4. Mr N has said that the missing contributions amounted to £6,250.

Background information, including submissions from the parties

5. In October 2019, Mr N began employment with the Employer.
6. On 8 October 2019, the Employer emailed Mr N to confirm that pension contributions would start 6 months into his employment. This email also confirmed that Mr N's contributions would be paid into the Plan and that the rate of contributions would be: 5% employer contributions and 5% employee contributions.

"...that (Mr N's pension) will be sorted out in 6 months' time. However, as you will be aware, the company is obliged to enrol you on the Government National Employment Savings Trust (**NEST**) workplace pension scheme."

...

“I expect you would prefer to continue with your Standard Life policy therefore, under the regulations, you will have to be registered with NEST but you would then write to us (or to NEST) to confirm you do not want to be included in the scheme.”

7. On 31 October 2019, Mr N received his first payslip from the Employer. It showed an employee pension contribution of £125.67 and an Employer contribution of £94.26. Subsequent payslips showed no Employee or Employer contributions.
8. On 7 November 2019, Mr N emailed the Employer to confirm that he had opted out of NEST and that he would provide the details of the Plan for his employee and employer contributions to be paid into.
9. On 17 December 2019, Mr N says he spoke to the Employer while in the office and provided a physical copy of the Plan details.
10. Between May 2020 and October 2022, the Employer failed to pay any pension contributions into the Plan. Additionally, employee contributions were not deducted from Mr N's pay.
11. On 10 May 2023, Mr N brought his complaint to The Pensions Ombudsman (**TPO**).
12. Mr N provided copies of the payslips that he held for the period April 2020 to October 2022, which showed that there were no employer or employee pension contributions. The Employer contributions for this period would have amounted to £6,250 on the basis that that it had agreed to make contributions at the rate of 5% of his pay. A breakdown of the deductions has been included in Appendix 1.
13. On 4 October 2023, TPO asked the Employer for its formal response to Mr N's complaint. This request was repeated on 26 October 2023.
14. On 26 October 2023, the Employer responded to the request for a formal response. The Employer said that Mr N was enrolled with NEST on starting his employment and subsequently withdrew or opted out. The Employer said that during Mr N's three years of employment he did not raise the subject of his personal pension. The Employer also mentioned that Mr N took the company to an Employment Tribunal where he was awarded a full and final settlement, which included reference to pension matters.
15. On 26 October 2023, Mr N confirmed that there had been an Employment Tribunal at which he was awarded £28,182.00, however these proceedings did not include his complaint about his pension entitlement.
16. On 1 November 2023, the Employer informed TPO that Mr N had raised the issue of his pension and this had been included in the Employment Tribunal in advance of the hearing.
17. On 1 November 2023, Mr N provided a copy of the Employment Tribunal notes. The pension contributions were not mentioned in the proceedings. Pension documents

are referenced as part of the bundle of documents but there was no decision made relating to pension contributions.

18. On 22 November 2023, TPO contacted the Employer to inform it that no decision was made relating to the pension contributions in the Employment Tribunal notes. TPO requested that the Employer provided a copy of the Tribunal's decision and referred to the specific paragraph that mentioned pension contributions.
19. On 22 November 2023, the Employer responded to TPO but did not provide any further evidence stating that;

"I am sorry that I do not have time to continue a ping pong of emails with you."
20. The Employer suggested that TPO should obtain the requested information from elsewhere.

Adjudicator's Opinion

21. Mr N'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. The Employer has argued that Mr N's pension contributions were covered by the outcome of an Employment Tribunal and that the settlement awarded to Mr N included any pension contributions owed to him.
 - The Employer provided copies of Employment Tribunal documents, and the full transcript of the Employment Tribunal was provided by Mr N. In the Employment Tribunal notes pension documents are referenced as part of the bundle of documents but there was no decision made relating to the pension itself or the outstanding pension contributions.
 - The Adjudicator said that he had no reason to doubt the information provided by Mr N. So, in the Adjudicator's Opinion, on the balance of probabilities, employer pension contributions had not been paid into the Plan. As a result of this maladministration Mr N was not in the financial position he ought to be in.
 - In the Adjudicator's view, Mr N 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.
22. On 27 August 2024, the Employer responded to the Adjudicator's Opinion with the following comments;

- The Employer agreed that £6,250 of employer contributions had not been paid into Mr N's pension. It said that Mr N was equally to blame as he had not raised this issue with the Employer at the time.
- The Employer said that Mr N did not provide details of the Plan for it to make the relevant payments.
- The Employer agrees that the Employment Tribunal did not specifically refer to Mr N's pension but believes that the loss of earnings calculation included pension contributions.

23. The Adjudicator responded to these comments with the following;

- Although Mr N could have raised the issue with the Employer sooner the point at which he complained to TPO was within TPO's three-year time limit and as a result the complaint is a valid one.
- Mr N has provided emails to show the Employer had agreed that it would make payments into the Plan and that he provided the relevant Plan details on 17 December 2019. The Employer has not provided any evidence to show that it was chasing Mr N for this information as it was obligated to do so it could comply with its enrolment responsibilities. Considering this evidence, on the balance of probabilities, Mr N did provide this information and the Employer failed to pay the contributions.
- As employer pension contributions were not paid (following the initial October 2019 contribution) and were due to begin being paid in May 2020 these could not have been considered part of Mr N's loss of earnings.

24. The Employer did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion.

Ombudsman's decision

25. Mr N has complained that the Employer has not paid all the contributions due to his Plan account.
26. The Employer is required to pay employer pension contributions as part of its pension responsibilities under the Pensions Act 2008. The Employer has not provided any evidence to show that Mr N had opted out of receiving employer pension contributions. Nor has the Employer shown that this matter was adequately addressed at an Employment Tribunal.
27. Mr N has provided evidence to show that an agreement was made with the Employer for it to pay employer pension contributions into the Plan. These contributions have not been paid and so the Employer is in breach of its responsibilities under the Pension Act 2008.

28. I find that the relevant employee contributions were not deducted and that employer contributions were held back by the Employer and not paid into the Plan. The Employer failed to rectify this and when asked for further details of the Employment Tribunal it refused to provide this information which unduly delayed my Offices investigation into his matter.
29. The Employer's failure to pay employer contributions into the Plan amounts to unjust enrichment and has caused Mr N to suffer a financial loss. The Employer shall take remedial action to put this right.
30. Mr N is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which he has suffered. I agree with the Adjudicator that £1,000 is an appropriate amount given the circumstances.
31. Therefore, I uphold Mr N's complaint.

Directions

32. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) Pay Mr N £1,000 for the serious distress and inconvenience he has experienced.
 - (ii) Pay £6,250 into Mr N's Plan account. This figure represents the amount that, according to the figures provided by Mr N, have not been 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 paid to date;
 - (iii) Establish with the Plan administrator whether the late payment of contributions has meant that fewer units were purchased in Mr N'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.
33. Within 14 days of receiving confirmation from the Plan administrator of any shortfall in Mr N's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman

17 October 2024

Appendix 1

Date	Employee contributions	Employer contributions
May 2020	£208.33	£208.33
June 2020	£208.33	£208.33
July 2020	£208.33	£208.33
August 2020	£208.33	£208.33
September 2020	£208.33	£208.33
October 2020	£208.33	£208.33
November 2020	£208.33	£208.33
December 2020	£208.33	£208.33
January 2021	£208.33	£208.33
February 2021	£208.33	£208.33
March 2021	£208.33	£208.33
April 2021	£208.33	£208.33
May 2021	£208.33	£208.33
June 2021	£208.33	£208.33
July 2021	£208.33	£208.33
August 2021	£208.33	£208.33
September 2021	£208.33	£208.33
October 2021	£208.33	£208.33
November 2021	£208.33	£208.33
December 2021	£208.33	£208.33
January 2022	£208.33	£208.33
February 2022	£208.33	£208.33
March 2022	£208.33	£208.33
April 2022	£208.33	£208.33
May 2022	£208.33	£208.33

CAS-105290-N4S0

June 2022	£208.33	£208.33
July 2022	£208.33	£208.33
August 2022	£208.33	£208.33
September 2022	£208.33	£208.33
October 2022	£208.33	£208.33