

Ombudsman's Determination

Applicant	Mr L
Scheme	NEST (the Scheme)
Respondent	Allwood Buildings Limited (the Employer)

Outcome

1. Mr L'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 L £500 for the significant distress and inconvenience it has caused him.

Complaint summary

2. Mr L has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme.
3. When he originally brought his complaint to The Pensions Ombudsman (**TPO**), Mr L said that the missing contributions were "in excess of £3,000". Since TPO began its investigation, the Employer has made some payments into the Scheme.
4. Mr L has acknowledged the payments but has said that over £2,000 still remains unpaid.

Background information, including submissions from the parties

5. In December 2019, Mr L began his employment with the Employer.
6. Between November 2021 and December 2022, the Employer failed to pay pension contributions into the Scheme.
7. On 19 July 2022, Mr L brought his complaint to TPO.
8. Mr L provided copies of the payslips that he held for the period from February 2022 to May 2022, which detailed the pension contributions deducted from his pay and the corresponding employer contributions during that period.
9. On 5 December 2022, Mr L left his employment with the Employer.

10. On 13 December 2022, TPO asked the Employer for its response to the complaint.
11. On 14 December 2022, the Employer said it was liaising with NEST and The Pension Regulator (**TPR**) and asked if it could respond by 9 January 2023. TPO agreed to this extension.
12. On 9 January 2023, TPO chased the Employer for its response.
13. On 9 January 2023, the Employer said it was still liaising with NEST and TPR. It said that Mr L should start to see credits paid into his account shortly and his account would be up to-date in four weeks.
14. On 20 January 2023, TPO asked the Employer for an update.
15. On 20 January 2023, the Employer told TPO that it had started to reconcile Mr L's NEST account and that about a third of the outstanding contributions had been credited to his account.
16. On 6 February 2023, Mr L told TPO that £758.35 Employee contributions and £1,358.35 Employer contributions had been credited to his NEST account. He said £827.56 Employee contributions and £1,416.96 Employer contributions remained unpaid.
17. On 6 February 2023, TPO asked the Employer when the outstanding contributions would be paid. The Employer failed to respond.
18. On 15 February 2023, TPO left a message at the Employer's office to call him. The Employer failed to return the call or contact TPO.

Caseworker's Opinion

19. Mr L'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 all 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. Although the Employer accepted that contributions remained unpaid, it failed to provide a full breakdown of what was owed. So, the contribution schedule in the Appendix has been produced based solely on the evidence provided by Mr L.
 - The Caseworker said that he had no reason to doubt the information provided by Mr L. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr L's salary but had not been paid into the Scheme. In addition, the Employer had not paid all of the employer contributions that were due over the same period. As a result of its maladministration, Mr L was not in the financial position he ought to be in.

- In the Caseworker's view, Mr L 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.
20. In response to the Opinion, the Employer said it accepted the award of £500 for non-financial injustice. It asked for confirmation on when the payment needed to be made by.
 21. The Caseworker responded and explained that all payments needed to be made in accordance with the instructions included in the Opinion. The Caseworker asked the Employer to confirm whether it was going to comply with the "Putting matters right" section of the Opinion.
 22. The Employer failed to respond.

Ombudsman's decision

23. Mr L has complained that the Employer has not paid all the contributions due to his Scheme account.
24. I find that employee contributions were deducted but held back by the Employer and not paid into the Scheme. Although the Employer has paid some of the contributions, it has not brought Mr L's Scheme account up to date. It has also failed to fully respond to the Caseworker's Opinion.
25. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr L to suffer a financial loss. The Employer shall take remedial action to put this right.
26. Mr L is entitled to a distress and inconvenience award in respect of the significant ongoing non-financial injustice which he has suffered.

Directions

27. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Mr L £500 for the significant distress and inconvenience he has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr L'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 L.

CAS-91165-X1T9

28. The Employer shall, within 14 days of receiving a request by Mr L, 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 L 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 L'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 Scheme administrator charge a fee for carrying out the above calculation.
30. Within 14 days of receiving confirmation from NEST of any shortfall in Mr L's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman
2nd May 2023

Appendix

Date	Employee contributions	Employer contributions
24 February 2022	£126.67	£221.67
1 April 2022	£126.67	£221.67
29 April 2022	£126.67	£221.67
31 May 2022	£126.67	£221.67