

Ombudsman's Determination

Applicant	Mr E
Scheme	Scottish Widows Group Personal Pension Plan (the Plan)
Respondents	Key Security (UK) Ltd (the Employer)

Outcome

1. Mr E's complaint is upheld and, to put matters right, the Employer shall pay £1,268.77 into the Plan. The Employer shall ensure that Mr E 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 E £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

3. Mr E 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 £1,268.77.

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. In January 2022, Mr E began his employment with the Employer.
7. Mr E was enrolled into the Plan with a start date of 1 April 2022.
8. In March 2023, Mr E ceased employment with the Employer and a final payslip was provided to him on 10 April 2023.
9. Between May 2022 and April 2023, the Employer failed to pay pension contributions into the Plan.

10. Mr E complained to the Employer in May 2023, that he had not received details of his pension account.
11. On 7 July 2023, the Employer made a payment of £262.40 into the Plan.
12. On 2 October 2023, Mr E brought his complaint to The Pensions Ombudsman (**TPO**).
13. On 3 October 2023, the Employer paid £270.78 into the Plan and a further £281.92 on 26 October 2023.
14. Mr E provided TPO with copies of the payslips he held for the period from May 2022 to April 2023, which detailed the pension contributions deducted from his pay and the corresponding employer contributions.
15. On 9 November 2023, TPO asked the Employer for its formal response to Mr E's complaint.
16. The Employer responded to TPO on 16 November 2023. It said the outstanding contributions would be repaid by 29 February 2024, in accordance with a deadline set by The Pensions Regulator (**TPR**).
17. On 29 December 2023, the Employer said it was working to a repayment date of March 2024, for the missing pension contributions, as set by TPR.
18. On 19 February 2024, the Employer provided TPO with a copy of TPR's letter dated 25 August 2023. This showed that all pension contributions were to be paid by 18 March 2024.
19. On the same day the Employer told TPO that TPR's repayment date of 18 March 2024, would be changing. No further evidence was provided about the change in TPR's repayment date.
20. On 20 February 2024, the Employer paid a further £223.73 into the Plan.
21. The Employer has not provided any further evidence to TPO regarding the outstanding pension contributions.
22. On 27 March 2024, Mr E provided evidence to demonstrate that there had been no further payments paid into the Plan since 20 February 2024.
23. The total of employer and employee contributions for the period May 2022 to April 2023 was £2,782.20. With the four payments made to the Plan deducted, the total contributions owed by the Employer was £1,853.52.

Adjudicator's Opinion

24. Mr E'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, while the Employer had on occasion responded to TPO's communications it had not done so cooperatively, therefore he had to base his Opinion solely on the information provided by Mr E.
- The Adjudicator said that he had no reason to doubt the information provided by Mr E. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Mr E's salary but had not all been paid into the Plan. In addition, the Employer had not paid all the employer contributions that were due over the same period. As a result of its maladministration, Mr E was not in the financial position he ought to be in.
- In the Adjudicator's view, Mr E had suffered serious distress and inconvenience due to the Employer's maladministration. The Adjudicator was of the opinion that an award of £500 for non-financial injustice was appropriate in the circumstances.

25. On 16 April 2024, the Employer responded disagreeing with the Adjudicator's Opinion. In summary the Employer said:-

- It would not pay an award for the non-financial injustice for Mr E thinking he had lost his pension contributions. Mr E had been reassured on multiple occasions, confirmed by payments being made to the Plan since making his complaint.
- It had suffered serious distress and inconvenience through having to manage during difficult trading conditions.
- It was unable to pay the entire backlog of pension contributions to the Plan in 21 days due to the way the Plan's administrator accepts payments and a lack of cashflow.
- The non-financial injustice award of £500 in the Opinion, was not consistent with an award of £1,000 made in a previous Determination it had received in case CAS-104629-R1D4.

26. On 30 April 2024, Mr E informed TPO the Employer had made a payment into the Plan of £296.93. A screenshot of the payment history shows that this sum was received on 19 April 2024. The Employer paid a further £287.82 on 1 August 2024. The outstanding amount of contributions amounted to £1,268.77. The Appendix has been amended since the Adjudicator's Opinion to reflect the additional payments from the Employer.

27. As the Employer did not agree with the Adjudicator's Opinion, the complaint was passed to me to consider. I agree with the Adjudicator's Opinion, except the level of award for maladministration.

Ombudsman's decision

28. Mr E has complained that the Employer has not paid all the contributions due to his Plan account.
29. The Employer's position is that the unpaid pension contributions were a result of it suffering difficult trading conditions, of which TPR and TPO were aware.
30. TPR's letter of 25 August 2023 stated that the Employer should pay back all employees outstanding contributions for each individual worker affected who was enrolled in the Plan, by 18 March 2024. No evidence has been provided to show that the time period was extended. Mr E has brought a complaint to TPO specifically regarding his unpaid contributions which remain unpaid. It is clear from the evidence provided that the Employer has failed to pay all of Mr E's outstanding contributions into the Plan. On this basis, I agree with the Adjudicator's decision to accept this complaint for formal investigation.
31. 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 resolve Mr E's complaint following the Adjudicator's Opinion.
32. The Employer's failure to pay employee and employer contributions into the Plan amounts to unjust enrichment and has caused Mr E to suffer a financial loss. The Employer shall take remedial action to put this right.
33. The Adjudicator's Opinion was that an award of £500 for distress and inconvenience was appropriate because, while non-financial injustice had been suffered by Mr E, the Employer had corresponded with TPO and made some contributions to the Plan. He considered the level of non-financial injustice to be significant rather than serious, but that an award was appropriate in the circumstances.
34. In consideration of the events in this case, I find that Mr E 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 the Employer's continuing failure to resolve the dispute during TPO's investigation into Mr E's complaint. It is my view, that an award of £1,000 is a more appropriate figure for the non-financial injustice Mr E has suffered.

Directions

35. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Mr E £1,000 for the serious distress and inconvenience he has experienced;
 - (ii) pay £1,268.77 into Mr E's Plan account. This figure represents the amount that, according to the figures provided by Mr E, has been deducted from his pay, but

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not paid into the Plan account. It also includes the employer contributions for the relevant period which should also have 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 E'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.

36. Within 14 days of receiving confirmation from the Plan administrator of any shortfall in Mr E's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman

2 September 2024

Appendix

Date	Employer contributions	Employee contributions	Total paid to Plan	Total owed to Plan
Jan 2022	xx	xx	xx	xx
Feb 2022	xx	xx	xx	xx
March 2022	xx	xx	xx	xx
April 2022	xx	xx	xx	xx
10/05/2022	£85.10	£141.84	xx	£226.94
10/06/2022	£87.82	£146.37	xx	£461.13
10/07/2022	£91.43	£152.39	xx	£704.95
10/08/2022	£83.90	£139.83	xx	£928.68
10/09/2022	£96.30	£160.50	xx	£1118.48
10/10/2022	£93.35	£155.58	xx	£1434.41
10/11/2022	£95.03	£158.38	xx	£1687.82
10/12/2023	£92.72	£154.54	xx	£1935.08
10/01/2023	£100.34	£167.23	xx	£2202.65
10/02/2023	£83.89	£139.82	xx	£2426.36
10/03/2023	£70.27	£117.12	xx	£2613.75
10/04/2023	£63.17	£105.28	xx	£2782.20
07/07/2023			£226.94	£2555.26
03/10/2023			£234.19	£2321.07
26/10/2023			£243.82	£2077.25
20/02/2024			£223.73	£1853.52
19/04/2024			£296.93	£1556.59
01/08/2024			£287.82	£1268.77