

Ombudsman's Determination

Applicant	Mr R
Scheme	NEST (the Plan)
Respondent	Fallis Construction Ltd (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 Plan.

Background information, including submissions from the parties

3. In June 2014, Mr R began his employment with the Employer.
4. Between February 2020 and November 2020, the Employer failed to pay pension contributions due into the Plan.
5. Mr R was unable to provide copies of the payslips for the period from February 2020 to November 2020 as these were not provided to him by the Employer. However, Mr R was able to provide a contribution history and screenshots from his NEST account, which showed that no contributions were paid after 6 February 2020
6. On 25 November 2020, Mr R ceased employment with the Employer.
7. On 15 December 2020, Mr R raised the issue of the unpaid contributions with the Employer. The Employer said it would be resolved by the weekend.
8. On 4 January 2021, Mr R raised the issue of unpaid contributions again with the Employer.

9. On 12 January 2021, Mr R brought his complaint to The Pensions Ombudsman (TPO).
10. On 14 January 2021, Mr R emailed the Employer and requested a resolution to the issue regarding the unpaid contributions.
11. On 25 January 2021 and 8 March 2021, Mr R repeated his request.
12. On 28 September 2021, TPO wrote to the Employer for further information in response to Mr R's complaint. This request was repeated on 26 October 2021, 27 April 2022 and 16 May 2022. None of these requests received a response.
13. On 22 August 2022, TPO contacted the Employer again for further information regarding a breakdown of the unpaid contributions. This request was repeated on 5 October 2022.
14. On 18 October 2022, the Employer requested an extension to the deadline. This was granted until 2 November 2022.
15. On 2 November 2022, the Employer confirmed that some contributions had not been paid. It said that it had updated the pensions contributions via the NEST website.
16. On 10 November 2022, TPO responded to the Employer's email with an explanation of how TPO approaches complaints of this type. TPO said that the Employer should put Mr R in the position he would have been in, had the pension contributions been paid on time. So, it would have to ask the Plan administrator to calculate any potential financial loss.
17. On 5 December 2022, the Employer said that it would pay the contributions plus any financial loss.
18. On 7 December 2022, TPO wrote to the Employer and acknowledged the Employer's agreement to resolve the complaint. It set out the steps the Employer needed to take in order to resolve Mr R's complaint. It said that the Employer should complete the steps within 28 days.
19. On 17 January 2023, Mr R contacted TPO and confirmed that no payment had been made into the Plan.

Caseworker's Opinion

20. 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 Plan. 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. He said that although the Employer

acknowledged it had not paid the pension contributions, it did not fully engage with TPO when TPO requested payslips or a contribution breakdown.

- The Employer agreed it was responsible for the error and accepted TPO's suggested resolution. So, there was no question that an error had occurred, and the Employer was responsible. The Employer failed to resolve the issue as it had promised. As a result of the Employer's 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.

21. The Employer did not respond to the Caseworker's Opinion by the deadline and a further week extension was given.
22. On 16 March 2023, the Employer responded. It agreed with the majority of the Caseworker's Opinion. However, it disagreed with the payment of distress and inconvenience.
23. The complaint was passed to me to consider. I agree with the Caseworker's Opinion.

Ombudsman's decision

24. Mr R has complained that the Employer has not paid all the contributions due to his Plan account.
25. I find that employee contributions were deducted but held back by the Employer and not paid into the Plan. The Employer failed to rectify this on time. It also disagreed with the payment of distress and inconvenience in the Caseworker's Opinion.
26. The Employer's failure to pay employee and employer contributions into the Plan amounts to unjust enrichment and has caused Mr R to suffer a financial loss. The Employer shall take remedial action to put this right.
27. In my view, Mr R is entitled to a distress and inconvenience award in respect of the serious and ongoing non-financial injustice which he has suffered. In my view, Mr R distress and inconvenience was exacerbated by the Employer's failure to respond in a timely manner during my Office's investigation into Mr R's complaint.

Directions

28. 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 Plan; and
 - (iii) forward the Schedule to Mr R.
- 29. 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.
- 30. 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 Plan;
 - (ii) establish with the Plan whether the late payment of contributions has meant that fewer units were purchased in Mr R's Plan account than he would have otherwise secured, had the contributions been paid on time; and
 - (iii) pay any reasonable administration fee should the Plan administrator charge a fee for carrying out the above calculation.
- 31. Within 14 days of receiving confirmation from NEST of any shortfall in Mr R's units, pay the cost of purchasing any additional units required to make up the shortfall.

Dominic Harris

Pensions Ombudsman
23 March 2023