

## Ombudsman's Determination

Applicant	Ms Z
Scheme	NEST ( <b>the Scheme</b> )
Respondent	Bright Learners Ltd ( <b>the Employer</b> )

## Outcome

1. Ms Z's complaint is upheld and, to put matters right, the Employer shall pay £438.41 into the Scheme. The Employer shall ensure that Ms Z 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 Ms Z £500 for the significant distress and inconvenience it has caused her.

## Complaint summary

3. Ms Z has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
4. Ms Z has said that the missing contributions amounted to £438.41.

## Background information, including submissions from the parties

5. The sequence of events is not in dispute, so I have only set out the salient points.
6. In March 2021, Ms Z began her employment with the Employer. The Employer was a family company run by Mr L and his daughter Ms L.
7. Between April 2021 and May 2022, the Employer failed to pay pension contributions into the Scheme.
8. On 15 August 2022, Ms L resigned from her position as a director of the Employer. However, she remained involved in the company.
9. On 10 May 2023, Ms Z brought her complaint to The Pensions Ombudsman (**TPO**).
10. Ms Z provided copies of the payslips that she held for the period from April 2021 to May 2022, which detailed the pension contributions deducted from her pay and the

corresponding employer contributions. These deductions amounted to £1,023.05. A breakdown of the deductions has been included in the Appendix.

11. On 31 August 2023, Ms L on behalf of the Employer, agreed that contributions were outstanding and stated that although the company was going into liquidation, it would pay the contributions owed to Ms Z.
12. On 16 October 2023, Ms L stated that her company Bright Learners Montessori Ltd, were accepting all debts and liabilities of the Employer.
13. Between September 2023 and April 2024, TPO contacted the Employer via emails and telephone calls on numerous occasions. The Employer continued to accept that contributions were owed and made several promises to pay. However, to date, the employer contributions remain unpaid.
14. On 2 April 2024, TPO chased the Employer again. The Employer failed to respond by the deadline.
15. Between 2 April and 22 April 2024, TPO contacted the Employer to give it a final opportunity to pay after it advised that it was arranging to pay the contributions owed. The Employer stated that the liquidators had advised it to pay the employee contributions directly to Ms Z and the employer contributions directly to the Scheme.
16. On 22 April 2024, the Employer confirmed that it would pay the employee contributions to Ms Z and that it would pay the employer contributions directly into the Scheme.
17. On 23 April 2024, TPO spoke to Mr L. He advised that due to health reasons Ms L was dealing with this complaint on his behalf and he was happy for her to continue in this endeavour. He advised that the company was going into liquidation and acknowledged that contributions were owed to Ms Z.
18. On 30 April 2024, the Employer paid £584.64 directly to Ms Z for the employee contributions.
19. Between 30 April and 11 June 2024, TPO contacted the Employer on numerous occasions to advise it to pay the remaining £438.41 for the employer contributions and provide details of the Scheme to evidence they had been paid.
20. On 28 May 2024, TPO advised the Employer that it was giving it a final opportunity to resolve Ms Z's complaint. It stated that the Employer had been given ample opportunity to pay the remaining contributions which it acknowledged that it owed. Therefore, if the employer contributions remained unpaid, Ms Z's complaint would be formally resolved which would result in further costs to the Employer.
21. To date, the employer contributions remain outstanding.

## **Caseworker's Opinion**

22. Ms Z'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. Ms Z has complained that her pension contributions have not been paid into the Scheme. The Employer agreed on 31 August 2023, that contributions were owed to Ms Z. On 30 April 2024, the Employer paid the employee contributions of £584.64 directly to Ms Z. However, having reviewed the available evidence, it was the Caseworker's opinion that not all contributions were paid, as the employer contributions of £438.41 remained outstanding. So, an error has occurred, and the Employer is responsible.
  - The Caseworker said that the Employer agreed on several occasions between April and June 2024, that it would pay the employer contributions into the Scheme. However, despite the Employer's assurances that it would pay £438.41 into the Scheme, no evidence has been provided by it that the remaining contributions have been paid. So, in the Caseworker's Opinion, contributions were owed to Ms Z but have not been paid into the Scheme. As a result of its maladministration, Ms Z was not in the financial position she ought to be in.
  - In the Caseworker's view, Ms Z 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.
23. On 2 July 2024, the Employer responded to the Caseworker's Opinion. It stated that it was happy to agree with the Opinion, but the rest of the contributions had been paid and it asked TPO to minus this amount from the amount owed.
24. On 2 July 2024, TPO responded. It stated that £438.41 for the employer contributions remained unpaid despite the Employer's repeated assurances that it would pay.
25. The Employer did not respond by the deadline and the complaint was passed to me to consider. I agree with the Caseworker's Opinion.

## **Ombudsman's decision**

26. Ms Z has complained that the Employer has not paid all the contributions due to her Scheme account.
27. I find that the employer contributions have not been paid into the Scheme. The Employer failed to rectify this despite the assurances made to TPO that it would pay these contributions of £438.41. The Employer has also stated that it agrees with the

Caseworker's Opinion, so it is aware that the employer contributions are still owed to Ms Z.

28. The Employer's failure to pay employer contributions into the Scheme amounts to unjust enrichment and has caused Ms Z to suffer a financial loss. The Employer shall take remedial action to put this right.
29. Ms Z is entitled to a distress and inconvenience award in respect of the significant ongoing non-financial injustice which she has suffered. This was exacerbated by its failure to resolve Ms Z's complaint, despite being given ample opportunity to pay the employer contributions following its agreement that contributions were owed to Ms Z.

### **Directions**

30. To put matters right, the Employer shall, within 28 days of the date of this Determination:
  - (i) pay Ms Z £500 for the significant distress and inconvenience she has experienced;
  - (ii) pay £438.41 into Ms Z's Scheme account. This figure represents the employer contributions that, according to the figures provided by Ms Z, have not been paid into the Scheme account. The Employer agrees that this amount is owed to Ms Z.
  - (iii) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Ms Z's Scheme account than she would have otherwise secured, had the contributions been paid on time; and
  - (iv) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.
31. Within 14 days of receiving confirmation from NEST of any shortfall in Ms Z's units, pay the cost of purchasing any additional units required to make up the shortfall.

**Anthony Arter CBE**

Deputy Pensions Ombudsman

8 July 2023

**Appendix**

Date	Employee Contributions ( <b>PAID</b> )	Employer Contributions
Apr-21	41.54	31.15
May-21	41.54	31.15
Jun-21	41.54	31.15
Jul-21	41.54	31.15
Aug-21	41.54	31.15
Sep-21	41.54	31.15
Oct-21	41.54	31.15
Nov-21	41.54	31.15
Dec-21	41.54	31.15
Jan-22	41.54	31.15
Feb-22	41.54	31.15
Mar-22	44.62	33.46
Apr-22	41.54	31.15
May-22	41.54	31.15
<b>Total</b>	<b>584.64</b>	<b>438.41</b>