

Ombudsman's Determination

Applicant	Mr R
Scheme	NEST (the Scheme)
Respondent	Flix Facilities Limited (the Employer)

Outcome

1. Mr R'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 R £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

2. Mr R has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme.
3. Mr R has said that the missing contributions amounted to £1,856.43.

Background information, including submissions from the parties

4. Between August 2019 and February 2021, the Employer failed to pay pension contributions into the Scheme.
5. On 18 February 2021, Mr R brought his complaint to The Pensions Ombudsman (TPO).
6. Mr R provided copies of the payslips that he held for the period from August 2019 to January 2021, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These deductions amounted to £1,856.43. A breakdown of the deductions has been included in the Appendix.
7. On 10 March 2022, the Employer wrote to all staff whose pension contributions had not been paid. It said that financial circumstances, caused by the Covid-19 pandemic, was the reason why it was unable to maintain pension contributions. It argued that, during the Covid-19 pandemic, it prioritised keeping staff on full pay instead of making pension contributions.

8. On 31 March 2022, the Employer provided a further update. It said that it had begun to make payments to the Scheme and Mr R's Scheme account would be brought up to date within 17 months.
9. On 21 June 2022, TPO asked the Employer for its formal response to Mr R's complaint. The Employer replied and provided copies of the two emails previously sent to Mr R in March 2022.
10. On 28 October 2022, TPO contacted the Employer again and asked whether it agreed that pension contributions had not been remitted to the Scheme.
11. On 14 November 2022, TPO repeated its request for a response to Mr R's complaint.
12. The Employer failed to respond.

Caseworker's Opinion

13. Mr R'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 said 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 fully responded to TPO's communications, she had to base her Opinion predominantly on the information provided by Mr R.
 - The Caseworker said that she had no reason to doubt the information provided by Mr R. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr R's salary, 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 R was not in the financial position he ought to be in.
 - In the Caseworker's view, Mr R had suffered serious distress and inconvenience due to the Employer's maladministration. The Caseworker was of the opinion that an award of £1,000 for non-financial injustice was appropriate in the circumstances.
14. 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.

Ombudsman's decision

15. Mr R has complained that the Employer has not paid all the contributions due to his Scheme account.

16. 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 it has also failed to respond to the Caseworker's Opinion.
17. 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.
18. Mr R is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which he has suffered. The distress and inconvenience suffered by Mr R was exacerbated by the Employer's failure to respond fully during my Office's investigation into Mr R's complaint.

Directions

19. 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) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr R'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 R.
20. The Employer shall, within 14 days of receiving a request by Mr R, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.
21. Within 14 days of receiving confirmation from Mr R 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 R'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.
22. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Mr R's units, pay the cost of purchasing any additional units required to make up the shortfall.

CAS-67669-X3H5

Dominic Harris

Pensions Ombudsman
6 February 2023

Appendix

Date	Employee contributions	Employer contributions
30/8/19	£54.39	£40.80
27/9/19	£58.40	£43.80
25/10/19	£51.01	£38.26
29/11/19	£49.16	£36.87
27/12/19	£46.80	£35.10
31/1/20	£49.57	£37.18
28/2/20	£51.42	£38.56
24/4/20	£61.56	£46.17
29/5/20	£68.21	£51.16
26/6/20	£58.74	£44.05
31/7/20	£67.42	£50.57
28/8/20	£62.01	£46.51
25/9/20	£65.17	£48.88
30/10/20	£73.51	£55.14
27/11/20	£67.87	£50.91
25/12/20	£67.35	£50.51
29/1/21	£58.62	£43.97