

Ombudsman's Determination

Applicant	Mr R
Scheme	Aviva (the Scheme)
Respondent	Alliance Automotive UK Trading Groups Limited (the Employer)

Outcome

1. Mr R's complaint is upheld and, to put matters right, the Employer shall pay Mr R £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

2. Mr R has complained that the Employer, despite deducting contributions from his pay, had failed to pay into the Scheme.
3. Mr R has said that the missing contributions amounted to over £2,000.
4. The Employer has now paid all unpaid pension contributions to the Scheme, but the award for £1,000 for the serious distress and inconvenience remains outstanding.

Background information, including submissions from the parties

5. In November 2018, Lloyds Motor Spares was acquired by the Alliance Automotive Group. Mr R, who had worked for Lloyds Motor Spares for 25 years, said that his employment went through a Transfer of Undertakings (Protection of Employment) (**TUPE**) over to the Employer. However, following the acquisition, it took six months for him to be added to the Employer's pension scheme.
6. Throughout these six months, pension contributions were being taken from Mr R's salary, however, these contributions had not been paid to the Scheme.
7. Mr R provided copies of the payslips that he held for the period from November 2018 to April 2019, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These deductions amounted to £2,913.72.
8. On 26 April 2022, TPO asked the Employer for its response to Mr R's complaint. No response was received.

9. On 26 July 2022, TPO chased the Employer again. But the Employer failed to respond.
10. On 22 September 2022, an Opinion letter was sent to all parties upholding Mr R's complaint. Including a £1,000 award for the serious distress and inconvenience.
11. On 12 October 2022, the Employer contacted TPO and said it disagreed with the Opinion letter. The Employer said it did not employ Mr R, and he was employed by Lloyds Motor Spares Limited from 1 December 2018 to 30 April 2019.
12. On 30 November 2022, TPO informed the Employer that Mr R had said that the payslips for the period of missing contributions are under Lloyds Motor Spare Limited. However, the Employer was in control of the company, including looking after the payroll prior to May 2019. This is because between December 2018 and January 2019, changes were made to Mr R's pay by the Employer. TPO asked the Employer to provide evidence that supports that the TUPE commenced from 1 May 2019.
13. On 2 February 2023, the Employer provided evidence to TPO that it was liaising with the Scheme to resolve the unpaid pension contributions.
14. On 8 August 2023, the Scheme informed TPO that it was having complications correcting the scheme contributions for all the members that were affected. The Scheme said it would provide TPO with an update.
15. On 17 October 2023, the Employer informed TPO that the payment for the unpaid pension contributions had been paid to the Scheme.
16. On 31 October 2023, the Scheme contacted TPO confirming that the Employer had made a payment, and it was in the process of applying it to Mr R's plan. The Scheme said that Mr R's plan was not the only one affected and it was a scheme level issue it was trying to resolve.
17. On 2 January 2024, the Employer told TPO that it did not agree with the award of £1,000 for the serious distress and inconvenience.
18. On 29 November 2024, the Employer told TPO that to bring Mr R's complaint to a resolution, it was willing to pay the £1,000 for the serious distress and inconvenience.
19. On 3 December 2024, TPO provided the Employer with Mr R's contact details to pay the £1,000 for the serious distress and inconvenience.
20. On 11 December 2024, the Scheme confirmed to TPO that the unpaid pension contributions and investment loss had been applied to Mr R's plan.
21. On 19 December 2024, TPO contacted the Employer confirming that all unpaid pension contributions, including the investment loss had been applied to Mr R's plan. TPO asked the Employer if it still agreed to pay the award of £1,000 for the serious distress and inconvenience.

22. On 22 January 2025, TPO chased the Employer again. But the Employer failed to respond.

Caseworker's Opinion

23. Mr R's complaint was considered by one of our Caseworkers 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 Caseworker's findings are summarised below:-
- The Caseworker 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 R.
 - The Caseworker said that she had no reason to doubt the information provided by Mr R. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr R's salary but had not been paid into the Scheme. 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 R was not in the financial position he ought to be in for a number of years.
 - In the Caseworker's view, Mr R had suffered serious distress and inconvenience due to the Employer's maladministration. The Caseworker was of the opinion that an award of £1,000 for non-financial injustice was appropriate in the circumstances.
24. The Employer has now remitted all unpaid pension contributions to the Scheme, including investments loss. However, the Employer disagrees with the Caseworker's award of £1,000 for the non-financial injustice. The complaint was passed to me to consider, and I agree with the Caseworker's award in the Opinion.

Ombudsman's decision

25. Mr R had complained that the Employer did not pay all the contributions due to his Scheme account.
26. The Employer has now paid both the employee and employer contributions into the Scheme. However, the delay in doing so amounts to unjust enrichment.
27. Mr R 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 failing to respond to TPO to bring Mr R's complaint to a resolution.

CAS-62086-Z6M1

Directions

28. To put matters right, the Employer shall, within 28 days of the date of this Determination:

(i) pay Mr R £1,000 for the serious distress and inconvenience he has experienced.

Camilla Barry

Deputy Pensions Ombudsman

5 March 2025