

Ombudsman's Determination

Applicant	Mr H
Scheme	NEST (the Scheme)
Respondent	Flow Electrics Ltd (the Employer)

Outcome

1. Mr H's complaint is upheld and, to put matters right, the Employer shall pay £726.90 into the Scheme. The Employer shall ensure that Mr H is not financially disadvantaged by its maladministration. So, it shall arrange for any investment loss to be calculated and paid into the Scheme.
2. In addition, the Employer shall pay Mr H £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

3. Mr H has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme.
4. The available evidence shows that the missing contributions amounted to £726.90.

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 August 2021, Mr H began his employment with the Employer.
7. Between November 2021 and June 2022, the Employer failed to pay pension contributions into the Scheme.
8. On 29 August 2023, Mr H complained to the Employer about the missing pension contributions.
9. On the same day, Mr H also brought his complaint to The Pensions Ombudsman (**TPO**).

10. On 30 October 2023, the Employer explained to Mr H that the pension contributions were with the Scheme, but it was unable to gain access via the Employer portal.
11. Mr H provided copies of the payslips that he held for the period from November 2021 to June 2022, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These deductions amounted to £726.90. A breakdown of the deductions has been included in the Appendix.
12. On 7 May 2024, TPO asked the Employer for its response to Mr H's complaint.
13. On 15 May 2024, the Employer accepted the pension contributions for November 2021 to June 2022 had not been paid and stated the outstanding contributions would be paid by 15 July 2024.
14. On 28 May 2024, TPO wrote to the Employer to confirm its agreement to pay the outstanding contributions and pay any investment returns as calculated by the Scheme administrator due on the unpaid contributions. This request was repeated on 18 June 2024.
15. On the same day the Employer confirmed its agreement to pay the outstanding contributions by 15 July 2024.
16. On 7 August 2024, Mr H told TPO that the Employer failed to pay the outstanding contributions into the Scheme.

Adjudicator's Opinion

17. Mr H's complaint was considered by one of our Adjudicators 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 Adjudicator's findings are summarised below:-
 - The Adjudicator stated the Employer had accepted that not all of the contributions had been paid.
 - As the Employer accepted contributions had been deducted from Mr H's salary but had not been paid into the Scheme, the Adjudicator was of the view that there had been maladministration. Consequently, Mr H was not in the financial position he ought to be in.
 - In the Adjudicator's view, Mr H had suffered serious distress and inconvenience due to 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. On 29 August 2024, the Employer responded to the Adjudicator's Opinion. It said that the pension had been set up and it was awaiting confirmation of transferring an old account to the new account. The Employer stated Mr H's pension would be up to date in a matter of days.

19. On 30 August 2024, the Adjudicator emailed the Employer to confirm whether it accepts the Opinion in full. The Employer did not respond to this request and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion.

Ombudsman's decision

20. Mr H has complained that the Employer has not paid all the contributions due to his Scheme account.
21. 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 TPO or Mr H.
22. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr H to suffer a financial loss. The Employer shall take remedial action to put this right.
23. Mr H is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which he has suffered. This was exacerbated by not adhering to the agreement reached for payment of the missing contributions causing Mr H to return to TPO to get the matter resolved.

Directions

24. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Mr H £1,000 for the serious distress and inconvenience he has experienced;
 - (ii) pay £726.90 into Mr H's Scheme account. This figure represents the amount that, according to the figures provided by Mr H, have been deducted from his pay, but not paid into the Scheme account. It also includes the employer contributions for the relevant period which should have also been paid but have not been to date;
 - (iii) establish with the Scheme administrator whether the late payment of contributions has meant that fewer units were purchased in Mr H's Scheme account than he would have otherwise secured had the contributions been paid on time; and
 - (iv) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.

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25. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Mr H's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman

13 September 2024

Appendix

Date	Employee contributions	Employer contributions
November 2021	£39.87	£29.91
December 2021	£39.87	£29.91
January 2022	£39.87	£29.91
February 2022	£39.87	£29.91
March 2022	£39.87	£29.91
April 2022	£72	£54
May 2022	£72	£54
June 2022	£72	£54
Total amount: £726.90	£415.35	£311.55