

## Ombudsman's Determination

Applicant	Mr T
Trust	NOW Pensions Trust ( <b>the Trust</b> )
Respondent	Caledonian Manpower Ltd ( <b>the Employer</b> )

## Outcome

1. Mr T's complaint is upheld and, to put matters right, the Employer shall pay £1,891.42 into the Trust. 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 Trust.
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 Trust.
4. The available evidence shows that the missing contributions amounted to £1,891.42.

## 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 April 2022, Mr T began his employment with the Employer.
7. Between 6 May 2022 and 17 December 2022, the Employer failed to pay pension contributions into the Trust.
8. On 21 November 2023, Mr T brought his complaint to The Pensions Ombudsman (**TPO**).
9. Mr T provided some of the weekly payslips for the period from May 2022 to December 2022, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. Mr T has been unable to provide all of the payslips because the Employer did not provide them all. From the available payslips

he provided, the deductions amounted to £955.68 of employee contributions and £573.42 of employer contributions.

10. Mr T was unable to provide payslips for the following weeks: -
  - 17/06/2022
  - 16/07/2022
  - 03/09/2022
  - 17/09/2022
  - 15/10/2022
  - 03/12/2022
11. Mr T provided a pension history schedule from the Employer which showed Mr T's pensionable earnings, and employee and employer pension contributions. Based on the pension history schedule, the pension contributions amounted to £226.45 of employee contributions and £135.87 employer contributions for the weeks with no available payslips.
12. The total outstanding contributions according to the payslips, and the pension history schedule provided by Mr T, amounted to £1,891.42.
13. On 12 June 2024, TPO wrote to the Employer to ask for more information in response to Mr T's complaint.
14. On the same day, the Employer responded and said that it was no longer trading and that it had no means to settle Mr T's claims.
15. On the same day, TPO wrote to the Employer again asking for evidence supporting its claim that it was no longer trading, as its company status was still showing as active on Companies House. The Employer confirmed again that it was not active and that it had ceased trading.
16. On 13 July 2024, TPO confirmed that it would continue the formal investigation of Mr T's complaint as it had not received any evidence which suggested that the Employer was no longer active. The Employer did not provide any further information in response to Mr T's complaint.

## **Adjudicator's Opinion**

17. 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 Trust. 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. She said that, as the Employer had not responded to any of TPO's communications, she had to base her Opinion solely on the information provided by Mr T.

- According to the payslips provided the total amount outstanding was £1,529.10. The pension history schedule provided by Mr T detailed the amounts of contributions involved for the weeks with no available payslips. It was the Adjudicator's view, on the balance of probabilities, that £362.32 had not been remitted into the Trust for these weeks. In taking this view, the Adjudicator considered that the amounts shown on the pension history schedule did match the deductions shown on the available payslips that have been provided by Mr T.
- The Adjudicator said that she 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 Trust. 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 significant 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.

18. The Employer did not respond to the Adjudicator's Opinion and 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**

19. Mr T has complained that the Employer has not paid all the contributions due to his Trust account.
20. I find that employee contributions were deducted but held back by the Employer and not paid into the Trust. The Employer failed to rectify this and did not engage with TPO or Mr T. It has also failed to respond to the Adjudicator's Opinion.
21. According to the payslips provided the total amount outstanding was £1,529.10. The pension history schedule provided by Mr T detailed the pension contributions outstanding for the weeks with no available payslips. I agree with the Adjudicator that, on the balance of probabilities, £362.32 has not been remitted into the Trust for these weeks. The amounts detailed on the pension history schedule do otherwise match the deductions shown on the available payslips that have been provided by Mr T. A total of £1,891.42 of unpaid contributions are therefore due to Mr T's Trust account.
22. The Employer's failure to pay employee and employer contributions into the Trust amounts to unjust enrichment and has caused Mr T to suffer a financial loss. The Employer shall take remedial action to put this right.

23. Mr T is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which he has suffered which has been exacerbated by the Employer's failure to properly respond to the Adjudicator.

## **Directions**

24. 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 £1,891.42 into Mr T's Trust account. 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 Trust 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 Trust administrator whether the late payment of contributions has meant that fewer units were purchased in Mr T's Trust account than he would have otherwise secured, had the contributions been paid on time; and
  - (iv) pay any reasonable administration fee should the Trust administrator charge a fee for carrying out the above calculation.
25. Within 14 days of receiving confirmation from the Trust 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

6 August 2023

**Appendix**

<b>Payslip date</b>	<b>Employer contributions (£)</b>	<b>Employee contributions (£)</b>
06/05/2022	14.93	24.88
13/05/2022	20.19	33.65
20/05/2022	23.26	38.77
27/05/2022	21.95	36.58
03/06/2022	14.93	24.88
10/06/2022	23.99	39.99
17/06/2022	*	*
24/06/2022	19.61	32.68
02/07/2022	20.78	34.63
09/07/2022	19.61	32.68
16/07/2022	*	*
23/07/2022	20.19	33.65
30/07/2022	22.24	37.06
06/08/2022	25.41	42.35
13/08/2022	17.85	29.75
20/08/2022	21.65	36.09
27/08/2022	24.29	40.48
03/09/2022	*	*
10/09/2022	14.93	24.88
17/09/2022	*	*
24/09/2022	17.27	28.78
01/10/2022	22.09	36.82
08/10/2022	25.41	42.35
15/10/2022	*	*
22/10/2022	25.41	42.35
29/10/2022	20.48	34.14
05/11/2022	21.80	36.33
12/11/2022	22.53	37.55
19/11/2022	25.41	42.35
26/11/2022	25.41	42.35
03/12/2022	*	*
10/12/2022	25.41	42.35
17/12/2022	16.39	27.31
	<b>573.42</b>	<b>955.68</b>

\* Payslips for these weeks were not available