

Ombudsman's Determination

Applicant	Ms D
Scheme	NEST (the Plan)
Respondent	Outsprint Ltd (the Employer)

Outcome

1. Ms D'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 D £1,000 for the serious distress and inconvenience it has caused her.

Complaint summary

2. Ms D has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Plan.
3. Ms D has said that the missing contributions amounted to approximately £2,000.

Background information, including submissions from the parties

4. In June 2020, Ms D began her employment with the Employer. Ms D says the Employer began pension deductions from June 2020, despite her not yet being enrolled onto the Plan.
5. On 6 July 2020, Ms D became a member of the Plan.
6. On 12 August 2020, the Employer made payments into the Plan. This consisted of £145.88 in employee contributions and £109.41 in employer contributions.
7. On 17 August 2020, the Employer made further payments into the plan. The amounts and contribution breakdown were identical to those paid on 12 August 2020.
8. On 2 December 2020, the Employer made its last payment into the Plan. This consisted of £145.88 in employee contributions and £109.41 in employer contributions.

9. In February 2021, Ms D first raised the issue of unpaid pension contributions with the Employer. She said that, between June 2020 and February 2021, the Employer had failed to pay all the required pension contributions into the Plan.
10. On 28 February 2021, Ms D left her employment with the Employer.
11. Between April 2021 and October 2021, Ms D received several communications from NEST. These informed Ms D it had reported the Employer to The Pensions Regulator (**TPR**) for late payment of contributions.
12. On 14 October 2021, Ms D brought her complaint to The Pensions Ombudsman (**TPO**).
13. Ms D provided copies of the payslips that she held for the period from June 2020 to October 2020, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. Ms D was unable to provide the payslips for her remaining time with the Employer. A breakdown of the deductions has been included in the Appendix, however an accurate figure of the total unpaid contributions cannot be given due to the missing payslips.
14. On 5 August 2022, Ms D confirmed she had received no correspondence from the Employer since she had brought the complaint to TPO.
15. On 25 August 2022, TPO wrote to the Employer to ask for more information in response to Ms D's complaint. This request was repeated on 8 September 2022. Neither of these requests received a response.

Caseworker's Opinion

16. Ms D'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 D.
 - The Caseworker said that he had no reason to doubt the information provided by Ms D. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Ms D's salary, but 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 D was not in the financial position she ought to be in.
 - In the Caseworker's view, Ms D 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.

17. 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

18. Ms D has complained that the Employer has not paid all the contributions due to her Plan account.
19. 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 with either my Office or Ms D. It has also failed to respond to the Caseworker's Opinion.
20. The Employer's failure to pay employee and employer contributions into the Plan amounts to unjust enrichment and has caused Ms D to suffer a financial loss. The Employer shall take remedial action to put this right.
21. Ms D 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 D's complaint.

Directions

22. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Ms D £1,000 for the serious distress and inconvenience she has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Ms D'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 D.
23. The Employer shall, within 14 days of receiving a request by Ms D, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.
24. Within 14 days of receiving confirmation from Ms D 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 D's Plan account than she would have otherwise secured, had the contributions been paid on time; and

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(iii) pay any reasonable administration fee should the Plan administrator charge a fee for carrying out the above calculation.

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

Anthony Arter

Pensions Ombudsman
8 December 2022

Appendix

Date	Employee contributions	Employer contributions
26/06/2020	£88.30	£66.22
28/07/2020	£145.88	£109.41
26/08/2020	£145.88	£109.41
28/09/2020	£145.88	£109.41
28/10/2020	£145.88	£109.41