

Ombudsman's Determination

Applicant	Ms N
Scheme	True Potential Investments Pension Scheme (the Scheme)
Respondent	Mr Peter E O'Hare (the Employer)

Outcome

1. Ms N's complaint is upheld and, to put matters right, the Employer shall pay £1,684.24 into the Scheme. The Employer shall ensure that Ms N 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 Ms N £1,000 for the serious distress and inconvenience it has caused her.

Complaint summary

3. Ms N has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme. She has said that pension contributions were not paid into the Scheme from June 2022 to August 2023, and that pension contributions were paid late from September 2019 to May 2022.
4. The available evidence shows that the missing contributions amounted to £1,684.24. This figure represents employee contributions of £1,024.58 and employer contributions of £614.75.

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 August 2019, Ms N began her employment with the Employer. She has confirmed that the Employer operates its business as a Sole Trader.
7. Ms N was enrolled into the Scheme on 2 September 2019.
8. Between September 2019 and May 2022, the Employer paid pension contributions into the Scheme, but they were paid late.

9. Between June 2022 and August 2023, the Employer failed to pay pension contributions into the Scheme.
10. In August 2023, Ms N left her employment with the Employer.
11. On 21 January 2024, Ms N brought her complaint to The Pensions Ombudsman (**TPO**).
12. Ms N has said that she did not receive payslips from the Employer from June 2022 to August 2023. She has provided a schedule from HMRC which details her gross pay for the period between June 2022 and August 2023. Her gross pay for each month has been included in the Appendix.
13. The Scheme administrator provided a schedule of the pensions contributions made to Ms N's Scheme account (**the Schedule**) by the Employer between September 2019 and May 2022. The Scheme administrator also confirmed that contributions should have been paid into the Scheme in line with its True Potential Auto Enrolment Employer Agreement (**the Agreement**) from June 2022 to August 2023. The relevant parts of the Agreement, and extracts from The Pension Regulator and the Pensions Act 2008 (**the Act**) have been included in the Appendix.
14. On 9 October 2024, TPO wrote to the Employer to ask for more information in response to Ms N's complaint. The Employer acknowledged the receipt of the email on the same day.
15. On 24 October 2024, TPO followed up its request to the Employer. But the Employer failed to respond by the deadline.

Adjudicator's Opinion

16. Ms 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 Scheme. The Adjudicator's findings are summarised below:-
 - The Adjudicator stated that the Employer was given reasonable opportunity to respond and engage with Ms N's complaint to TPO, but it did not do so. 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 Ms N.
 - The Adjudicator said that she had no reason to doubt the information provided by Ms N. The evidence provided by Ms N and the Scheme administrator confirmed that the Employer did set up a workplace pension for Ms N with the Scheme in line with auto-enrolment obligations, and that it paid pension contributions into the Scheme prior to June 2022.
 - The Appendix provides a summary of Ms N's monthly gross pay from June 2022 to August 2023. Pension contributions were not paid into the Scheme during this period, even though Ms N was still enrolled in the Scheme and her pay met the pension qualifying earnings threshold for the entire period except for in June 2023.

- In the Adjudicator's opinion, the Employer acted in breach of the Agreement, because it has not paid the contributions due for these months in accordance with the Agreement and the expectations set out by the Act, which amounts to maladministration.
 - As a result of its maladministration, Ms N was not in the financial position she ought to be in. Pension contributions should have been paid to the Scheme and calculated by reference to the statutory minimum automatic enrolment contribution rate of 3% and 5% employer and employee contributions. It was the Adjudicator's view, on the balance of probabilities that £1,024.58 in employee contributions and £614.75 in employer contributions had not been remitted to the Scheme.
 - The Schedule provided by the Scheme administrator also confirmed that pension contributions were paid into the Scheme late by the Employer between September 2019 and May 2022.
 - In the Adjudicator's view, Ms 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.
17. 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.

Ombudsman's decision

18. Ms N has complained that the Employer has not paid all the contributions due to her Scheme account. She has also said that the Employer paid some of the contributions due to her late.
19. I find that employee contributions were deducted but held back by the Employer and not paid into the Scheme. The Employer failed to rectify this and did not engage with TPO or Ms N. It has also failed to respond to the Adjudicator's Opinion.
20. Ms N has evidenced that she was still enrolled into the Scheme from June 2022 to August 2023 and that her monthly gross pay met the pension qualifying earnings threshold for the entire period except for June 2023.
21. I find that a total of £1,684.24 has not been paid into the Scheme. The Scheme administrator has confirmed that contributions should have been paid into the Scheme in line with the Agreement and calculated by reference to the statutory minimum automatic enrolment contribution rate of 3% and 5% employer and employee contributions. The Employer has not provided any information to dispute this position.
22. I therefore agree with the Adjudicator that on the balance of probabilities, £1,024.58 in employee contributions and £614.75 in employer contributions has not been remitted into the Scheme.

23. The Schedule provided by the Scheme administrator also confirms that pension contributions were paid into the Scheme late by the Employer between September 2019 and May 2022.
24. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Ms N to suffer a financial loss. The Employer shall take remedial action to put this right.
25. Ms N 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 its failure to respond during TPO's investigation into Ms N's complaint.

Directions

26. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Ms N £1,000 for the serious distress and inconvenience she has experienced;
 - (ii) pay £1,684.24 into Ms N's Scheme account. This figure represents the employee contributions of £1,024.58 and employer contributions of £614.75.
 - (iii) establish with the Scheme administrator whether the late payment of contributions has meant that fewer units were purchased in Ms N's Scheme account than she would have otherwise secured, had the contributions been paid on time from September 2019 to August 2023; and
 - (iv) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.
27. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Ms N's units, pay the cost of purchasing any additional units required to make up the shortfall.

Camilla Barry

Deputy Pensions Ombudsman

20 January 2025

Appendix

Pay Period	Gross salary (£)
June 2022	2,080.00
August 2022	2,080.00
September 2022	2,080.00
October 2022	2,080.00
November 2022	2,080.00
December 2022	2,080.00
January 2023	2,080.00
February 2023	2,080.00
March 2023	2,080.00
April 2023	2,080.00
May 2023	2,080.00
June 2023*	481.36
July 2023	533.60
August 2023	2,278.40

* Ms N did not meet the qualifying earnings threshold this month

Appendix

True Potential Auto Enrolment Employer Agreement

Your duties.

In order to use the True Potential Pension, you agree to:

- Set up and manage the automatic enrolment pension scheme, in line with the expectations set out by The Pensions Regulator (TPR), via your individual secure employer site.

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- Provide us with the following information in order to establish and manage your scheme, and monitor this to ensure that it is correct:
 - Company name
 - Companies House number
 - Registration number
 - Registered office address
 - Contact address (if different)
 - Contact details
 - Elected Scheme Name
 - Staging Date
 - Nominated retirement age for the scheme
 - Tax relief method to be applied to member contributions
 - Type of salary contributions are to be deducted from
 - Elected default fund choice
 - Level of contributions to be paid
 - How you would like to communicate with your employees

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Regulation.

You retain sole responsibility for compliance with all relevant Regulatory Requirements of the Employer in respect of Automatic Enrolment legislation.

Appendix

The Pensions Regulator

Making contributions to your pension scheme

How much to pay in

The amount you and your staff member pay into your pension scheme may vary depending on which pension scheme you choose. However, by law, you and your staff have to pay a minimum amount into your scheme.

This is set at 8% of your member of staff's earnings. You, the Employer, must pay at least 3% of this, but you can choose to pay more.

Date	Total minimum contribution	Employer minimum contribution
06/04/2019 onwards	8% (including 5% staff contribution)	3%

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When you must pay your contributions

You must agree the dates when you will pay contributions into the scheme with your scheme provider.

However, by law, when you take contributions from your staff's pay you must pay these to your pension scheme by the 22nd (19th if you pay by cheque) day of the next month.

You may be fined by The Pensions Regulator if you don't pay by the time you've agreed with your scheme provider.

Appendix

Pensions Act 2008

20 Quality requirement: UK money purchase schemes

(1) A money purchase scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if under the scheme—

- (a) the jobholder's employer must pay contributions in respect of the jobholder;
- (b) the employer's contribution, however calculated, must be equal to or more than 3% of the amount of the jobholder's qualifying earnings in the relevant pay reference period;
- (c) the total amount of contributions paid by the jobholder and the employer, however calculated, must be equal to or more than 8% of the amount of the jobholder's qualifying earnings in the relevant pay reference period.