

Ombudsman's Determination

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| Applicant | Ms R |
| Scheme | NEST (the Scheme) |
| Respondent | SRG Contractors (the Employer) |

Outcome

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

Complaint summary

2. Ms R has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
3. Ms R has said that the missing contributions amounted to £2,218.09.

Background information, including submissions from the parties

4. In February 2021, Ms R began her employment with the Employer.
5. Ms R has confirmed that, for 18 months, the Employer failed to pay pension contributions into the Scheme.
6. On 10 July 2022, Ms R brought her complaint to The Pensions Ombudsman (**TPO**).
7. Ms R provided copies of some of the payslips that she held for the period from February 2021 to January 2022, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. Ms R has said that these deductions amounted to £2,218.09. A breakdown of the deductions, from the available payslips, has been included in the Appendix.
8. Ms R also provided copies of letters she received from the Scheme administrator that confirmed pension contributions were not being paid into her account.

9. On 31 August 2022, the Scheme administrator wrote to Ms R and confirmed that her Scheme account was empty. As a result, it said it would close her account.
10. On 10 January 2023, TPO wrote to the Employer to ask for more information in response to Ms R's complaint. This request was repeated on 6 February 2023.
11. On 23 February 2023, the Employer contacted TPO and said that it had been trying to contact Ms R to agree a settlement. The Employer said that it would attempt to resolve the issue with Ms R if she contacted it directly.
12. On 23 February 2023, TPO asked Ms R if she was willing to contact the Employer.
13. Later that day, TPO replied to the Employer and asked it to produce a schedule that showed the employee and employer contributions that related to Ms R's employment.
14. On 24 February 2023, Ms R emailed TPO and confirmed that she had contacted the Employer. However, contributions remained unpaid.
15. On 9 March 2023, Ms R said she had not heard from the Employer and requested for her complaint to proceed to a formal investigation.

Caseworker's Opinion

16. Ms R'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 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 the dates and amounts of contributions involved. She said that, although the Employer had engaged with TPO, it had not agreed an action plan to address the points raised by Ms R.
 - The Caseworker said that she had no reason to doubt the information provided by Ms R. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Ms R'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, Ms R was not in the financial position she ought to be in.
 - In the Caseworker's view, Ms R had suffered serious distress and inconvenience due to the Employer's maladministration. The Caseworker was of the opinion that an award of £1,000 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 R has complained that the Employer has not paid all the contributions due to her Scheme account.
19. I find 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 meaningfully engage with either my Office or Ms R. It has also failed to respond to the Caseworker's Opinion.
20. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Ms R to suffer a financial loss. The Employer shall take remedial action to put this right.
21. Ms R is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which she has suffered. In my view, Ms R distress and inconvenience was exacerbated by the Employer's failure to respond during my Office's investigation into Ms R's complaint.

Directions

22. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Ms R £1,000 for the serious distress and inconvenience she has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Ms R'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 Ms R.
23. The Employer shall, within 14 days of receiving a request by Ms R, 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 R that she 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 Ms R's Scheme account than she would have otherwise secured, had the contributions been paid on time; and
 - (iii) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.

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

Anthony Arter CBE

Deputy Pensions Ombudsman
26 April 2023

Appendix

| Date | Employee contributions | Employer contributions |
|--------------------------|------------------------|------------------------|
| 20/02/21 to 26/02/2021 | £34.38 | £20.63 |
| 13/03/2021 to 19/03/2021 | £34.38 | £20.63 |
| 10/04/2021 to 16/04/2021 | £33.10 | £19.86 |
| 03/07/2021 to 09/07/2021 | £34.38 | £20.63 |
| 01/01/2022 to 07/01/2022 | £28.00 | £16.80 |