

Ombudsman's Determination

Applicant	Mr K
Scheme	True Potential (the Scheme)
Respondent	Property Maintenance & Repair Team Limited (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 £500 for the significant 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 approximately £8,500 across the period of his whole employment.

Background information, including submissions from the parties

4. In September 2016, Mr K began his employment with the Employer.
5. In June 2021, Mr K left this employment on being made redundant.
6. On 7 March 2022, Mr K brought his complaint to The Pensions Ombudsman (**TPO**).
7. Mr K provided copies of some of the payslips that he held for the period from December 2020 to May 2021, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These deductions amounted to £309.89. However, Mr K said that the payslips only showed a selection of the contributions that were unpaid. A breakdown of the deductions has been included in the Appendix.
8. On 24 June 2022, TPO asked the Employer for its response to Mr K's complaint.

9. On 24 June 2022, the Employer's representative (**the Representative**) emailed TPO to say that the owner of the Employer was ill in hospital with stage four cancer. The Representative said that she was the wife of the owner of the Employer, and she would attempt to resolve the complaint. It should be noted that the Representative has been named as a Director of the Employer on Companies House since the Employer's inception. She said that she was under the impression that the complaint had been resolved, as she had told Mr K that all his contributions were up to date. She attached a copy of an email she had sent Mr K that gave him details of the Scheme. The Representative also said that she had asked the Scheme administrator to check if there had been any investment loss. It advised her that it could be done, but it would take a long time.
10. On 28 June 2022, TPO asked the Representative to confirm what steps the Employer was taking to make good the contribution shortfall and any investment loss. TPO said that if the contributions had been paid, it needed evidence to show this.
11. On 4 July 2022, the Representative advised TPO that she was unsure how to download a report showing that all Mr K's contributions were up to-date. So, she was waiting for the Scheme administrator to help her. She sent screen shots, but these did not confirm that the contributions had been paid.
12. On 6 July 2022, TPO acknowledged the screenshots but said that they did not evidence payment of contributions. It asked for a copy of the contributions schedule.
13. On the 6 July 2022, the Representative sent TPO a response from the Scheme administrator confirming that it had received all of Mr K's contributions and they were up to date. She said that the owner of the Employer had been moved to a hospice to receive palliative care.
14. On 7 July 2022, TPO told Mr K that the Representative was under the impression that his complaint had been resolved after she told him that his contributions were up to date. TPO forwarded Mr K the letter from the Scheme administrator that confirmed that all contributions had been brought up to date.
15. On 7 July 2022, Mr K asked if TPO had been given a breakdown of the contributions and whether there had been any investment loss. He also asked about any redress for the distress and inconvenience he suffered.
16. On 12 July 2022, TPO said that it appreciated that this had been a difficult time for the Representative and that other matters had taken her attention. However, it had an obligation to investigate Mr K's complaint. It said that it required a breakdown of contributions.
17. On 17 November 2022, TPO asked the Representative to provide a full response to Mr K's complaint.
18. On 17 November 2022, the Representative told TPO that she was unable to open the encrypted email and asked for it to be sent via post.

19. On 23 November 2022, TPO re-sent its request via the post. No response was received.

Caseworker's Opinion

20. 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 provide evidence that it had remitted all the contributions that were due to the Scheme. 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. The Representative had told us that contributions to Mr K's Scheme were up to-date, but she did not provide a Schedule of Contributions so that Mr K could see what contributions had been paid to his Scheme account.
 - The Representative had not provided a full response to Mr K's complaint points, and she had not fully engaged with TPO to produce an action plan to address them.
 - As the Representative had not told us what contributions had been deducted from Mr K's salary, the contribution schedule in the Appendix had been produced based solely on the evidence provided by Mr K.
 - The Caseworker had no reason to doubt the evidence provided by Mr K and the Employer failed to provide evidence to the contrary, so it was his opinion that it was likely that contributions had been deducted from Mr K's salary which were not remitted to his Scheme. This amounted to maladministration by the Employer.
 - 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.
21. The Employer did not respond to the Caseworker's Opinion and the complaint was passed to me to consider. I agree with the Caseworker's Opinion except the award for distress and inconvenience.

Ombudsman's decision

22. Mr K has complained that the Employer has not paid all the contributions due to his Scheme account.
23. I recognise that the Representative has had to deputise for the late Employer and then take sole responsibility for the Employer. Although this was clearly a difficult time, the Employer still had a responsibility to pay all contributions into the Scheme.

24. 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 fully engage with either my Office or Mr K. It has also failed to respond in full to the Caseworker's Opinion.
25. The Employer's apparent failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr K to suffer a financial loss. The Employer shall take remedial action to put this right.
26. Mr K is entitled to a distress and inconvenience award in respect of the ongoing non-financial injustice which he has suffered. However, taking into account the difficult and challenging circumstances of the Employer I consider that an award of £500 is appropriate in this case.

Directions

27. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Mr K £500 for the significant distress and inconvenience he has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr K's pay in respect of the period of his employment. The Schedule shall also include the corresponding employer contributions that were due to the Scheme; and
 - (iii) forward the Schedule to Mr K.
28. The Employer shall, within 14 days of receiving a request by Mr K, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.
29. Within 14 days of receiving confirmation from Mr K 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 K'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.

CAS-85163-W6Y3

30. 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
4 May 2023

Appendix

Date	Employee contributions	Employer contributions
December 2020	£65.81	Not shown
January 2021	£61.02	Not shown
February 2021	£61.02	Not shown
April 2021	£61.02	Not shown
May 2021	£61.02	Not shown