

Ombudsman's Determination

Applicant Mr Y

Scheme NEST (**the Scheme**)

Respondent JBN Bathroom and Heating Shop Limited (**the Employer**)

Outcome

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

Complaint summary

2. Mr Y has complained that the Employer, despite deducting contributions from his pay, has failed to pay the contributions into the Scheme.
3. Mr Y has said that the missing contributions amounted to £2,500.12.

Background information, including submissions from the parties

4. Mr Y was employed by the Employer and enrolled into the Scheme. He has said that pension contributions were paid into the Scheme until June 2019. However, from July 2019 contributions stopped being paid into the Scheme.
5. In December 2019, Mr Y noticed that contributions were not being paid into his Scheme account. He contacted the Employer regarding the issue, but did not receive a satisfactory response.
6. In February 2021, Mr Y chased the Employer regarding the outstanding contribution payments to the Scheme. Mr Y repeated this on 10 June 2021.

7. On 11 June 2021, the Employer contacted Mr Y and stated that it wanted to resolve the issue and invited Mr Y to a meeting. The same day, Mr Y replied and indicated that he wanted something in writing.
8. Later the same day, the Employer responded and said that it would employ an accountant, to work over the weekend, to ensure that unpaid contributions would be paid the following week. It said that this would have a knock-on effect financially and it was disappointed Mr Y could not trust it to bring the contributions up to date.
9. On 20 June 2021, Mr Y left the employment of the Employer.
10. On 21 June 2021, Mr Y chased the Employer for an update on the contributions.
11. On 24 June 2021, the Employer responded to Mr Y stating that “the pensions come out by direct debit so are not immediate.”
12. On 26 June 2021, Mr Y brought his complaint to The Pensions Ombudsman (**TPO**).
13. Mr Y provided copies of payslips and pay information he held covering the period from 4 February 2020 to 20 June 2021 which detailed the pension contributions deducted from his pay and the corresponding employer contributions. Mr Y said that the contributions, which were never paid into his pension, amounted to £2,500.12. A breakdown of the contributions has been included in the Appendix.
14. Also in the complaint submissions was a breakdown of payments, covering the period from 16 April 2019 to 28 January 2020, which was supplied by the Scheme administrator. The contributions that were paid late amounted to £1,470.78. A breakdown of when the contributions were paid has also been included in the Appendix.
15. In July and August 2021, the Employer made several payments into the Scheme. A breakdown of these is also included in the Appendix.
16. On 28 July 2022, TPO asked the Employer for its formal response to Mr Y’s complaint, but, no response was received.
17. On 11 August 2022, TPO again chased the Employer for a response. The same day, the Employer responded stating that it was happy to pay and would get it rectified as soon as possible.
18. Later the same day, TPO contacted the Employer and said that payment would need to be made within 28 days. The 28 days was reached on 8 September 2022.
19. On 8 September 2022, TPO chased the Employer for payment. TPO gave the Employer a further 14 days in which to make the payment.
20. On 22 September 2022, the deadline passed. The Employer had failed to respond to TPO or make a payment into the Scheme.

Caseworker's Opinion

21. Mr Y'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 as to the facts of the case, including the dates and amounts of contributions involved. She said that, as the Employer has not provided a satisfactory response to any of TPO's communications, her Opinion was based solely on the information provided by Mr Y.
 - The Caseworker said that she had no reason to doubt the payslips and pay information provided by Mr Y. So, in the Caseworker's Opinion, it was likely that the contributions, that had been deducted from Mr Y's salary, 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 Y had suffered a financial loss.
 - In the Caseworker's view, Mr Y had experienced 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.
22. The Employer did not respond to the Caseworker's Opinion so Mr Y's complaint was passed to me to consider. I agree with the Caseworker's Opinion.

Ombudsman's decision

23. Mr Y has complained that the Employer has not paid all the contributions due to his Scheme account.
24. The available evidence supports the view 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 in a meaningful way with either my Office or Mr Y.
25. The Employer's failure to pay employee and employer contributions into to the Scheme amounts to unjust enrichment and has caused Mr Y to suffer a financial loss. The Employer shall take remedial action to put this right.
26. Mr Y is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which he has suffered. This was made worse by the Employer's failure to respond fully to my Office's investigation into Mr Y's complaint.

Directions

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

Anthony Arter

Pensions Ombudsman
25 November 2022



Appendix

Contributions due for	Employee contributions	Employer contributions	Date paid
16 April 2019	£11.80	£9.83	5 August 2019
23 April 2019	£19.66	£14.74	5 August 2019
30 April 2019	£19.58	£14.68	5 August 2019
7 May 2019	£19.58	£14.68	5 August 2019
14 May 2019	£19.58	£14.68	5 August 2019
21 May 2019	£19.58	£14.68	5 August 2019
28 May 2019	£19.58	£14.68	5 August 2019
4 June 2019	£19.58	£14.68	22 August 2019
11 June 2019	£19.58	£14.68	22 August 2019
18 June 2019	£19.58	£14.68	2 December 2019
25 June 2019	£19.58	£14.68	2 December 2019
2 July 2019	£19.58	£14.68	2 December 2019

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9 July 2019	£19.58	£14.68	7 July 2021
16 July 2019	£19.50	£14.62	7 July 2021
23 July 2019	£19.58	£14.68	5 August 2021
30 July 2019	£19.58	£14.68	5 August 2021
06 August 2019	£21.38	£16.03	5 August 2021
13 August 2019	£21.38	£16.03	5 August 2019
20 August 2019	£21.38	£16.03	5 August 2021
27 August 2019	£21.38	£16.03	5 August 2021
03 September 2019	£21.38	£16.03	5 August 2021
10 September 2019	£21.38	£16.03	5 August 2021
17 September 2019	£21.38	£16.03	5 August 2021
24 September 2019	£21.38	£16.03	5 August 2021
1 October 2019	£21.38	£16.03	5 August 2021
8 October 2019	£21.38	£16.03	5 August 2021
15 October 2019	£21.38	£16.03	5 August 2021
22 October 2019	£21.38	£16.03	5 August 2021
29 October 2019	£21.38	£16.03	5 August 2021

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5 November 2019	£21.38	£16.03	17 August 2021
12 November 2019	£21.38	£16.03	17 August 2021
19 November 2019	£21.38	£16.03	17 August 2021
26 November 2019	£21.38	£16.03	17 August 2021
03 December 2019	£21.38	£16.03	17 August 2021
10 December 2019	£21.38	£16.03	17 August 2021
17 December 2019	£21.38	£16.03	17 August 2021
24 December 2019	£21.38	£16.03	17 August 2021
31 December 2019	£21.38	£16.03	17 August 2021
07 January 2020	£21.38	£16.03	17 August 2021
14 January 2020	£21.38	£16.03	17 August 2021
21 January 2020	£21.38	£16.03	17 August 2021
28 January 2020	£21.38	£16.03	17 August 2021
4 February 2020 to 5 April 2020	£235.08	£175.54	Not paid
6 April 2020 to 5 April 2021	£954.60	£715.95	Not paid
6 April 2021 to 20 June 2021	£239.40	£179.55	Not paid
Total contributions payable	£2,290.46	£1,717.85	

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Total contributions paid	£861.38	£646.81
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