

Ombudsman's Determination

Applicant	Mr Y
Scheme	The People's Pension (the Scheme)
Respondent	Fenestration Recycling Company Limited (the Employer)

Outcome

1. Mr Y'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 Y £500 for the significant distress and inconvenience it has caused him.

Complaint summary

2. Mr Y has complained that the Employer, despite deducting contributions from his pay, has failed to pay into the Scheme.
3. Mr Y has said that the missing contributions amounted to approximately £1,000.

Background information, including submissions from the parties

4. In June 2021, Mr Y began receiving letters from the Scheme informing him that pension contributions were not being paid by the Employer.
5. In July 2022, Mr Y brought his complaint to The Pensions Ombudsman (**TPO**).
6. Mr Y provided copies of the payslips that he held for the period from September 2020 to March 2022 which detailed the pension contributions deducted from his pay and the corresponding employer contributions. A breakdown of the deductions has been included in the Appendix.
7. In February 2023, the Employer agreed that it was behind in its pension contributions. It said it had been paying £1,000 per week to the Scheme for all of its employees and expected all contributions to be paid up by the end of April 2023.
8. Later that month, TPO requested evidence of the payments made to the Scheme. Within this request, the Caseworker told the Employer that potential investment loss,

due to the time the contributions have not been invested, would also need to be considered in order to resolve Mr Y's complaint.

9. In May 2023, Mr Y provided evidence from the Scheme account that showed some contributions remained outstanding.
10. On 19 May 2023, TPO asked the Employer for its full response. This request was repeated in June 2023. Neither of these requests received a response by the deadline.

Caseworker's Opinion

11. Mr Y'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 failed to fully respond to TPO's communications, she had to base her Opinion largely on the information provided by Mr Y.
 - The Caseworker said that she had no reason to doubt the information provided by Mr Y. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr Y'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 Y was not in the financial position he ought to be in.
 - In the Caseworker's view, Mr Y had suffered significant distress and inconvenience due to the Employer's maladministration. The Caseworker was of the opinion that an award of £500 for non-financial injustice was appropriate in the circumstances.
12. 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.

Ombudsman's decision

13. Mr Y has complained that the Employer has not paid all the contributions due to his Scheme account.
14. I find that employee contributions were deducted but held back by the Employer and not paid into the Scheme. While I recognise that the Employer has begun to make payments since the start of TPO's investigation, it appears that contributions still remain unpaid. The Employer has also missed opportunities to engage with TPO by failing to respond to the Caseworker's Opinion.

15. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr Y to suffer a financial loss. The Employer shall take remedial action to put this right.
16. Mr Y is entitled to a distress and inconvenience award in respect of the significant ongoing non-financial injustice which he has suffered.

Directions

17. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Mr Y £500 for the significant distress and inconvenience he has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr Y'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 Y.
18. The Employer shall, within 14 days of receiving a request by Mr Y, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.
19. Within 14 days of receiving confirmation from Mr Y 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 Y'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.
20. Within 14 days of receiving confirmation from The People's Pension of any shortfall in Mr Y's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman
24 October 2023

Appendix

Date	Employee contributions	Employer contributions
30/09/2020	£34.16	£25.62
30/10/2020	£31.68	£23.76
30/11/2020	£34.30	£25.73
23/12/2020	£34.63	£25.97
31/01/2021	£24.14	£18.10
28/02/2021	Payslip not provided	Payslip not provided
31/03/2021	Payslip not provided	Payslip not provided
30/04/2021	Payslip not provided	Payslip not provided
31/05/2021	Payslip not provided	Payslip not provided
30/06/2021	Payslip not provided	Payslip not provided
31/07/2021	£36.49	£27.37
31/08/2021	£39.55	£29.66
30/09/2021	£47.69	£35.77
31/10/2021	£42.92	£32.19
30/11/2021	£45.26	£33.95
31/12/2021	£47.60	£35.70
29/01/2022	£39.68	£29.76
28/02/2022	£31.04	£23.28
31/03/2022	£31.04	£23.28