

Ombudsman's Determination

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| Applicant | Mr S |
| Scheme | NEST (the Scheme) |
| Respondent | Alpha Home Design Ltd (the Employer) |

Outcome

1. Mr S' complaint is upheld and, to put matters right, the Employer shall pay £828.10 into the Scheme. The Employer shall ensure that Mr S is not financially disadvantaged by its maladministration. So, it shall arrange for any investment loss to be calculated and paid into the Scheme.
2. In addition, the Employer shall pay Mr S £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

3. Mr S has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme.

Background information, including submissions from the parties

4. In February 2020, Mr S began his employment with the Employer, which terminated on 25 July 2022.
5. On 22 February 2022, an application to strike-off the Employer's company off the Registrar of Companies was made, but an objection to strike-off was lodged on 10 March 2022.
6. On 2 August 2022, the former 'active' director of the company resigned, leaving the company with no active directors. Both confirmation statement and accounts for the year ending 2021 have not been filed and are overdue. The Employer on Companies House is still "an active" company.
7. On 25 August 2022, Mr S brought his complaint to The Pensions Ombudsman (**TPO**).
8. Mr S said that he had been made redundant, following which he checked his pension contributions. He said that he had spoken with the Scheme and had been informed

that eight months of contributions were unpaid, from December 2021 to July 2022. Mr S said he had correspondence from the Scheme which confirmed that contributions had not been paid. He wanted the missing contributions to be paid back to him.

9. On 1 February 2023, Mr S received an Employment Tribunal decision in his favour against the Employer. The Employment Tribunal covered unlawful deductions from wages, redundancy, breach of contract, and pro-rata holiday. It did not cover unpaid pension contributions.
10. Mr S said that contributions had not been paid for December 2021 to July 2022, but he has been unable to provide payslips for the entire period. Mr S provided copies of the payslips that he held, from September 2021 to February 2022, which detailed the pension contributions deducted from his pay. A breakdown of the deductions has been included in the Appendix. Mr S said that the Employer failed to give him any payslips for the rest of the period. He said he had spoken the Employer's previous accountant who had confirmed that the payslips provided were the last received and since then it had not heard from the Employer.
11. On 13 November 2023, Mr S provided a screenshot of his Scheme account. This showed that the last contribution made by the Employer was on 30 December 2021 for £50.70. Mr S' last contribution was for £67.60 made on the same date. He also provided letters from the Scheme which confirmed that contributions for January 2022, February 2022 and March 2022 were either unpaid or the Employer failed to notify the Scheme that they were not due. The letters for January 2022 and February 2022 detailed the missing contributions as employer contributions of £50.70 and employee contributions of £67.60, for each month respectively. The letter for the missing contributions for March 2022 did not detail the amounts owed. All letters notified Mr S that the Scheme had reported the Employer to The Pension Regulator (TPR).
12. On 25 September 2023, TPO attempted to contact the Employer for a response to Mr S' complaint, but notification of a failed email delivery was received. The same notification was received on 29 September 2023.
13. On 26 September 2023, TPO wrote to the Employer's registered address. This request was repeated on 19 October 2023. No response was received.
14. TPO's attempts to get in contact with the Employer were unsuccessful and neither of the requests for further information were responded to.
15. On 18 October 2023, TPO issued an Opinion on Mr S' complaint. This was served to the Employer to the registered address on Companies House. No response was received to the Opinion.
16. On 5 March 2024, TPO attempted to call the Employer, but this was also unsuccessful. This was repeated on 4 June 2024 and 6 June 2024.

Caseworker's Opinion

17. Mr 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 not responded to any of TPO's communications, she had to base her Opinion solely on the information provided by Mr S.
 - The Caseworker said that she had no reason to doubt the information provided by Mr S. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr 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 S was not in the financial position he ought to be in.
 - In the Caseworker's view, Mr S 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.
18. 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

19. Mr S has complained that the Employer has not paid all the contributions due to his Scheme account.
20. Mr S claimed unpaid contributions for the period of December 2021 to July 2022. He provided payslips for the period September 2021 to February 2022. He was unable to provide the payslips for March 2022 to July 2022. However, letters from the Scheme confirmed contributions for January 2022, February 2022 and March 2022 were either unpaid or the Employer had failed to notify the Scheme that such contributions were not due. The screenshot of his Scheme account showed that the last contribution received from the Employer was for December 2021.
21. The Employer failed to rectify the issue and did not engage with TPO during the investigation. It has also failed to respond to the Caseworker's Opinion. On 25 September 2023, TPO contacted the Employer for a response to Mr S' complaint, but notification of a failed email delivery was received. The same notification was received on 29 September 2023.
22. On 26 September 2023, TPO wrote to the Employer's registered address. This request was repeated on 19 October 2023. TPO's attempts to get in contact with the

Employer were unsuccessful and neither of the requests for further information were responded to. Due to the lack of engagement from the Employer, I have not seen any evidence contradicting Mr S' account or a denial of liability.

23. Considering the Employer's failure to engage with TPO's investigation, I have only been able consider the available evidence that Mr S has provided. Having reviewed the payslips for the preceding months, the Scheme letters confirming payments were missing, and the Scheme account which showed that the last contribution made was in December 2021, I am satisfied that, on the balance of probabilities, contributions were more likely than not deducted for the entire period as claimed. I therefore find that employee contributions were deducted but held back by the Employer and not paid into the Scheme between January 2022 and July 2022.
24. The payslips between September 2021 to February 2022 showed that the Mr S' contributions remained the same throughout. The Employer's contributions were shown on two of these payslips, but also remained consistent. In addition, Mr S' wage as indicated on the payslips remained the same. Where the contributions were stated as missing on the Scheme's letters, it matched the contributions indicated on the payslips. As set out in the Appendix, this which was £50.70 for the employer contributions and £67.60 for Mr S' contributions.
25. Contributions are due for seven months at a monthly rate of £50.70 for the employer's contributions and £67.60 for Mr S' contributions. This amounts to £354.90 of employer contributions and £473.20 of employee contributions. A total £828.10 of unpaid contributions are therefore due Mr S' Scheme account.
26. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr S to suffer a financial loss. The Employer shall take remedial action to put this right.
27. Mr S 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 respond during TPO's investigation into Mr S' complaint.

Directions

28. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Mr S £1,000 for the serious distress and inconvenience he has experienced;
 - (ii) pay £828.10 into Mr S' Scheme account. This figure represents the amount that, according to the figures provided by Mr S have been deducted from his pay, but not paid into the Scheme account. It also includes the employer contributions for the relevant period which should have been paid but have not been to date;

- (iii) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Mr S' Scheme account than he would have otherwise secured, had the contributions been paid on time; and
- (iv) pay within 14 days of receiving confirmation from the Scheme of any shortfall in Mr S' units, the cost of purchasing any additional units required to make up the shortfall and any reasonable administration fee should the scheme administrator charge a fee for carrying out the above calculation.
- (v) In the event that (iii) and (iv) are not complied with and the Scheme is able to confirm fewer units were purchased in Mr S' scheme account than he would have otherwise secured, had the contributions been paid on time, then the Employer shall pay in accordance with (iv) above upon confirmation of the shortfall amount together with any reasonable administration fee should the scheme administrator charge a fee for carrying out the above calculation.

Anthony Arter CBE

Deputy Pensions Ombudsman

30 June 2024

Appendix

| Date | Employee contributions | Employer contributions |
|----------------|------------------------|------------------------|
| September 2021 | 67.60 | |
| October 2021 | 67.70 | 50.70 |
| November 2021 | 67.70 | |
| December 2021 | 67.70 | |
| January 2022 | 67.60 | 50.70 |
| February 2022 | 67.60 | 50.70 |
| March 2022 | no payslip | no payslip |
| April 2022 | no payslip | no payslip |
| May 2022 | no payslip | no payslip |
| June 2022 | no payslip | no payslip |
| July 2022 | no payslip | no payslip |