

## Ombudsman's Determination

Applicant	Mr R
Scheme	Collegia Pension Scheme ( <b>the Scheme</b> )
Respondent	Stein Electrical & Mechanical Solutions Limited ( <b>the Employer</b> )

## Outcome

1. Mr R's complaint is upheld and, to put matters right, the Employer shall pay £1,949.57 into the Scheme. The Employer shall ensure that Mr R 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 R £1,000 for the serious distress and inconvenience it has caused him.

## Complaint summary

3. Mr R has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme.
4. Mr R has said that the missing contributions amounted to £1,949.57.

## 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. Mr R was initially enrolled by the Employer into a pension scheme with NEST. The Employer deducted contributions from Mr R's pay which were remitted to this pension scheme
7. On 5 June 2023, Mr R was informed by NEST that the Employer was no longer paying contributions into this scheme and the last payment it received was on 31 May 2023.
8. In June 2023, Mr R contacted the Employer. He said that he was aware that contributions were no longer being paid to NEST, but they were still being deducted from his wages. Therefore, he wanted to know what was happening with his pension contributions.

9. On 8 June 2023, the Employer replied to Mr R. It confirmed that it was using a new pension provider which was Collegia Pensions (**Collegia**). It said that there was a slight delay between setting up the Scheme and the direct debit going through. It assured him that the contributions would be paid into the Scheme.
10. Throughout June and July 2023, Mr R continued to chase the Employer regarding his pension contributions to ensure they were paid into the Scheme.
11. On 4 July 2023, the Employer responded. It assured Mr R that the situation was being dealt with and it would update him as soon as it was resolved.
12. On 6 August 2023, Mr R received an email from Collegia. It confirmed that it was his new pension provider and Mr R had been enrolled into the Scheme.
13. Between August and October 2023, the Employer deducted contributions from Mr R's wages, but he received no confirmation that these contributions were being remitted to the Scheme. Mr R contacted the Employer on numerous occasions to ask it to pay these contributions into the Scheme. Mr R also contacted Collegia who said that it expected the Employer to pay the outstanding contributions into the Scheme. However, the contributions remained unpaid.
14. On 19 September 2023, Collegia responded to Mr R and advised him that it was going to collect the contributions from the Employer on 20 September 2023, as the direct debit had been scheduled for the monies to be taken.
15. Between September and October 2023, Mr R continued to chase the Employer and Collegia to find out what was happening with his pension contributions.
16. On 3 October 2023, Collegia responded to Mr R. It told him that the Employer advised it that it would make the payment for the outstanding contributions by the end of that week. Collegia said to Mr R that it believed this time the Employer would pay the contributions.
17. On 6 October 2023, Collegia responded to a further message from Mr R asking it for updates. It advised Mr R that the Employer said that it would send Collegia the contributions and outstanding data at the beginning of the following week. Collegia advised Mr R that it had informed the Employer that this was its last warning otherwise it would report the Employer to The Pensions Regulator (**TPR**).
18. On 11 October 2023, Mr R checked the Scheme account. He could not see that any contributions were paid into the Scheme. Mr R submitted a complaint to the Pensions Ombudsman (**TPO**).
19. On 30 October 2023, Collegia emailed Mr R. It confirmed that the Employer had not been sending pension contributions since 26 July 2023, despite the fact that it had contacted the Employer on numerous occasions to chase the unpaid contributions. As a result, Collegia said that it had reported the Employer to TPR.

20. In November 2023, Mr R wrote a formal complaint to the Employer regarding his unpaid contributions.
21. On 11 January 2024, Mr R contacted TPO and said that he had not received any response from the Employer and his pension contributions remained unpaid.
22. On 11 March 2024, Mr R opted to leave the Scheme as there were outstanding contributions which had not been paid by the Employer. Mr R did not trust the Employer's assurances that it would pay the outstanding contributions. The last date that contributions were deducted from Mr R's wages was 10 March 2024.
23. On 24 March 2024, there was a number of exchanges between Mr R and the Employer.
24. Mr R again complained that contributions had been deducted from his wages but not remitted to the Scheme, and that this issue remained outstanding.
25. The Employer responded by email. In summary it said: -
  - The previous management company were responsible for the mess which had occurred with the unpaid contributions.
  - It had been liaising with Collegia to resolve the issue of the unpaid contributions and would be entering into an agreement with it to ensure the unpaid contributions were paid over the next few months.
  - All contributions would be paid into the Scheme.
26. Mr R responded and said that he had waited long enough for his contributions to be paid.
27. The Employer replied and said that it was waiting to receive money and reiterated that it would pay the outstanding unpaid contributions.
28. On 3 May 2024, TPO contacted the Employer regarding Mr R's complaint. It asked the Employer to respond by 17 May 2024.
29. On 16 May 2024, TPO chased the Employer for its response to Mr R's complaint.
30. On 16 May 2024, the Employer responded and asked TPO to schedule a call for the following week. This was agreed and scheduled for 22 May 2024.
31. On 21 May 2024, TPO asked the Employer for a number on which to contact it. The Employer responded and said that 23 May 2024, would be a more suitable date to receive a call from TPO. It did not provide a contact number.
32. On 22 May 2024, TPO asked the Employer to confirm the best time to contact it the following day. The Employer did not respond.

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33. On 23 May 2024, TPO contacted the Employer to ask if it was available the following day or alternatively, it could respond via email to Mr R's complaint. The Employer did not respond.
34. On 28 May 2024, TPO contacted the Employer to give it a final opportunity to provide its response by 7 June 2024. The Employer did not respond.
35. On 31 May 2024, Mr R ceased working for the Employer.
36. On 15 July 2024 the Employer contacted TPO and said:-
  - It employed an external payroll company to deal with its payroll including the payment of employee pensions. This company moved the pensions, and it was not paying the contributions. This had been the subject of an investigation by His Majesty's Revenue and Customs (**HMRC**) where the Employer was a victim of serious organised crime.
  - It was trying its best to repay the contributions, however it was experiencing a cashflow issue because a client had not paid £915,000 which was causing serious issues.
  - Its intention was to ensure that all employee's contributions were met.
37. On 15 July 2024, the Adjudicator requested evidence from the Employer regarding its response which it failed to provide.
38. On 19 July 2024, TPO asked Mr R and Collegia to clarify the total amount of contributions owed by the Employer.
39. On 22 July 2024, Mr R said that from 14 August 2023 to 10 March 2024, contributions were deducted from his pay by the Employer but were not remitted to the Scheme. Mr R provided copies of the payslips that he held from 14 August 2023 to 10 March 2024, which detailed the pension contributions deducted from his pay. Mr R said that the outstanding contributions amounted to £1,949.57. A breakdown of these contributions has been included in the Appendix.
40. Collegia confirmed that it received ten payments from the Employer between 29 May 2023 to 13 August 2023, and these payments were remitted to the Scheme. Collegia said that it had not received any contributions into the Scheme after the 13 August 2023.

## **Adjudicator's Opinion**

41. Mr R'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. She said that, although the Employer initially appeared to engage with TPO, it did not provide a response.
  - As the Employer did not adequately respond to TPO's communications, she had to base her Opinion solely on the information provided by Mr R. So, the contribution schedule in the Appendix was produced based solely on the evidence provided by Mr R. The Adjudicator said that she had no reason to doubt the information provided by Mr R and based on the information provided by him, £1,216.09 in employee contributions and £733.48 in employer contributions were not remitted to the Scheme.
  - So, in the Adjudicator's Opinion, contributions were deducted from Mr R's salary, which were not paid into the Scheme. This amounted to clear maladministration. 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 R was not in the financial position he ought to be in.
  - In the Adjudicator's view, Mr R 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.
42. On 12 August 2024, TPO contacted the Employer to give it a final opportunity to provide a response.
43. On the same day, the Employer responded. It said that it had provided TPO with an explanation for the missing contributions, however it failed to provide any evidence to support its position that it had been the victim of serious organised crime or the HMRC investigation into the allegation.
44. Following the Employer's response, the complaint was passed to me to consider. I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

45. Mr R has complained that the Employer has not paid all the contributions due to his Scheme account.
46. 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 either TPO or Mr R. It has also failed to provide evidence regarding the HMRC investigation of the allegation made by the Employer, the reason why it said it had not paid Mr R's contributions into the Scheme.

47. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr R to suffer a financial loss. The Employer shall take remedial action to put this right.
48. Mr R 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 its failure to resolve the issue during TPO's investigation into Mr R's complaint.

### **Directions**

49. To put matters right, the Employer shall, within 28 days of the date of this Determination:
  - (i) pay Mr R £1,000 for the serious distress and inconvenience he has experienced;
  - (ii) pay £1,949.57 into Mr R's Scheme account. This figure represents the amount that, according to the figures provided by Mr R, 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 also have been paid but have not been paid to date;
  - (iii) establish with the Collegia whether the late payment of contributions has meant that fewer units were purchased in Mr R's Scheme account than he would have otherwise secured, had the contributions been paid on time; and
  - (iv) pay any reasonable administration fee should Collegia charge a fee for carrying out the above calculation.
50. Within 14 days of receiving confirmation from Collegia of any shortfall in Mr R's units, pay the cost of purchasing any additional units required to make up the shortfall.

**Anthony Arter CBE**

Deputy Pensions Ombudsman  
9 September 2024

**Appendix**

<b>Week (2023)</b>	<b>Employee Contributions</b>	<b>Employer Contributions</b>	<b>Paid</b>
14/08 - 20/08	42.35	25.41	No
21/08 - 27/08	35.69	21.41	No
28/08 - 03/09	42.35	25.41	No
04/09 - 10/09	35.69	21.41	No
11/09 - 17/09	42.35	25.41	No
18/09 - 24/09	35.69	21.41	No
25/09 - 01/10	35.69	21.41	No
02/10 - 08/10	35.69	21.41	No
09/10 - 15/10	35.69	21.41	No
16/10 - 22/10	35.69	21.41	No
23/10 - 29/10	35.69	21.41	No
30/10 - 05/11	42.35	25.41	No
06/11 - 12/11	42.35	25.41	No
13/11 - 19/11	42.35	25.41	No
20/11 - 26/11	42.35	25.41	No
27/11 - 03/12	42.35	25.41	No
04/12 - 10/12	42.35	25.41	No
11/12 - 17/12	35.69	21.42	No
18/12 - 24/12	35.69	21.42	No
25/12 - 30/12	35.69	21.42	No
31/12 - 06/01	25.51	19.14	No
01/01 - 07/01	35.69	21.42	No
08/01 - 14/01	42.35	25.41	No
15/01 - 21/01	42.35	25.41	No
22/01 - 28/01	42.35	25.41	No
29/01 - 04/02	42.35	25.41	No
05/02 - 11/02	42.35	25.41	No
12/02 - 18/02	42.35	25.41	No
19/02 - 25/02	42.35	25.41	No
26/02 - 03/03	42.35	25.41	No
04/03 - 10/03	42.35	25.41	No
11/03 - 17/03	0	0	N/A
18/03 - 24/03	0	0	N/A
25/03 - 31/03	0	0	N/A
<b>Total (unpaid)</b>	<b>1216.09</b>	<b>733.48</b>	<b>1949.57</b>