

Ombudsman's Determination

Applicant	Mr I
Scheme	National Employment Savings Trust (the Scheme)
Respondent	The Protein Ice Cream Company Limited (the Employer)

Outcome

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

Complaint summary

2. Mr I has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme.
3. Mr I has said that the missing contributions amounted to £2,011.74.

Background information, including submissions from the parties

4. In December 2019, Mr I began his employment with the Employer.
5. On 29 January 2021, Mr I brought his complaint regarding the missing contributions to The Pensions Ombudsman (**TPO**).
6. Mr I provided copies of the payslips that he held for the period from December 2019 to November 2020 which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These unpaid contributions amounted to £2,011.74. A breakdown of the deductions has been included in the Appendix.
7. On 30 October 2021, TPO asked the Employer for its formal response to Mr I's complaint. This request was repeated on 3 December 2021. Neither of these requests received a response.
8. On 3 May 2022, TPO chased the Employer again. This request was repeated on 17 May 2022, but, the Employer failed to respond by the deadline.

Caseworker's Opinion

9. Mr I's complaint was considered by one of our Caseworkers 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 Caseworker's findings are summarised below:-
- The Caseworker 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, as the Employer had not responded to any of TPO's communications, she had to base his Opinion solely on the information provided by Mr I.
 - The Caseworker said that she had no reason to doubt the information provided by Mr I, so, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr I's salary that 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 I was not in the financial position he ought to be in.
 - In the Caseworker's view Mr I had suffered significant distress and inconvenience due to the Employer's maladministration. In the opinion of the Caseworker an award of £500 for non-financial injustice was appropriate in the circumstances.
10. The Employer did not respond to the Caseworker's Opinion and the complaint was passed to me to consider. I agree with the Caseworker's Opinion, except the level of award for maladministration.

Ombudsman's decision

11. Mr I has complained that the Employer has not paid all the contributions due to his Scheme account.
12. 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 engage with either my Office or Mr I. It has also failed to respond to the Caseworker's Opinion.
13. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr I to suffer a financial loss. The Employer shall take remedial action to put this right.
14. Mr I 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 respond during my Office's investigation into Mr I's complaint.

Directions

15. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Mr I £1,000 for the serious distress and inconvenience he has experienced.
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr I's pay in respect of the period of his employment. The Schedule shall also include the corresponding employer contributions that were due to the Scheme; and
 - (iii) forward the Schedule to Mr I.
16. The Employer shall, within 14 days of receiving a request by Mr I, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.
17. Within 14 days of receiving confirmation from Mr I that he agrees with the information on the Schedule, the Employer shall:
 - (i) pay the missing contributions to the Scheme;
 - (ii) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Mr I's Scheme account than he would have otherwise secured, had the contributions been paid on time; and
 - (iii) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.
18. Within 14 days of receiving confirmation from the Scheme of any shortfall in Mr I's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter

Pensions Ombudsman
1 December 2022

Appendix

Date	Employee contributions	Employer contributions
30/11/2019	£0.00	£0.00
31/12/2019	£141.07	£84.65
31/01/2020	£141.07	£84.65
29/02/2020	£141.07	£84.65
31/03/2020	£141.07	£84.65
30/04/2020	£99.01	£59.41
31/05/2020	£99.01	£59.41
30/06/2020	£99.01	£59.41
31/07/2020	£99.00	£59.40
31/08/2020	£99.00	£59.40
30/09/2020	£99.00	£59.40
30/10/2020 – Payslip missing	£99.00	£59.40
Total	£1,257.31	£754.43