CAS-106345-X0V0

Ombudsman's Determination

Applicant	Mr A
Scheme	NEST (**the Scheme**)
Respondents	PDM Property Holdings Limited (**the Employer**)

Outcome

1. Mr A's complaint is upheld and to put matters right the Employer shall pay him £500 for the significant distress and inconvenience it has caused him.

Complaint summary

2. Mr A has complained about the Employer's request to reclaim £3,275.87 in pension contributions from his Scheme account.

3. Mr A maintains that he was entitled to be enrolled in the Scheme and receive pension contributions during his employment. Although the Scheme administrator did not return the pension contributions to the Employer, Mr A is dissatisfied with the distress and inconvenience he experienced while attempting to resolve the matter.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points.

5. In August 2015, Mr A began his employment with the Employer.

6. Mr A was the Employer's sole employee, as an office manager. His duties did not include working with payroll or pension contributions as those areas were administered by a separate firm of accountants.

7. The Pensions Act 2008 stipulated that all employers must enrol certain workers into a pension scheme (**automatic enrolment**). Between 1 October 2012 and 1 April 2017, all employers in existence on 1 April 2012 had to begin their automatic enrolment duties. For new employers, set up between April 2012 and March 2013, their automatic enrolment duties started on 1 May 2017. For new employers, set up between April 2013 and September 2017, their automatic enrolment duties started between 1 July 2017 and 1 February 2018. New employers from October 2017 had immediate automatic enrolment duties.

8. In accordance with part one of the Pensions Act 2008, employers are responsible for establishing whether or not they need to provide a pension scheme and what their duties are. Employers who are required to provide a pension scheme must:-

- Set up a pension scheme (ideally before their duties start).
- Automatically enrol eligible staff into a pension scheme from their first day of employment and deduct pension contributions from their pay.
- Inform staff how automatic enrolment applies to them, within six weeks of the employer duties start date.
- Declare their compliance to the Pensions Regulator (**TPR**) within five months of their duties start date.

9. Section 3(2) of the Pensions Act 2008, states:

> "The employer must make prescribed arrangements by which the jobholder becomes an active member of an automatic enrolment scheme with effect from the automatic enrolment date."

10. On 11 March 2020, Mr A was enrolled into the Scheme.

11. On 31 March 2020, Mr A received a payslip which showed that an employee contribution of £62.86 had been deducted from his pay. It also showed an employer contribution of £47.14.

12. On 3 April 2023, Mr A ceased employment with the Employer.

13. On 28 April 2023, the Scheme administrator debited £3,275.87 from Mr A's Scheme account as the Employer requested a return of the pension contributions made to the Scheme. This figure represented £1,852.14 of employee contributions and £1,423.73 of employer contributions.

14. On 5 May 2023, Mr A emailed the Employer attaching details of the contributions removed from his Scheme account. He said that he would be contacting the Employer's accountant for clarification on why the contributions had been debited.

15. On 11 May 2023, the Employer emailed Mr A and said that it contacted the Scheme administrator questioning why contributions were being paid to the Scheme. The Employer confirmed that it was seeking a return of the pension contributions paid.

16. On the same day, Mr A told the Employer that the employee contributions had been deducted from his salary and he was entitled to employer pension contributions. He said that details of the pension contributions could be obtained from the Employer's accountant.

17. On 15 May 2023, the Employer said the employer pension contributions were made without its authorisation. The Employer added that it was for Mr A to prove his entitlement to the contributions paid into the Scheme rather than its accountant. It

also said that any employee contributions paid by Mr A was his money, but he was not entitled to any employer contributions.

18. On 22 May 2023, Mr A told the Employer it had to contribute employer pension contributions. Mr A added that he had contacted The Pensions Regulator (**TPR**) and The Pension Ombudsman (**TPO**) to verify this was the case.

19. On the same day, Mr A's email to the Employer said that if the pension contributions were returned from the Scheme, then he would suffer a financial loss covering a period of two years. He added that the Employer's actions had caused him distress and inconvenience.

20. On 31 May 2023, Mr A referred his complaint to TPO.

21. Mr A told TPO that the Employer had not set up a workplace pension for him between August 2015 and February 2020.

22. Mr A provided copies of his payslips for the period March 2020 to January 2023 to show that employer and employee pension contributions were being deducted monthly.

23. Mr A also provided TPO with a schedule from the Scheme administrator which showed that 46 payments had been debited from his Scheme account with a reference of "*corrected*". The entries were split between employer contributions of £1,423.73 and £1,852.14 for employee contributions, a total of £3,275.87.

24. On 2 July 2023, Mr A contacted the Employer seeking a response to his previous correspondence. On the same day the Employer told Mr A that the Scheme administrator still held the pension contributions, and if they failed to act in the next few days then it would instruct solicitors.

25. On the same day, Mr A asked the Employer if it had a signed declaration that he did not want to contribute to a workplace pension.

26. On 4 July 2023, the Employer said: -

    - It had no reason to retain records of any contributions that Mr A might have opted to contribute.
    - Employer contributions had been taken without consent.
    - The Scheme administrator had accepted it was in the wrong but had failed to return the pension contributions.
    - It would be taking legal action against the Scheme administrator for the return of the employer pension contributions.

27. On 11 July 2023, Mr A provided the Employer with a copy of his payslips showing the pension contributions and evidence of his enrolment with the Scheme. He also asked whether the Employer had evidence of him opting out of the Scheme.

28. On 14 July 2023, the Employer told Mr A that it had passed the matter to its solicitors. It also said the Scheme administrator had asked for evidence of the Employer agreeing to contributions being taken out of the business account, but it did not have such a record as it had not agreed for contributions to be made.

29. On the same day, Mr A and the Employer exchanged further correspondence. Mr A requested details of the solicitors and that he had provided his payslips as evidence of being entitled to pension contributions. The Employer reiterated that it had not agreed to his enrolment in the Scheme.

30. On 21 July 2023, the Employer told Mr A that while there was no evidence of it authorising his enrolment, it did have an email sent to its accountants telling them that Mr A had opted out of the pension in lieu of an increase to his salary.

31. On 15 April 2024, the Scheme administrator wrote to Mr A and said that after becoming aware of the dispute, its investigation found that the Employer could not evidence its request for the contributions to be returned. The Scheme administrator also confirmed to Mr A that his pension account had received a reimbursement of the contributions, as of 8 March 2024, and that it had processed the transaction so there was no financial loss to him.

32. On 20 May 2024, Mr A told TPO that he was unable to provide us with a copy of his employment contract.

33. On 4 June 2024, TPO asked the Employer for its comments in response to Mr A’s complaint.

34. On 19 June 2024, the Employer told TPO it disagreed with the complaint as Mr A had processed the contributions from the company’s bank account without permission.

35. On 24 June 2024, TPO asked the Employer to demonstrate why, as an employee, Mr A was not entitled to employer contributions in line with pension automatic enrolment legislation.

36. On 25 June 2024, the Employer told TPO: -

- Mr A had been enrolled in the Scheme but had later opted out in lieu of a higher salary.

- The only evidence it had to demonstrate Mr A opted out was the change in salary payments.

- Mr A signed himself up to the Scheme and made payments without the knowledge of the Directors, which came to light when he left the company.

- Mr A had control of the administration within the company, and it had a strong suspicion that the paper trail had been deleted.

37. On 4 July 2024, TPO provided the Employer with details of "Opting out – automatic enrolment detailed guidance for Employer", available from The Pensions Regulator's website.

38. The Employer did not respond with any further comments to TPO in support of its decision to seek a return of the contributions paid to Mr A's Scheme account. So, TPO contacted the Scheme administrator for details of whether Mr A had opted out of the Scheme, but it confirmed that following his enrolment on 11 March 2020 there was no opt-out recorded with it.

Adjudicator's Opinion

39. Mr 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:-

- Mr A was enrolled into the Scheme and was entitled to a workplace pension under the Pensions Act 2008. He had employee contributions deducted from his pay from March 2020. The Employer was required to make employer contributions into the Scheme up to when he left on 3 April 2023.

- The Employer did not provide any evidence to support its position that Mr A opted out of the Scheme. It also provided no further evidence to show he was not entitled to be enrolled and have employer pension contributions paid to the Scheme.

- There was no evidence that the Employer took legal action against Mr A or the Scheme administrator for the return of the employer pension contributions.

- In the Adjudicator's view, Mr A had suffered significant distress and inconvenience due to the Employer's maladministration. The Adjudicator was of the opinion that an award of £500 for non-financial injustice was appropriate in the circumstances.

40. PDM Property Holdings Limited did not respond to the Adjudicator's Opinion.

41. Mr A responded to the Adjudicator and said the Employer should pay £1,500 as compensation for the distress and inconvenience he suffered. A summary of Mr A 's comments are below: -

- The Employer had failed to take steps to put the matter right.

- The Employer had failed to understand the distress and inconvenience he was suffering despite being told about it.

- TPO should be punishing the Employer for fraud.

- He had been proactive during the complaint process and fought to prevent a financial loss.

42. The Employer had failed to engage with TPO and had not replied to the Adjudicator’s Opinion.

43. The Adjudicator informed Mr A that it is not TPO’s role to make punitive awards and, while the distress and inconvenience suffered was significant, he did not see sufficient grounds to increase the award from £500 to £1,500. The complaint was passed to me to consider. I agree with the Adjudicator’s Opinion.

44. On 5 December 2024, TPO asked the Scheme administrator to comment on Mr A’s complaint. In response, it confirmed that the Employer had enrolled Mr A into the Scheme on 11 March 2020 and that no opt-out request was made within one month of this date.

45. On 19 December 2024, TPO asked the Employer to explain the role undertaken by Mr A during his employment and to provide a copy of his employment contract. TPO did not receive a response from the Employer.

Ombudsman’s decision

46. Mr A has complained about the Employer’s request to reclaim £3,275.87 in pension contributions from his Scheme account. The pension contributions remained in the Scheme, but Mr A remains dissatisfied with the distress and inconvenience he experienced.

47. Mr A maintains that he was entitled to be enrolled in the Scheme and receive pension contributions during his employment. It is not within my jurisdiction to make a decision about the Employer’s compliance with automatic enrolment obligations as these are matters for the Pensions Regulator to consider. However, it is within my remit to consider if there has been a breach of trust or breach of contract under the arrangements made to comply with automatic enrolment obligations.

48. There is not dispute that Mr A was enrolled into the Scheme on 11 March 2020 for the purposes of pension contributions in respect of his pensionable service with the Employer. The Employer has been unable to provide any evidence to support its position that Mr A opted out of the Scheme and the Scheme administrator has confirmed that no opt out request was received.

49. Under the rules of the Scheme (**the Scheme Rules**) the Employer was obliged to pay to the Scheme, at least 3% of Mr A’s qualifying earnings in the relevant pay reference period, and the employer and employee contributions must amount to at least 8% of Mr A’s qualifying earnings in the relevant pay reference period. The relevant provisions of the Scheme Rules are outlined in the Appendix.

50. I find that the Employer has acted in breach of the Scheme Rules by attempting to reclaim the pension contributions for the period of time that Mr A was enrolled into the Scheme. This amounts to maladministration.

51. While Mr A has not suffered a financial loss because the pension contributions have remained in the Scheme, I acknowledge that Mr A had to pursue the Employer to a

considerable extent to rectify the situation. This would have undoubtedly caused Mr A significant distress and inconvenience which given the circumstances warrants an award of £500.

52. Therefore, I uphold Mr A’s complaint.

Directions

53. To put matters right, the Employer shall, within 28 days of the date of this Determination pay Mr A £500 for the significant distress and inconvenience he has experienced.

Camilla Barry

Deputy Pensions Ombudsman

15 January 2025

Appendix

NEST Scheme Rules

Rule 7.1.1

Where in respect of a member a participating employer has elected to use the Scheme to:

1. (a) fulfil its duties under:(i) in relation to Great Britain, section 2(1) (by virtue of section), 3(2), 5(2) or 7(3) of the 2008 Act; or(ii) in relation to Northern Ireland, section 2(1) (by virtue of section), 3(2), 5(2) or 7(3) of the 2008 NI Act), or

1. (b) arrange for a worker to become a member of the Scheme within article 19(2A) of the Order,

from the date that admission to membership or the making of contribution arrangements in relation to that member takes effect, the participating employer shall pay and the Trustee shall accept such contributions as may be required in order for the Scheme to meet the quality requirement referred to in Part 1 of the 2008 Act (Part 1 of the 2008 NI Act), or the alternative requirement referred to in Part 1 of the 2008 Act (or Part 1 of the 2008 NI Act), in relation to the member, having regard to the contributions being paid by the member under rule 9.1.

Section 20 Pensions Act 2008

20 Quality requirement: UK money purchase schemes

(1) A money purchase scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if under the scheme—

(a) the jobholder's employer must pay contributions in respect of the jobholder;

(b) the employer's contribution, however calculated, must be equal to or more than 3% of the amount of the jobholder's qualifying earnings in the relevant pay reference period;

(c) the total amount of contributions paid by the jobholder and the employer, however calculated, must be equal to or more than 8% of the amount of the jobholder's qualifying earnings in the relevant pay reference period.