

Ombudsman's Determination

Applicant	Mrs A
Scheme	National Employment Savings Trust - NEST (the Trust)
Respondents	BG Children's Care Homes Limited (the Employer)

Outcome

1. Mrs A's complaint is upheld and to put matters right the Employer shall pay the missing contributions in respect of this pension and make good any shortfall in units.
2. In addition, the Employer shall pay Mrs A £1,000 for the serious distress and inconvenience it has caused her.

Complaint summary

3. Mrs A has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Trust.
4. Mrs A has said that the missing contributions amounted to £454.34.

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.
6. In June 2022, Mrs A began her employment with the Employer.
7. Between August 2022 and December 2022, the Employer failed to pay pension contributions into the Trust.
8. In March 2023, the Employer paid pension contributions relating to the period from August 2022 to December 2022 into the Trust. The total amount of contributions paid was £225.64.
9. On 5 May 2023, Mrs A brought her complaint to the Pensions Ombudsman (**TPO**).
10. In May 2023, contributions were not made based on pay received for Mrs A's work throughout May 2023. These contributions amounted to £170.34 (£106.46 employee contributions and £63.88 employer contributions).

11. Mrs A provided copies of the payslips that she held for the period from August 2022 to November 2022, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. These deductions amounted to a total of £679.98 (£424.98 employee contributions and £255 employer contributions). A breakdown of the deductions has been included in the Appendix.
12. The total amount of unpaid pension contributions outstanding was £454.34 (£283.96 in employee contributions and £170.38 in employer contributions).
13. In August 2023, the Employer told TPO that it would contact the Trust administrator in order to find out how to pay the missing contributions.
14. On 16 October 2023, TPO asked the Employer for its formal response to Mrs A's complaint. This request was repeated on 26 October 2023 and 14 November 2023.
15. Between 11 January 2024 and 21 June 2024, TPO contacted the Employer three additional times for the Employer to provide its response to this case.
16. On 1 July 2024, the Employer responded to the Opinion and disagreed with the outcome.

Adjudicator's Opinion

17. Mrs A'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 below:-
 - The Employer had been contacted a number of times and did not provide its response to the complaint raised by Mrs A prior to the Opinion.
 - The Employer has not engaged with TPO to agree an action plan to address the points raised by Mrs A. Following the Opinion the Employer disagreed with the amount of pension contributions owed to Mrs A.
 - The Appendix provides a summary of the monthly contributions that were due from August 2022 to November 2022. These amounts were deducted from Mrs A's salary and were not paid into the Trust.
 - The Employer has since paid £225.64 into the Trust. Based on the information provided by Mrs A £454.34 (£283.96 in employee contributions and £170.38 in employer contributions) has not been remitted to the Trust.
 - The Adjudicator said that he had no reason to doubt the information provided by Mrs A and that it is consistent with the payslips that Mrs A had provided. So, it is the Adjudicator's opinion that contributions have been deducted from Mrs A's salary, but they have not been paid into the Trust. This amounts to maladministration.

- In the Adjudicator's view Mrs A has suffered distress and inconvenience as a result of the Employer's maladministration. The Adjudicator was of the opinion that an award of £1,000 for non-financial injustice was appropriate in the circumstances.
18. The Employer responded to the Opinion and while it did agree that there were outstanding pension contributions owed to Mrs A it disputed the amount of contributions owed and disagreed with the outcome.
 19. The Employer said that £198.47 was owed to Mrs A based on a total value of pension contributions being £424.98 with £225.64 already having been paid. However, this value only takes into account employee contributions and does not take into account employer contributions.
 20. As the Employer did not agree with the Adjudicator's Opinion the complaint was passed to me to consider. I have reviewed the evidence and agree with the Adjudicator's Opinion.

Ombudsman's decision

21. Mrs A has complained that the Employer has not paid all the contributions due to her Trust account.
22. I find that employee contributions were deducted but held back by the Employer and not paid into the Trust. Although the Employer has belatedly paid some of the outstanding contributions it has not taken steps to fully repay the contributions owed to Mrs A.
23. I find that employer contributions have not been paid into the Trust by the Employer which should be added to the total sum of pension contributions owed to Mrs A.
24. According to the payslips provided the total amount of outstanding contributions was £454.34. This figure represents the combined total of £283.96 employee contributions and £170.38 employer contributions. I agree with the Adjudicator that, on the balance of probabilities, £454.34 has not been remitted to the Trust.
25. The Employer's failure to pay employee and employer contributions into the Trust in a timely fashion amounts to unjust enrichment and has caused Mrs A to suffer a financial loss. The Employer shall take remedial action to put this matter right.
26. Mrs A is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which she has suffered which has been exacerbated by the Employer's failure to properly respond to the Adjudicator.
27. I uphold Mrs A's complaint.

Directions

28. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mrs A £1,000 for the serious distress and inconvenience she has experienced;
 - (ii) pay £454.34 into Mrs A's Trust account. This figure represents the amount that, according to the figures provided by Mrs A, have been deducted from her pay, but not paid into the Trust account. It also includes the employer contributions for the relevant period which should also have been paid but have not been paid to date;
 - (iii) establish with the Trust administrator whether the late payment of contributions has meant that fewer units were purchased in Mrs A's Trust account than she would have otherwise secured had the contributions been paid on time; and
 - (iv) pay any reasonable administration fee should the Trust administrator charge a fee for carrying out the above calculation.
29. Within 14 days of receiving confirmation from the Trust administrator of any shortfall in Mrs A's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman
18 October 2024

Appendix

Date	Employee contributions	Employer contributions
1 – 31 August 2022	£79.63	£47.78
1 – 30 September 2022	£79.63	£47.78
1 – 31 October 2022	£79.63	£47.78
1 – 30 November 2022	£79.63	£47.78
1 – 31 May 2023	£106.46	£63.88
Contributions paid to date	£141.02	£84.62
Total contribution value	£424.98	£255.00
Total contributions outstanding	£283.96	£170.38
Total contributions owed	£454.34	