

Ombudsman's Determination

Applicant	Mrs W
Scheme	NEST (the Scheme)
Respondent	Albany Grange Ltd (T-A Martin Veasey Talent Solutions) (the Employer)

Outcome

1. Mrs W's complaint is upheld and, to put matters right, the Employer shall ensure that Mrs W is not financially disadvantaged by its maladministration. It shall arrange for any investment loss to be calculated and paid into the Scheme.
2. The Employer shall also pay Mrs W £500 for the significant distress and inconvenience it has caused her.

Complaint summary

3. Mrs W has complained that the Employer, despite deducting contributions from her pay, had failed to pay them into the Scheme.
4. Mrs W has said that the missing contributions amounted to approximately £1,000.
5. The Employer has now paid the contributions into the Scheme. However, Mrs W has complained that the Employer has failed to pay the investment returns due on the unpaid contributions.

Background information, including submissions from the parties

6. Between April 2020 and August 2020, the Employer failed to pay pension contributions into the Scheme.
7. On 17 March 2021, Mrs W brought her complaint to The Pensions Ombudsman (**TPO**).
8. On 9 December 2021, TPO asked the Employer for its formal response to Mrs W's complaint. This request was repeated on 13 April 2022.

9. On 17 May 2022, the Employer replied stating it had started to make payments but there were some issues allocating payments to the correct schedule. The Employer confirmed it was trying to resolve the problem.
10. The Employer also said it would not be compensating Mrs W as it was not responsible for Covid and the impact it had on its business.
11. On 31 May 2022, Mrs W told TPO that the Employer had said it was in a position to start clearing the backlog of overdue pension payments. She said that the Employer had previously told her that the repayments would commence in February 2022 and would continue on a monthly basis until cleared. However, payments did not start until 22 April 2022 and she had not received a payment in May 2022.
12. On 3 November 2022, Mrs W informed TPO that her pension contributions had been brought up to date. However, the Employer had failed to address the financial loss associated with the late payments. Mrs W said that she had suffered distress and inconvenience as a result of the late payments.
13. On 25 November 2022, TPO asked the Employer for its response to Mrs W's complaint. This request was repeated on 19 December 2022. Neither of these requests received a response.

Caseworker's Opinion

14. Mrs W's complaint was considered by one of our Caseworkers who concluded that further action was required by the Employer as it had failed to make sure that Mrs W is not financially disadvantaged by its maladministration. 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 if any investment returns were due on the unpaid pension contributions. She said that, as the Employer had not responded to all of TPO's communications, she had to base her Opinion solely on the information provided by Mrs W.
 - The Caseworker said that she had no reason to doubt the information provided by Mrs W. So, in the Caseworker's Opinion, on the balance of probabilities, the contributions were paid late and this could have caused financial loss. As a result of the Employer's maladministration, Mrs W was not in the financial position she ought to be in.
 - In the Caseworker's view, Mrs W had suffered significant distress and inconvenience due to the Employer's maladministration. The Caseworker was of the opinion that an award of £500 for non-financial injustice was appropriate in the circumstances.
15. 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

16. Mrs W has complained that her pension contributions were paid late into the Scheme. This delay has meant that she may have lost out on potential investment growth.
17. I find that that late payment of contributions amounts to maladministration. Although the Employer has now paid all contributions, it has not rectified the potential financial loss caused by the late payment. It has also failed to fully engage with my Office or respond to the Caseworker's Opinion.
18. The Employer shall take remedial action to ensure that Mrs W has not been disadvantaged by the late payment of her contributions.
19. Mrs W is entitled to a distress and inconvenience award in respect of the significant ongoing non-financial injustice which she has suffered. In my view, Mrs W distress and inconvenience was exacerbated by the Employer's failure to respond fully during my Office's investigation into Mrs W's complaint.

Directions

20. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Mrs W £500 for the significant distress and inconvenience she has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mrs W's pay in respect of the period of her employment. The Schedule shall also include the corresponding employer contributions that were due to the Scheme; and
 - (iii) forward the Schedule to Mrs W.
21. The Employer shall, within 14 days of receiving a request by Mrs W, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.
22. Within 14 days of receiving confirmation from Mrs W that she agrees with the information on the Schedule, the Employer shall:
 - (i) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Mrs W's Scheme account than she would have otherwise secured, had the contributions been paid on time; and
 - (ii) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.

CAS-69459-K3D0

23. Within 14 days of receiving confirmation from NEST of any shortfall in Mrs W's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman
6 March 2023