

Ombudsman's Determination

Applicant	Mr H
Scheme	NEST (the Scheme)
Respondent	Harmony Films Limited (the Employer)

Outcome

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

Complaint summary

2. Mr H has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme.
3. Mr H has said that the missing contributions amounted to £1,879.71.

Background information, including submissions from the parties

4. In February 2013, Mr H began his employment with the Employer.
5. On 1 July 2021, Mr H contacted the Employer and complained that NEST had not received any pension contributions since before November 2020.
6. On 29 October 2021, Mr H brought his complaint to The Pensions Ombudsman (**TPO**).
7. Mr H provided copies of the payslips that he held for the period from October 2020 to September 2021, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. He also provided a single payslip from February 2020. The contributions shown on the payslips amounted to £1,879.71. A breakdown of the contributions has been included in the Appendix.
8. On 11 May 2022, TPO contacted the Employer and asked for a response to Mr H's complaint. TPO chased the Employer on 26 May 2022.

9. On 7 June 2022, the Employer called TPO and stated that there is a payment plan set up with NEST to pay back the missing pension contributions. TPO asked for evidence of this agreement. The Employer sent a screen shot that showed direct debits had been set up with a description that mentioned HMRC. However, there was nothing to show that payments had been arranged with NEST. The Employer did not provide anything to show that NEST had agreed to a payment plan.
10. On 9 June 2022, TPO requested further evidence of the payment plan that had been agreed with NEST.
11. Later that day, TPO contacted NEST directly to ask about the payment plan.
12. On 23 June 2022, NEST informed TPO that there is no record of any such payment plan to repay Mr H's missing pension contributions.
13. On 24 June 2022, TPO informed the Employer of the comments provided by NEST and asked the Employer to confirm how and when the missing contributions will be paid.
14. TPO repeated its request on 8 July 2022, but, the Employer failed to respond by the deadline.

Caseworker's Opinion

15. Mr H'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 on the facts of the complaint, including the dates and amounts of contributions involved. She said that, as the Employer had confirmed that pension contributions had not been paid into the Scheme, she was satisfied that maladministration had occurred.
 - In the Caseworker's Opinion, contributions had been deducted from Mr H's salary but 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 H was not in the financial position he ought to be in.
 - In the Caseworker's view, Mr H 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.
16. On 7 September 2022, several weeks after the deadline for response, the Employer emailed the Caseworker and accepted the Opinion. It accepted an error had occurred and said that it was due to a member of staff leaving the business. It accepted that

there was financial loss and said that it would pay the distress and inconvenience payment. It said that it would have this fully resolved by the end of the week.

17. On 9 November 2022, the Caseworker contacted the Employer and asked for an update. The Caseworker said that Mr H had provided her with a screenshot of his NEST account and no payments had been made since September 2020. So, the Employer had not made payments as it said it would.
18. The Employer responded and said that the first instalment was paid on 26 October 2022 following discussions with NEST about making monthly payments to clear the arrears.
19. On 23 November 2022, the Caseworker responded and said that the Opinion, that the Employer accepted, instructed the Employer to pay all unpaid contributions within 28 days of the Opinion being accepted. The Caseworker also noted that, prior to the Opinion being issued, the Employer was given several opportunities to resolve the case informally, potentially by way of a repayment plan. The Employer failed to provide evidence of an agreed repayment plan, so the Caseworker proceeded to issue an Opinion.
20. According to the evidence on file, the Employer has failed to make the promised payments to Mr H's Scheme account. So, the complaint has been passed to me to consider. I agree with the Caseworker's Opinion, except for the level of award for maladministration.

Ombudsman's decision

21. Mr H has complained that the Employer has not paid all the contributions due to his Scheme account.
22. I find that employee contributions were deducted but held back by the Employer and not paid into the Scheme. Although several promises were made to resolve the matter, the Employer has failed to bring Mr H's pension contributions up to date.
23. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr H to suffer a financial loss. The Employer shall take remedial action to put this right.
24. Mr H is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which he has suffered. This was exacerbated by its failure to pay the unpaid contributions even after it had accepted the Opinion. Mr H would have suffered serious distress and inconvenience at the thought of his pension contributions being lost.

Directions

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

Anthony Arter CBE

Deputy Pensions Ombudsman
26 January 2023

Appendix

Date	Employee contributions	Employer contributions
20/02/20	£82.92	£62.19
20/10/20	£82.60	£61.95
20/11/20	£82.60	£61.95
20/12/20	£82.60	£61.95
20/01/2021	£82.60	£61.95
20/02/2021	£82.60	£61.95
20/03/2021	£82.60	£61.95
20/04/2021	£82.60	£61.95
20/05/2021	£82.60	£61.95
20/06/2021	£82.60	£61.95
20/07/2021	£82.60	£61.95
20/08/2021	£82.60	£61.95
20/09/2021	£82.60	£61.95