

Ombudsman's Determination

Applicant	Mr D
Scheme	Options Pensions (the Scheme)
Respondent	ACF Consultants Limited (the Employer)

Outcome

1. Mr D's complaint is upheld and, to put matters right, the Employer shall pay the missing contributions in respect of his pension and make good any shortfall in units. The Employer should also ensure that the employer contributions match the employee contributions.
2. In addition, the Employer shall pay Mr D £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

3. Mr D has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme.
4. As well as the failure to remit pension contributions, Mr D has complained that the Employer has not paid the correct level of employee and employer contributions as provided in the Terms and Conditions of his employment (**the Employment Contract**).

Background information, including submissions from the parties

5. In October 2020, Mr D began his employment with the Employer.
6. Mr D has said that, in the early stages of his employment, he contacted the Employer and asked for his pension contributions to rise to 8% of his pay.
7. On 24 February 2021, Mr D emailed the Employer and asked for an update on his pension queries. He said that he wanted to put in 8% of his pay because the Employer had committed to matching it. He confirmed that he was willing to backdate his payments in order to increase his pension.

8. On 9 March 2021, Mr D emailed the Employer and chased an update on his pension query. He reiterated his wish to backdate payments to ensure employee and employer contributions were calculated as 8% of his pay.
9. The Employer responded on the same day and said that his pension contributions should be “totalling 8%”.
10. On 25 April 2021, Mr D emailed the Employer and resigned. He said that he had been asking for details of the Scheme but had never received an adequate response. He said that, in accordance with the Employment contract, the Employer had pledged to match his contributions up to 8% of his pay. However, despite him asking for this on multiple occasions, nothing was ever done about it.
11. On 5 May 2021, Mr D brought his complaint to The Pensions Ombudsman (**TPO**).
12. Mr D provided copies of the payslips that he held for the period October 2020 to April 2021, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These deductions amounted to £2,506.11. A breakdown of the deductions has been included in Appendix One.
13. Mr D has also complained the Employer contributions have been underestimated. He argued that the Employer contributions should match the employee contributions.
14. Mr D provided a copy of the Employment Contract. Section eight of the Employment Contract says that the Employer will “match your pension contributions from a minimum of 4% per party (8% in total) to a maximum of 8% per party (16% in total).” The relevant sections of the Employment contract are set out in Appendix Two.
15. On 28 August 2022, TPO asked the Employer for its formal response to Mr D’s complaint. This request was repeated on 5 October 2022. Neither of these requests received a response.
16. As Mr D did not receive any pension information from the Employer or the Scheme administrator, Mr D was unsure of who the Scheme administrator was.
17. On 29 November 2022, TPO contacted the Employer to find out who administered the Scheme. The Employer provided this information to TPO on 13 December 2022. However, it failed to respond to the substantial parts of Mr D’s complaint.

Caseworker’s Opinion

18. Mr D’s complaint was considered by one of our Caseworkers who concluded that further action was required by the Employer. The Caseworker’s findings are summarised below:-
 - The Caseworker said 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 the substantive complaint points, she had to base her Opinion solely on the information provided by Mr D.

- The Caseworker said that she had no reason to doubt the information provided by Mr D. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr D'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.
 - Also, the Employer had failed to increase the employer and employee contributions to 8% as per Mr D's request.
 - As a result of its maladministration, Mr D was not in the financial position he ought to be in.
 - In the Caseworker's view, Mr D 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.
19. The Employer responded to the Caseworker's Opinion and said it would have matched Mr D's pension contributions from 3% to 5%. The Employer confirmed that once its systems are updated, it would pay the pension contributions and the investment loss.
20. As the Employer did not accept that contributions should have been calculated at the 8% level, the complaint was passed to me to consider. I agree with the Caseworker's Opinion.

Ombudsman's decision

21. Mr D has complained that the Employer has not paid all the contributions due to his Scheme account. In addition to contributions not being paid into the scheme, Mr D has complained that the Employer did not increase the employer and employee pension contributions to 8%.
22. I find that employee contributions were deducted but held back by the Employer and not paid into the Scheme. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr D to suffer a financial loss. The Employer shall take remedial action to put this right.
23. I also find the Employer did not increase Mr D's pension contributions following Mr D's request. In accordance with the Employment Contract, the Employer should have matched Mr D's employee contributions throughout his employment and it should have increased the contribution level following Mr D's request. The Employer failed to rectify this with either my Office or Mr D.

24. Mr D is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which he has suffered. In my view, Mr D distress and inconvenience was exacerbated by The Employer's failure to try to resolve Mr D's complaint.

Directions

25. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mr D £1,000 for the serious distress and inconvenience he has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr D's pay in respect of the period of his employment. The Schedule shall also include the corresponding employer contributions equalling the employee contributions up to the level agreed in the Employment Contract; and
 - (iii) forward the Schedule to Mr D.
26. The Employer shall, within 14 days of receiving a request by Mr D, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.
27. Within 14 days of receiving confirmation from Mr D that he agrees with the information on the Schedule, the Employer shall:
- (i) pay the missing contributions to the Scheme;
 - (ii) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Mr D's Scheme account than he would have otherwise secured, had the contributions been paid on time; and
 - (iii) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.
28. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Mr D's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman
23 May 2023

Appendix

Date	Employee contributions	Employer contributions
30/10/2020	£218.41	£131.05
30/11/2020	£270.83	£160.50
31/12/2020	£270.83	£160.50
29/01/2021	£270.83	£160.50
26/02/2021	£270.83	£160.50
31/03/2021	£270.83	£162.50

Appendix Two**Terms and Conditions of Employment****8. Pension**

8.1 The Company operates a Company Pension Scheme and will match your pension contributions from a minimum of 4% per party (8% in total) to a maximum of 8% per party (16% in total).