

Ombudsman's Determination

Applicant	Mr K
Scheme	NEST (the Scheme)
Respondent	Sarah Barrett Organic Lifestyle Group Ltd (the Employer)

Outcome

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

Complaint summary

2. In April 2021, Mr K started working for the Employer.
3. Mr K has said that between October 2022 and April 2023, the Employer failed to pay pension contributions into the Scheme. He also said that the Employer failed to pay the April 2022 pension contributions into the Scheme.

Background information, including submissions from the parties

4. In April 2021, Mr K started working for the Employer.
5. On 3 March 2023, Mr K made an application to The Pensions Ombudsman (**TPO**).
6. Mr K said that between October 2022 and April 2023, the Employer failed to pay pension contributions into the Scheme. He also said that the Employer also failed to remit the April 2022 pension contributions into the Scheme.
7. Mr K provided copies of some of the payslips that he held for the period from April 2022 to May 2023, which detailed the pension contributions deducted from his pay. A breakdown of the deductions has been included in the Appendix.
8. In March 2023, the Employer terminated Mr K's employment.
9. On 15 August 2023, TPO asked the Employer for its formal response to Mr K's complaint.

10. In response, on 29 August 2023, the Employer said that it was aware of the missing pension contributions and the requirement to bring these up to date for Mr K. The Employer said it was experiencing severe cash flow issues and that there were no cash reserves to pay any outstanding pension contributions.

Caseworker's Opinion

11. Mr K'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 K.
 - The Caseworker said that both parties agreed that some of the contributions had been deducted from Mr K's salary 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 K is not in the financial position he ought to be in.
 - The Caseworker acknowledged the Employer's comments that it had ceased trading and had no means to pay. However, the Caseworker said that the Employer should take steps to put Mr K in the same position he would have been in had the maladministration not occurred.
12. Mr K responded to the Opinion and said that he agreed with the overall conclusion. He said that the Appendix underestimated the unpaid contributions. He calculated the employee contributions as £1,010.39.
13. In response, the Caseworker explained that the Appendix was not a full breakdown of contributions that are owed. He said that his Opinion instructed the Employer to produce a contribution schedule and Mr K would be given an opportunity to challenge the schedule if it does not match what was unpaid.
14. 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, except the level of award for maladministration.

Ombudsman's decision

15. Mr K has complained that the Employer has not paid all the contributions due to his Scheme account.

16. I find that a number of employee contributions were deducted but held back by the Employer and not paid into the Scheme. The Employer failed to rectify this. It has also failed to respond to the Caseworker's Opinion.
17. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr K to suffer a financial loss. The Employer shall take remedial action to put this right.
18. Mr K is entitled to a distress and inconvenience award in respect of the significant ongoing non-financial injustice which he has suffered.

Directions

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

Anthony Arter CBE

Deputy Pensions Ombudsman
16 November 2023

Appendix

Date	Employee contributions	Employer contributions
13 April 2022	£69.28	Not stated
26 October 2022	£75.08	Not stated
23 November 2022	£72.57	Not stated
21 December 2022	£73.13	Not stated
18 January 2023	£76.12	Not stated
15 February 2023	£76.23	Not stated
15 March 2023	£75.06	Not stated
Total unpaid employee contributions	£ 517.47	
Total unpaid employer contributions		Unknown