

Ombudsman's Determination

Applicant	Mr I
Scheme	NEST (the Scheme)
Respondent	Hoopla Animation Limited (the Employer)

Outcome

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

Complaint summary

2. Mr I has complained that the Employer, despite deducting pension contributions from his pay, has failed to pay them into the Scheme.
3. Mr I has said that the missing contributions amounted to £1,248.95.

Background information, including submissions from the parties

4. In October 2021, Mr I began his employment with the Employer.
5. Between October 2021 and April 2022, the Employer failed to pay pension contributions into the Scheme.
6. On 3 March 2023, Mr I brought his complaint to The Pensions Ombudsman (**TPO**).
7. Mr I provided copies of the payslips that he held for the period from October 2021 to April 2022. He has been unable to provide a payslip for December 2021. A breakdown of the deductions has been included in the Appendix.
8. On 11 May 2023, TPO asked the Employer for its formal response to Ms I's complaint.
9. On 26 May 2023, the Employer confirmed that it was aware of the missing pension contributions and the requirement to bring these up to date. It said that it had been

experiencing financial difficulties from the effects of the pandemic. The Employer explained that it did not have the funds to pay, but it was in the process of raising funding and receiving revenue in order to pay the unpaid pension contributions.

10. On 31 May 2023, TPO asked the Employer if it had a timescale on when it intended to pay the unpaid pension contributions. This was repeated on 19 July 2023.
11. On 24 July 2023, the Employer confirmed that it was still awaiting its next round of funding. It confirmed that it would work with NEST to pay back the unpaid pension contributions.
12. On 1 August 2023, TPO asked the Employer again if it had a timescale on when it intended to pay the unpaid pension contributions. The Employer failed to respond by the deadline.
13. On 23 August 2023, Mr I wrote to TPO after checking his pension account and confirmed that no pension contributions had been paid into the Scheme.

Caseworker's Opinion

14. Mr I'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. He said that the Employer responded to TPO's communications and agreed that contributions were owed to Mr I. The Employer said it did not have the funds to bring the unpaid pension contributions up to date. However, once it secured its next round of funding it would pay the unpaid pension contributions. The Employer was unable to confirm when this would be.
 - The Caseworker said that both parties have agreed that contributions had been deducted from Mr I'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 I is not in the financial position he ought to be in.
 - In the Caseworker's view, Mr I 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.
15. The Employer agreed with the Caseworker's opinion and the proposed remedy. However, it did not have the sufficient funds to make payment.
16. The complaint was passed to me to consider. I agree with the Caseworker's Opinion.

Ombudsman's decision

17. Mr I has complained that the Employer has not paid all the contributions due to his Scheme account.
18. I find that employee contributions were deducted but held back by the Employer and not paid into the Scheme. Although the Employer has accepted this, it has failed to rectify the situation. Whilst the Employer has stated it is awaiting funding, it has failed to provide a date on when this should be expected. Mr I should not wait for an undefined period to be put back in the correct position.
19. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr I to suffer a financial loss. The Employer shall take remedial action to put this right.
20. Mr I is entitled to a distress and inconvenience award in respect of the significant ongoing non-financial injustice which he has suffered.

Directions

21. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Mr I £500 for the significant distress and inconvenience he has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr I'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 I.
22. The Employer shall, within 14 days of receiving a request by Mr I, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.
23. Within 14 days of receiving confirmation from Mr I 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 I'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.

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24. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Mr I's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman
13 November 2023

Appendix

Date	Employee contributions	Employer contributions
30 April 2022	£90.13	Unknown
31 March 2022	£119.20	Unknown
28 February 2022	£146.76	Unknown
31 January 2022	£119.20	Unknown
30 November 2021	£119.20	Unknown
Total unpaid employee contributions	£594.49	
Total unpaid employer contributions		Unknown