

Ombudsman's Determination

Applicant	Ms N
Scheme	NEST (the Plan)
Respondent	Flix Facilities Ltd (the Employer)

Outcome

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

Complaint summary

2. Ms N has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Plan.
3. Ms N has said that the missing contributions amounted to £1,858.18.

Background information, including submissions from the parties

4. In 2018, Ms N began her employment with the Employer.
5. In September 2019, the Employer stopped paying contributions into the Plan.
6. In late 2020, Ms N discovered contributions had not been paid into the Plan.
7. On 1 July 2021, Ms N raised an informal grievance with the Employer regarding the unpaid contributions. The Employer failed to respond.
8. On 8 July 2021, Ms N raised a formal grievance with the Employer.
9. On 16 July 2021, Ms N handed in her notice.
10. On 27 July 2021, Ms N was asked by the Employer if she wished to continue with her grievance.
11. On 30 July 2021, Ms N ended her employment with the Employer.

12. On the same day, Ms N raised the issue of the unpaid contributions again during a meeting over telephone. The Employer said it had five days to respond to her grievance.
13. The five days passed, but the Employer failed to respond.
14. On 24 August 2021, Ms N submitted an application to The Pensions Ombudsman (TPO).
15. Ms N provided copies of the payslips that she held for the period from September 2019 to July 2021, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. These deductions amounted to £1,858.18. A breakdown of the deductions has been included in the Appendix.
16. On 10 March 2022, the Employer wrote to all current and former staff. It said:
 - It acknowledged there were arrears in the pension payments;
 - It had attempted to resolve the issue with NEST and The Pensions Regulator (TPR). It said a new direct debit was set up with NEST but payments had to be claimed by NEST;
 - The pandemic caused the company to suffer major losses of income and had to adapt to remote working;
 - It was expecting three years' worth of payments from HMRC in respect of tax credits;
 - It paid all staff who were furloughed 100% of their salary when it could have chosen to make staff redundant;
 - No payment was made by the government to cover pensions of furloughed employees;
 - NEST and TPR confirmed the Employer continued to meet its statutory obligations; and
 - It had set up a repayment plan and would write to all individuals affected with a breakdown of the outstanding amounts and a projection of when this would be paid.
17. On 28 June 2022, TPO wrote to the Employer to ask for more information in response to Ms N's complaint. This request was repeated on 12 July 2022.
18. Later that day, the Employer acknowledged TPO's request. It said it:
 - did not dispute Ms N's claim;
 - agreed with the calculation provided by TPO;
 - acted in the best interests of its staff during the pandemic;

- acknowledged investment loss should be calculated and made good; and
 - was unable to pay individuals in one schedule due to the nature of the NEST payment system and, therefore, proposed monthly payment schedules.
19. On 28 July 2022, TPO wrote to the Employer again and requested evidence of the schedule of payments. On the same day, the Employer responded and said the proposals were made in telephone conversations with NEST and TPR and the requested information would be provided by 16 August 2022.
20. On 16 August 2022, TPO repeated its request for evidence and gave a final deadline of 30 August 2022. The request did not receive a response.

Caseworker's Opinion

21. Ms N'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 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. He said that, as the Employer had not responded to any of TPO's communications, he had to base his Opinion solely on the information provided by Ms N.
 - The Caseworker said that he had no reason to doubt the information provided by Ms N. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Ms N's salary, that had not been paid into the Plan. 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, Ms N was not in the financial position she ought to be in.
 - In the Caseworker's view, Ms N 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.
22. 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

23. Ms N has complained that the Employer has not paid all the contributions due to his Plan account.
24. 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 and did not engage in a

meaningful way with either my Office or Ms N. It has also failed to respond to the Caseworker's Opinion.

25. The Employer's failure to pay employee and employer contributions into the Plan amounts to unjust enrichment and has caused Ms N to suffer a financial loss. The Employer shall take remedial action to put this right.
26. Ms N is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which she has suffered. This was exacerbated by its failure to respond during my Office's investigation into Ms N's complaint.

Directions

27. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Ms N £1,000 for the serious distress and inconvenience she has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Ms N's pay in respect of the period of her employment. The Schedule shall also include the corresponding employer contributions that were due to the Plan; and
 - (iii) forward the Schedule to Ms N.
28. The Employer shall, within 14 days of receiving a request by Ms N, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.
29. Within 14 days of receiving confirmation from Ms N that she 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 Ms N's Plan account than she 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.

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

Anthony Arter

Pensions Ombudsman
15 December 2022

Appendix

Date	Employee contributions	Employer contributions
30/09/2019	£77.87	£58.40
31/10/2019	£44.46	£33.35
30/11/2019	£27.48	£28.11
31/12/2019	£42.66	£31.99
31/01/2020	£35.35	£26.51
28/02/2020	£29.70	£29.77
31/03/2020	£36.50	£27.37
30/04/2020	£46.95	£35.22
31/05/2020	£39.19	£29.40
30/06/2020	£35.88	£26.91
31/07/2020	£35.88	£26.91
31/08/2020	£39.37	£29.53
30/09/2020	£45.82	£34.37
31/10/2020	£47.04	£35.28
30/11/2020	£40.76	£30.57
31/12/2020	£51.58	£38.68
31/01/2021	£48.00	£36.00
28/02/2021	£48.26	£36.20
31/03/2021	£48.87	£36.65
30/04/2021	£53.42	£40.07
31/05/2021	£38.27	£28.71
30/06/2021	£42.9	£31.65
31/07/2021	£86.30	£64.73
Total Unpaid Contributions	£1,061.80	£796.38

Total Unpaid contributions: £1,858.18		
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