

Ombudsman's Determination

Applicant	Mr N
Scheme	NEST (the Scheme)
Respondent	Main Men Limited (the Employer)

Outcome

1. Mr N's complaint is upheld and, to put matters right, the Employer shall pay £1,025.96 into the Scheme. The Employer shall ensure that Mr N 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 N £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

3. Mr N has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme.
4. Mr N has said that the missing contributions amounted to £1,025.96.

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 January 2022, Mr N began his employment with the Employer.
7. Between February 2022 and December 2022, the Employer failed to pay pension contributions into the Scheme.
8. On 16 May 2023, Mr N raised his concerns with the Employer.
9. On 17 September 2023, Mr N brought his complaint to The Pensions Ombudsman (**TPO**).
10. Mr N provided copies of the payslips that he held for the period from February 2022 to December 2022, which detailed the pension contributions deducted from his pay

and the corresponding employer contributions. These deductions amounted to £1,025.96. A breakdown of the deductions has been included in the Appendix.

11. On 8 April 2024, TPO asked the Employer for its formal response to Mr N's complaint. This request was repeated on 25 April 2024. Neither of these requests received a response.

Caseworker's Opinion

12. Mr N'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 N.
 - The Caseworker said that she had no reason to doubt the information provided by Mr N. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr N'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 N was not in the financial position he ought to be in.
 - In the Caseworker's view, Mr N 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.
13. The Employer did not provide a response to resolve Mr N's complaint following the Caseworker's Opinion and the complaint was passed to me to consider. I agree with the Caseworker's Opinion.

Ombudsman's decision

14. Mr N has complained that the Employer has not paid all the contributions due to his Scheme account.
15. I find that employee contributions were deducted but held back by the Employer and not paid into the Scheme. The Employer failed to rectify this and resolve Mr N's complaint following the Caseworker's Opinion.

16. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr N to suffer a financial loss. The Employer shall take remedial action to put this right.
17. Mr N 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 resolve the dispute during TPO's investigation into Mr N's complaint.

Directions

18. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Mr N £1,000 for the serious distress and inconvenience he has experienced;
 - (ii) pay £1,025.96 into Mr N's Scheme account. This figure represents the amount that, according to the figures provided by Mr N, 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 also 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 N's Scheme account than he 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.
19. Within 14 days of receiving confirmation from NEST of any shortfall in Mr N's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman

10 June 2024

Appendix

Date	Employee contributions	Employer contributions
February 2022	£34.42	£57.37
March 2022	£34.42	£57.37
April 2022	£21.92	£36.53
May 2022	£34.42	£57.37
June 2022	£39.98	£66.64
July 2022	£34.42	£57.37
August 2022	£34.42	£57.37
September 2022	£34.42	£57.37
October 2022	£34.42	£57.37
November 2022	£42.47	£70.79
December 2022	£39.41	£65.69
Total unpaid employee contributions	<u>£384.72</u>	
Total unpaid employer contributions		<u>£641.24</u>