

Ombudsman's Determination

Applicant	Ms H
Scheme	Scottish Widows Stakeholder Pension Plan (the Scheme)
Respondent	East Ayrshire Citizens Advice Bureau (the Employer)

Outcome

1. Ms H's complaint is upheld and to put matters right the Employer shall pay the missing contributions in respect of Ms H's pension to the Scheme and arrange for any investment loss to be calculated and paid into the Scheme. In addition, the Employer shall pay Ms H £1,000 for the serious distress and inconvenience it has caused her.

Complaint summary

2. Ms H has complained that the Employer has failed to pay contributions into the Scheme in accordance with her contract of employment (see the Appendix).
3. Ms H said that due to the Scheme not receiving her pension contributions on time, she has missed out on investment growth which is owed to her.
4. Ms H said that she is unable to quantify what contributions are outstanding because the Employer has not provided her with a schedule of contributions.

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. I acknowledge there were other exchanges of information between all the parties.
6. On 3 July 2012, Ms H began employment with the Employer. In accordance with her contract of employment it was agreed that "The Company will contribute 5% of your gross earnings into a personal pension scheme".
7. On 11 August 2016, after a number of exchanges with the Employer, Ms H joined the Scheme.
8. In August 2016, the Employer paid £1,703.46 into the Scheme as a backdated payment of pension contributions on behalf of Ms H. Ms H queried the amount that was paid into the Scheme and informed the Employer that she understood that the

contributions from the Employer would be backdated from the date of her application to join the Scheme in September 2014.

9. The Employer informed Ms H that this was not the case and without evidence to prove this, it was unable to backdate her payment to September 2014.
10. On 21 March 2022, after further exchanges with the Employer, Ms H raised a formal complaint with the Employer. She said in summary:-
 - In December 2021, she wrote to the manager to inform her that she was aware that the Employer's contributions had not been calculated correctly since she joined the Scheme in 2016.
 - She asked for this to be rectified and to be compensated for the potential loss of growth of her pension pot and said that she would allow a reasonable time for this to be done.
 - To date, no response has been received and she requested that the Employer treat her email as a formal complaint and remedy the matter.
11. On 28 March 2022, the Employer informed Ms H that her complaint had been raised with the accounts team and that it would reconcile the balances for all staff affected.
12. On 28 April 2022, Ms H received a pay increase. The Employer agreed that this payment would be backdated to 1 April 2022.
13. On 28 June 2022, Ms H received a letter from the Scheme's administrator informing her that it had noticed a missed payment into the Scheme.
14. On 8 July 2022, Ms H wrote to the Employer to inform it that she had received a letter from the Scheme's administrator dated 30 June 2022, saying it had not received any payment into the Scheme.
15. On 12 July 2022, the Employer emailed Ms H. It said that it was processing the new pay rise for staff, and that this required it to cancel and review the pension contributions to each provider. It also said it was in the process of finalising the arrears which would be processed soon.
16. On 20 July 2022, JRD LLP Chartered Accountants (**JRD**) wrote to the Employer to inform it of Ms H's pension contribution arrears. It said:-

“For the period of 2016 to 2017, there was a shortfall of £680.32.

For the period of 2017 to 2018, there was a shortfall of £44.04.

For the period of 2018 to 2019, there was an overpayment of £11.68.

For the period of 2019 to 2020, there was a shortfall of £78.22.

For the period of 2020 to 2021, there was a shortfall of £171.91.

For the period of 2021 to 2022, there was a shortfall of £84.60.

For the period until 31 March 2022, there was a shortfall of £1,047.41.

For the period to 30 June 2022, there was a shortfall of £45.99.

The overall shortfall equalled £1,093.40.”

17. On 26 July 2022, the Employer wrote to the Scheme’s administrator and requested help in increasing the Employer’s contributions for several members of staff in line with the staff pay increase. It also informed the Scheme’s administrator that it had undertaken a reconciliation exercise and had identified shortfalls affecting staff members which needed to be rectified.
18. On 27 July 2022, the Employer sent a further email to the Scheme’s administrator requesting an increase to Ms H’s pension as per the staff pay increase. It also mentioned the shortfall owed to Ms H and said it would rectify this as soon as the direct debit had been set up to reflect the increased payments for the staff pay rise.
19. On 1 August 2022, the Employer wrote to Ms H to confirm that her monthly pension contributions were going to increase from £95.70 to £111.03 to reflect her new salary from 1 April 2022. It said this was going to take effect on 14 August 2022. The Employer referred to the arrears that were owed to Ms H and said that these would be calculated by JRD and paid to the Scheme on behalf of Ms H alongside a compensation payment.
20. On the same day, Ms H wrote to the Employer and requested a full breakdown of all the calculations. The Employer responded and said it would provide this as soon as everything has been calculated.
21. From June 2022 to April 2023, the Employer paid no contributions into the Scheme.
22. On 14 March 2023, the Employer wrote to the Scheme’s administrator to inform it that the increased payments requested in July 2022 had not been processed.
23. On 20 March 2023, the Scheme’s administrator wrote to Ms H to confirm that her monthly pension contributions were going to be increased from £95.70 to £111.03.
24. On 26 October 2023, Ms H received a letter from the Employer informing her that she had received another pay increase, and her new salary was £28,155.40. It also said that the increase in pay was to be backdated to 1 April 2023 and as the Employer paid 5% of gross salary towards her pension, the direct debit would need to be increased and backdated.
25. On 31 October 2023, the Scheme’s administrator wrote to Ms H to let her know that her monthly pension payments were being increased from £111.03 to £117.31 as per her salary increase.
26. Following the complaint being referred to The Pensions Ombudsman (**TPO**), Ms H and the Employer made further submissions that have been summarised below.

Ms H's position

27. She is still owed pension contributions and, despite the length of time given to the Employer to put matters right, no reconciliation had been made.

The Employer's position

28. It was aware that there was a shortfall of pension contributions owed to the Scheme on behalf of Ms H and it had been trying to rectify the matter with the Scheme's administrator.

Adjudicator's Opinion

29. Ms H's complaint was considered by one of our Adjudicators who concluded that further action was required by the Employer. The Adjudicator's findings are summarised in paragraphs 30 to 34 below.
30. During the course of Ms H's employment, she had paid pension contributions which had not been fully remitted to the Scheme. The Employer agreed that an error had been made on its part and that contributions were owed on behalf of Ms H. Further, during the course of Ms H's employment she had received pay increases from the Employer with the promise that the increased contributions would be backdated and paid into the Scheme. The Employer failed to action this promise.
31. The Employer, despite engaging with JRD and being aware of the issue at hand, had failed to make any payments to the Scheme to rectify the error it had made.
32. It was the Adjudicator's opinion, based on the information provided to her, that a number of contributions on behalf of Ms H had not been paid into the Scheme. The Adjudicator said that she had no reason to doubt the information provided by Ms H and that it was consistent with the information set out on her P60 slips and also her Scheme benefit statements. As contributions had not been fully paid into the Scheme, there had been maladministration on the part of the Employer and Ms H was not in the financial position she ought to be in.
33. The Adjudicator was of the opinion that the Employer should pay Ms H £500 in recognition of the significant distress and inconvenience its maladministration had caused to her.
34. The Employer failed to take the necessary actions to put matters right and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion except for the level of distress and inconvenience Ms H has experienced.

Ombudsman's decision

35. Ms H has complained that the Employer has not paid all the contributions due to her Scheme account.

36. I find that employee and employer contributions were deducted but held back by the Employer and not paid into the Scheme. The Employer has accepted that contributions were outstanding but has failed to rectify this.
37. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Ms H to suffer a financial loss. The Employer shall take remedial action to put this right.
38. Ms H 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 the Employer's failure to resolve the dispute during TPO's investigation into her complaint.
39. I uphold Ms H's complaint.

Directions

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

Anthony Arter CBE

Deputy Pensions Ombudsman

3 October 2024

Appendix

Extract of Ms H's contract of employment

16. RETIREMENT AND PENSION SCHEMES

The Company does not provide an occupational pension scheme.

Currently, the Company will contribute 5% of your gross earnings into a personal pension scheme or stakeholder pension scheme of your choice. Company contributions to the scheme will be made monthly by direct debit.

Employer contributions can only be backdated up to a maximum of six months from date of joining a scheme to start of employment with the company.

For the avoidance of doubt no employer contributions will be made for any period before the first day of employment with the company.