

Ombudsman's Determination

Applicant	Mr G
Scheme	NEST Pension Scheme (the Scheme)
Respondent	Figril Limited (the Employer)

Outcome

1. Mr G's complaint is upheld and, to put matters right, the Employer shall pay £6,498.01 into the Scheme. The Employer shall ensure that Mr G 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 G £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

3. Mr G 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 £6,498.01.

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 October 2016, Mr G began his employment with the Employer.
7. Between April 2020 and August 2023, the Employer failed to pay pension contributions into the Scheme.
8. On 6 September 2023, Mr G brought his complaint to The Pensions Ombudsman (**TPO**).
9. Mr G provided copies of the payslips that he held for the period from April 2020 to August 2023, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These deductions amounted to £6,162.47. A breakdown of the deductions has been included in the Appendix. Mr G was unable to provide payslips for July 2022 and April 2023.

10. Mr G also provided screenshots of his bank statements for July 2022 and April 2023 showing his pay from the Employer.
11. The payslips provided by Mr G for the period April 2020 to August 2023 show that when his gross monthly pay was £2,833.33, he had employee contributions of £92.54 and employer contributions of £69.40. When his gross monthly pay was £3,000.00, he had employee contributions of £99.20 and employer contributions of £74.40.
12. On 18 June 2024, TPO asked the Employer for its formal response to Mr G's complaint.
13. On 2 July 2024, TPO repeated its request for the Employer to provide a response to Mr G's complaint. The Employer responded on the same day and said that it agreed contributions were outstanding. It also said that it was in financial hardship and, consequently, it did not have the funds to pay the outstanding contributions.
14. On 9 July 2024, the Employer informed TPO that it had an arrangement with The Pensions Regulator (**TPR**) to pay the contributions it owed over a one-year period in £1,000 monthly instalments.
15. On 10 July and 30 July 2024, TPO asked the Employer how much it would pay under the TPR arrangement to Mr G's Scheme account. It asked the Employer to send evidence of the TPR arrangement. It did not reply to either request.

Adjudicator's Opinion

16. Mr G'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 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. He said that although the Employer had initially responded to the complaint by agreeing that it owed contributions, it had been unable to pay them or provide evidence to show it had an arrangement with TPR. He had to base his Opinion solely on the information provided by Mr G.
 - According to the payslips provided, the total amount outstanding was £6,162.47. Mr G was unable to find payslips for July 2020 and April 2023, however he provided screenshots of his bank statements for these months showing his net pay. It was the Adjudicator's view, on the balance of probabilities that Mr G's gross pay for July 2022 would have been £2,833.33. He would have received employee contributions of £92.54 and employer contributions of £69.40, similar to months before and after July 2022 as shown in the appendix. He was also of the view that on a balance of probabilities Mr G's gross pay for April 2023 would have been £3,000. He would have received employee contributions of £99.20 and employer

contributions of £74.40, similar to months before and after April 2023. Therefore, a total of £335.54 had also not been paid into the Scheme.

- The Adjudicator said that he had no reason to doubt the information provided by Mr G. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Mr G's pay, 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 G was not in the financial position he ought to be in.
- In the Adjudicator's view, Mr G 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.

17. The Employer acknowledged the Adjudicator's Opinion, but failed to provide a response, so the complaint was passed to me to consider. I agree with the Adjudicator's Opinion except the award for distress and inconvenience.

Ombudsman's decision

18. Mr G has complained that the Employer has not paid all the contributions due to his Scheme account.
19. 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 G. It has also failed to respond to the Adjudicator's Opinion.
20. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr G to suffer a financial loss. The Employer shall take remedial action to put this right.
21. Mr G is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which he has suffered, which was exacerbated by its failure to properly respond during TPO's investigation into Mr G's complaint.

Directions

22. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mr G £1,000 for the significant distress and inconvenience he has experienced;
 - (ii) pay £6,498.01 into Mr G's Scheme account. This figure represents the amount that, according to the figures provided by Mr G, 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;

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(iii) establish with the Scheme administrator whether the late payment of contributions has meant that fewer units were purchased in Mr G'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.

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

Anthony Arter CBE

Deputy Pensions Ombudsman

28 October 2024

Appendix

Date	Employee contributions	Employer contributions	Gross Pay
April 2020	£69.87	£52.40	£2,266.66
May 2020	£77.54	£58.16	£2,458.45
June 2020	£92.54	£69.40	£2,833.33
July 2020	£92.54	£69.40	£2,833.33
August 2020	£92.54	£69.40	£2,833.33
September 2020	£92.54	£69.40	£2,833.33
October 2020	£92.54	£69.40	£2,833.33
November 2020	£92.54	£69.40	£2,833.33
December 2020	£92.54	£69.40	£2,833.33
January 2021	£92.54	£69.40	£2,833.33
February 2021	£92.54	£69.40	£2,833.33
March 2021	£92.54	£69.40	£2,833.33
April 2021	£92.54	£69.40	£2,833.33
May 2021	£92.54	£69.40	£2,833.33
June 2021	£92.54	£69.40	£2,833.33
July 2021	£92.54	£69.40	£2,833.33
August 2021	£92.54	£69.40	£2,833.33
September 2021	£92.54	£69.40	£2,833.33
October 2021	£92.54	£69.40	£2,833.33
November 2021	£92.54	£69.40	£2,833.33
December 2021	£92.54	£69.40	£2,833.33
January 2022	£92.54	£69.40	£2,833.33
February 2022	£92.54	£69.40	£2,833.33
March 2022	£92.54	£69.40	£2,833.33

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April 2022	£92.54	£69.40	£2,833.33
May 2022	£92.54	£69.40	£2,833.33
June 2022	£92.54	£69.40	£2,833.33
July 2022	Missing payslip	Missing payslip	Missing payslip
August 2022	£92.54	£69.40	£2,833.33
September 2022	£92.54	£69.40	£2,833.33
October 2022	£99.20	£74.40	£3,000.00
November 2022	£99.20	£74.40	£3,000.00
December 2022	£99.20	£74.40	£3,000.00
January 2023	£99.20	£74.40	£3,000.00
February 2023	£99.20	£74.40	£3,000.00
March 2023	£99.20	£74.40	£3,000.00
April 2023	Missing payslip	Missing payslip	Missing payslip
May 2023	£99.20	£74.40	£3,000.00
June 2023	£99.20	£74.40	£3,000.00
July 2023	£99.20	£74.40	£3,000.00
August 2023	£12.64	£9.48	£835.92
Totals	£3,551.43	£2,611.04	