

Ombudsman's Determination

Applicant	Mrs E
Scheme	Scottish Widows Workplace Pension Scheme (the Scheme)
Respondents	Guardian Industrial UK Ltd (the Employer)

Outcome

1. Mrs E's complaint is upheld and, to put matters right, the Employer shall pay £1,190.74 into the Scheme. The Employer shall ensure that Mrs E is not financially disadvantaged by its maladministration, so, it shall arrange for any investment loss to be calculated and paid into the Scheme.
2. In addition, the Employer shall pay Mrs E £1,000 for the serious distress and inconvenience it has caused her.

Complaint summary

3. Mrs E has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
4. The available evidence shows that the missing contributions amounted to £1,190.74.

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 March 2021, Mrs E began her employment with the Employer.
7. On 31 March 2021, Mrs E received her first payslip which showed £47.72 had been deducted from her wages as an employee pension contribution. The payslip also showed £28.63 was being made as the Employer's pension contribution.
8. Mrs E said she became aware in October 2021 of the problems with the Employer not paying pension contributions into the Scheme.
9. On 15 November 2023, Mrs E ceased employment with the Employer. She contacted the Employer and explained what the outstanding pension contributions were.

10. On 28 November 2023, Mrs E complained to the Employer that not all contributions had been paid into the Scheme.
11. For the contributions covering March 2021 to September 2021, the Employer made late pension contributions into the Scheme on four occasions. Then, for the months October 2021 and November 2021, the Employer failed to make the required pension contributions into the Scheme until 30 May 2022 and 29 June 2022.
12. Between December 2021 and October 2023, the Employer failed to make any pension contributions into the Scheme for this period.
13. On 22 December 2023, Mrs E brought her complaint to The Pensions Ombudsman (TPO).
14. Mrs E provided copies of the payslips that she held for the period from March 2021 to October 2023, which detailed pension contributions deducted from her pay and the corresponding employer contributions.
15. Mrs E provided TPO with evidence of the payments made into the Scheme since 1 March 2021, with the first shown as paid on 26 May 2021.
16. The pension contributions outstanding for Mrs E for the period December 2021 to October 2023 totalled £744.21, in employee contributions and £446.53 in employer contributions, a total £1,190.74. A breakdown of these deductions has been included in the Appendix.
17. Mrs E provided TPO with copy correspondence showing that between 9 December 2021 and 15 November 2023, she had provided the Employer with a list of outstanding pension contributions, which included her own.
18. Mrs E provided TPO with correspondence showing that she was in dispute with the Employer for non-payment of her wages covering 1 to 15 November 2023. As such no pension contribution was deducted from her pay for November 2023.
19. Mrs E also provided TPO with documentation to show that a full and final settlement agreed with the Employer on 15 April 2024, for £2,653, was unrelated to the dispute concerning her pension contributions.
20. On 2 July 2024, TPO wrote to the Employer asking for its formal response to Mrs E's complaint regarding the late and unpaid pension contributions.
21. On 3 July 2024, the Employer told TPO that the dispute concerning Mrs E's pension contributions had been resolved through a separate settlement.
22. On 5 July 2024, TPO requested evidence from the Employer of the settlement it was referring to.
23. On 26 July 2024, TPO contacted the Employer again requesting a response to the email of 5 July 2024.

24. On 27 July 2024, the Employer told TPO it had been busy so could not respond sooner. The Employer said that Mrs E had been involved in the calculation of other staff members redundancy packages which included outstanding pension contributions, therefore it felt she had included her own outstanding contributions when arranging a final payment when her employment ended. The Employer then asked that TPO provide a breakdown of the unpaid pension contributions for Mrs E.
25. On 31 July 2024, TPO provided the Employer with a copy of the evidence that Mrs E provided which confirmed that the pension contributions dispute had not been included in an earlier settlement. TPO also provided the Employer with a summary of the payments made into the Scheme for Mrs E, together with the employee and employer contributions that had not been paid. TPO did not receive a response from the Employer.

Adjudicator's Opinion

26. Mrs E's complaint was considered by one of our Adjudicator's who concluded that further action was required by the Employer as it had failed to remit the contributions that were due to the Scheme. 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 initially corresponded it later had not engaged with TPO's communications requesting that it provide a detailed response, so he had to base his Opinion solely on the information provided by Mrs E.
 - The Adjudicator said that he had no reason to doubt the information provided by Mrs E, so, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Mrs E's salary but had been paid late into the Scheme or had not been paid to the Scheme at all. In addition, the Employer had not paid all the employer contributions that were due over the same period. As a result of its maladministration, Mrs E was not in the financial position she ought to be in.
 - In the Adjudicator's view, Mrs E had suffered serious distress and inconvenience due to the Employer's maladministration. The Adjudicator was of the opinion an award of £1,000 for non-financial injustice was appropriate in the circumstances.
27. On 5 October 2024, the Employer responded to the Adjudicator's Opinion. It disagreed with the decision and requested that Mrs E's complaint be reviewed again. In summary, the Employer said:-
 - It had not received the Adjudicator's correspondence of 31 July 2024.
 - No evidence had been provided to confirm the amount of £1,190.74.
 - It had agreed a settlement previously with Mrs E which had been paid in full.

- During Mrs E's employment it had asked her to help resolve the Employer's outstanding pension contributions issue, and if she had not included any in her settlement then it would look to come to an arrangement to pay them.
 - Once evidence had been provided to it that pension contributions were owed to Mrs E then it would propose a payment plan.
 - The company is still active but had ceased trading and so there are no funds or assets to cover Mrs E's claim.
 - It did not agree that a payment should be made for distress and inconvenience.
28. On 17 October 2024, the Adjudicator provided the Employer with a copy of his correspondence of 31 July 2024.
29. The Employer did not respond further to the Adjudicator and the complaint was passed to me to consider; I agree with the Adjudicator's Opinion.

Ombudsman's decision

30. Mrs E has complained that the Employer has not paid all the contributions due to her Scheme account.
31. I find that employee contributions were deducted but withheld by the Employer and not paid into the Scheme. The Employer failed to rectify this and resolve Mrs E's complaint following the Adjudicator's Opinion.
32. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mrs E to suffer a financial loss. The Employer shall take remedial action to put this right.
33. Mrs E is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which she has suffered. This was exacerbated by the Employer's continuing failure to resolve the dispute during TPO's investigation into Mrs E's complaint.

Directions

34. To put matters right, the Employer shall within 28 days of the date of this Determination:
- (i) pay Mrs E £1,000 for the serious distress and inconvenience she has experienced;
 - (ii) pay £1,190.74 into Mrs E's Scheme account. This figure represents the amount that, according to the figures provided by Mrs E, have been deducted from her pay, but not paid into the Scheme account. It also includes the employer contributions for the relevant period which should have also been paid but have not been paid to date;

CAS-115117-N7N7

(iii) establish with the Scheme administrator whether the late payment of contributions has meant that fewer units were purchased in Mrs E's Scheme account than she would have otherwise secured, had the contributions been paid on time; and

(iv) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.

35. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Mrs E's units under paragraph 34(iii) above, pay the cost of purchasing any additional units required to make up the shortfall into Mrs E's scheme account.

Anthony Arter CBE

Deputy Pensions Ombudsman

26 November 2024

Appendix

Date of payslip	Employee contribution deducted	Employer contribution	Date funds paid into Scheme	Total unpaid
31/03/21	£47.72	£28.63	26/05/21	xx
30/04/21	£71.92	£43.15	01/06/21	xx
31/05/21	£71.92	£43.15	16/07/21	xx
30/06/21	£67.40	£40.44	27/07/21	xx
31/07/21	£71.92	£43.15	11/08/21	xx
31/08/21	£71.92	£43.15	08/09/21	xx
30/09/21	£32.75	£19.65	16/12/21	xx
31/10/21	£32.75	£19.65	30/05/22	xx
30/11/21	£32.75	£19.65	29/06/22	xx
31/12/21	£32.75	£19.65	xxx	£52.40
31/01/22	£32.75	£19.65	xxx	£52.40
28/02/22	£32.75	£19.65	xxx	£52.40
31/03/22	£32.75	£19.65	xxx	£52.40
30/04/22	£32.75	£19.65	xxx	£52.40
31/05/22	£32.75	£19.65	xxx	£52.40
30/06/22	£32.75	£19.65	xxx	£52.40
31/07/22	£32.75	£19.65	xxx	£52.40
31/08/22	£32.75	£19.65	xxx	£52.40
30/09/22	£32.75	£19.65	xxx	£52.40
31/10/22	£32.75	£19.65	xxx	£52.40
30/11/22	£28.23	£16.94	xxx	£45.17
31/12/22	£32.75	£19.65	xxx	£52.40
31/01/23	£32.75	£19.65	xxx	£52.40

CAS-115117-N7N7

28/02/23	£28.23	£16.94	xxx	£52.40
31/03/23	£32.75	£19.65	xxx	£52.40
30/04/23	£32.75	£19.65	xxx	£52.40
31/05/23	£32.75	£19.65	xxx	£52.40
30/06/23	£32.75	£19.65	xxx	£52.40
31/07/23	£32.75	£19.65	xxx	£52.40
31/08/23	£32.75	£19.65	xxx	£52.40
29/09/23	£32.75	£19.65	xxx	£52.40
31/10/23	£32.75	£19.65	xxx	£52.40
*30/11/23	xx	xx		xx
Total unpaid	£744.21	£446.53		£1,190.74

*No payment was made to Mrs E for November 2021 and so no pension contributions deducted.