

Ombudsman's Determination

Applicant	Mr K
Scheme	True Potential SIPP (the Scheme)
Respondent	Downham Express Dry Cleaners Ltd (the Employer)

Outcome

1. Mr K'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. In addition, the Employer shall pay Mr K £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

2. Mr K has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme.
3. Mr K has said that the missing contributions amounted to £1,924.42.

Background information, including submissions from the parties

4. On 1 March 2020, the Employer purchased the company where Mr K was employed.
5. On 28 June 2021, Mr K got in touch with the Scheme administrator and was told no pension payments had been made to it since February 2020.
6. On 29 June 2021, Mr K raised the issue of the unpaid contributions with the Employer. The Employer said it was unaware of the issue and raised the matter with its accountant (**the Accountant**).
7. On 2 July 2021, the Employer received a letter from the Accountant which confirmed Mr K's employment continued following the purchase of the company. The Accountant also said that Mr K's enrolment to the Employer's scheme had been completed the previous week.
8. On 6 July 2021, the Accountant said it had sent everything to the Scheme administrator and it was waiting for access to the Scheme's online portal. Mr K

contacted the Scheme administrator and was informed that it only takes two days to set up an account.

9. On 8 August 2021, the Accountant emailed and confirmed contributions owed were reflected on the monthly reports to HMRC.
10. On 9 August 2021, Mr K delivered a letter to the Employer. He said that if the contributions were not paid by 12 August 2021, he would report the Employer to The Pensions Regulator (**TPR**).
11. On the same day, the Employer apologised and said it was unaware pensions had not been paid. It said that the Accountant was responsible for pensions contributions.
12. On 11 August 2021, the Accountant emailed Mr K and said the outstanding contributions amounted to £1,614.14 and this would be submitted once it had received the reference numbers from the Scheme administrator.
13. On 16 August 2021, Mr K's wife telephoned the Scheme administrator and was told it had not heard anything from the Employer or the Accountant in relation to Mr K.
14. On 30 September 2021, Mr K brought his complaint to The Pensions Ombudsman (**TPO**).
15. Mr K provided copies of the payslips that he held for the period from March 2020 to June 2021, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These deductions amounted to £1,534.33. A breakdown of the deductions has been included in the Appendix.
16. On 12 May 2022, TPO asked the Employer for more information in response to Mr K's complaint. This request was repeated on 26 May 2022.
17. On 14 June 2022, the Employer responded and asked for the initial request of 12 May 2022 to be resent as it had not received the email. It was given until 28 June 2022 to respond. The request was repeated on 5 July 2022.
18. On 6 July 2022, TPO emailed the Employer and asked for a response to its queries.
19. On 12 August 2022, the Employer responded and said it wished to make a payment but did not have the account details.
20. On 1 September 2022, TPO contacted Mr K to ask for the account details for the Scheme.
21. On 4 September 2022, Mr K told TPO that the Employer already had the account details as he had provided them in July 2021. Mr K also said that, when the Employer purchased the company, it had agreed to pay the pension contributions into the same scheme account used previously.

22. On 21 November 2022, TPO chased the Employer. TPO said that the payment needed to be made by 5 December 2022.
23. On 22 November 2022, the Employer responded to TPO and said it wanted to resolve the complaint and had contacted TPO on numerous occasions.
24. On 23 November 2022, TPO sent a final email to the Employer and explained the payment should be made into the Scheme account that the Employer was already aware of. TPO reiterated the deadline.

Caseworker's Opinion

25. Mr K'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.
 - The Caseworker said that he had no reason to doubt the information provided by Mr K as the Employer agreed contributions were outstanding. So, in the Caseworker's Opinion, contributions had been deducted from Mr K'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 K was not in the financial position he ought to be in.
 - In the Caseworker's view, Mr K 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.
26. The Employer responded to the Caseworker's Opinion and said:
 - It had produced a schedule (**the Schedule**) of pension contributions.
 - It had paid all outstanding contributions in accordance with the Schedule. However, it had not contacted the Scheme administrator about any potential financial loss.
 - It had experienced financial difficulties, so it was unable to make the full payment for distress and inconvenience. It suggested that this payment could be made over a period of at least 15 months.
 - Mr K's argument that the Employer had agreed to pay the contributions into the scheme that Mr K was a member of, prior to the Employer purchasing the

company, was incorrect. The Employer ran a separate payroll scheme and so it could not pay into the previous scheme.

27. The Caseworker shared the Employer's response with Mr K. Mr K provided the following in response:

- He accepted the Employer's Schedule.
- He said that the Scheme administrator had contacted him to explain that, while it had received the payment of the outstanding contributions, the payment could not be allocated because the Employer had not provided the corresponding submission.
- He rejected the Employer's suggestion of paying the distress and inconvenience award in instalments.

28. The complaint was passed to me to consider. I agree with the Caseworker's Opinion.

Ombudsman's decision

29. Mr K has complained that the Employer has not paid all the contributions due to his Scheme account.

30. I find that employee contributions were deducted but held back by the Employer and not paid into the Scheme on time.

31. Although the Employer has now paid the outstanding contributions to the Scheme, it did not provide the Scheme administrator with a submission that would have allowed it to allocate the payment, nor did it liaise with the Scheme regarding the payment of any investment loss. As the Employer has not addressed the potential investment loss associated with the late payment of the contributions, Mr K is still not in the financial position he ought to be in. The Employer shall take remedial action to put this right.

32. I have considered the Employer's argument that it was unable to pay into the pension scheme that had been set up by Mr K's previous employer. However, the fact remains Mr K had pension contributions deducted from his salary. These were not paid into the Scheme, or into any other pension scheme run by the Employer.

33. Mr K 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 K's distress and inconvenience was exacerbated by the Employer's prevarication and failure to properly respond during my Office's investigation into Mr K's complaint.

34. The Employer has asked for the award for distress and inconvenience to be paid over a period of 15 months. Given that this complaint is essentially about late payments, I

am not satisfied that the Employer would adhere to the payment plan. Therefore, I find that this payment should be made in accordance with the Directions below..

Directions

35. To put matters right, the Employer shall, within 28 days of the date of this Determination pay Mr K £1,000 for the serious distress and inconvenience he has experienced.
36. As Mr K has already agreed with the information on the Schedule, the Employer shall, within 28 days:
 - (i) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Mr K's Scheme account than he would have otherwise secured, had the contributions been paid on time; and
 - (ii) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.
37. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Mr K's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman
29 March 2023

Appendix

Date	Employee contributions	Employer contributions
28/03/2020	£69.24	£41.55
28/04/2020	£68.84	£41.31
28/05/2020	£68.84	£41.31
28/06/2020	£70.60	£42.36
28/07/2020	£70.59	£42.36
28/08/2020	£70.59	£42.36
28/09/2020	£70.59	£42.36
28/10/2020	£70.59	£42.36
28/11/2020	£49.88	£29.93
28/12/2020	£49.88	£29.93
28/01/2021	£49.88	£29.93
28/02/2021	£49.88	£29.93
28/03/2021	£49.88	£29.93
30/04/2021	£49.88	£29.93
31/05/2021	£49.88	£29.93
30/06/2021	£49.88	£29.93