

Ombudsman's Determination

Applicant	Mrs Y
Scheme	NEST
Respondent	Bolton Textiles (Group) Limited (BTGL)

Outcome

1. Mrs Y's complaint is upheld and to put matters right BTGL shall take the further steps set out in the directions (see paragraph 22 below).
2. BTGL shall also pay Mrs Y £1000 for the serious distress and inconvenience caused to her.

Complaint summary

3. Mrs Y complained that her employer, BTGL, failed to pay the correct contributions into NEST since September 2018. She also complained that in attempting to resolve the complaint, she suffered serious distress and inconvenience.
4. Mrs Y asked for her pension contributions to be brought up to date and for BTGL to compensate her for the distress caused.

Background information, including submissions from the parties

5. Mrs Y was an employee of Bolton Textiles Ltd for over 27 years.
6. In May 2017 Bolton Textiles Ltd went into administration, a process which was managed by RSM Manchester (**the administrators**). As part of the administration process the administrators transferred certain assets of Bolton Textiles Ltd to BTGL.
7. On 25 March 2017, the administrators completed a transfer of all employees from Bolton Textiles Ltd to BTGL. This meant that BTGL now had responsibility for ensuring it met the legal obligations for all Bolton Textiles Ltd employees.
8. In August 2018, Bolton Textiles Ltd was dissolved.
9. On 30 December 2018, NEST wrote to Mrs Y to say that it was reporting BTGL to The Pensions Regulator (**TPR**) because it had not paid contributions for the period 31

August 2018 to 6 September 2018 even though it had been sent several reminders, which “breached their legal duty as an employer”.

10. On receipt of this letter, Mrs Y said that she questioned BTGL about the missing contributions, and it informed her that this would be rectified.
11. Mrs Y was sent further letters from NEST to the same effect on, but not limited to, the following dates: -
 - 6 January 2019
 - 10 February 2019
 - 17 March 2019
 - 7 April 2019
 - 8 May 2019
12. Mrs Y made a further complaint to BTGL about the missing contributions, but she did not receive a response. So, in June 2019 Mrs Y brought the complaint The Pensions Ombudsman (**TPO**) to be considered.
13. On 6 November 2019, TPO wrote to BTGL asking for a response to the complaint.
14. On 8 November 2019, BTGL provided its final response. The response included a number of derogatory comments about Mrs Y personally and about her employment. The salient points in the response in relation to Mrs Y’s complaint are as follows:-
 - It agreed that contributions had not been paid. This was because the company did not make enough profit to accommodate pension payments and increases in minimum wage.
 - It would resolve the issue when its financial circumstances improved.
15. Further attempts were made to resolve the matter informally with BTGL, but these were unsuccessful.

Adjudicator’s Opinion

16. Mrs Y’s complaint was considered by one of our Adjudicators who concluded that further action was required by BTGL. The Adjudicator’s findings are summarised below:-
 - Legislation is prescriptive and does not allow for an employer to exercise discretion.
 - The Pensions Act 2008 (**the Act**) introduced a duty for employers to ‘make arrangements by which a jobholder becomes an active member of an automatic enrolment scheme with effect from the automatic enrolment date’.

- Under the Act, all employers must enrol certain workers into a pension scheme (**automatic enrolment**). Between 1 October 2012 and 1 April 2017, all employers in existence on 1 April 2012 had to begin their automatic enrolment duties. For new employers, set up between April 2013 and September 2017, their automatic enrolment duties started between 1 May 2017 and 1 February 2018. New employers from October 2017 had immediate automatic enrolment duties.
- The Adjudicator's view was that, on the available evidence, Mrs Y satisfied the criteria for automatic enrolment so, BTGL had a clear obligation under the Act to ensure that the correct contributions were paid into NEST, or another automatic enrolment arrangement that it deemed appropriate, and to report to TPR any issues with regard to the payment of pension contributions.
- Mrs Y provided payslips from her employment with BTGL which confirmed that she earned above the necessary threshold and that employee contributions were deducted from her salary monthly between 19 September 2018 and 3 May 2019.
- Mrs Y's payslips also confirmed that there were no pension deductions from May 2019 onwards.
- The Adjudicator's view was that BTGL had failed in its legal obligations as an employer and that Mrs Y had suffered a financial loss because of its maladministration and so BTGL should pay the missing employer and employee contributions to NEST, with consideration also being made to whether or not there is a unit shortfall. If so, it should cover the cost of correcting it.
- In relation to non-financial injustice, the Adjudicator's view was that an award of £1,000 would be appropriate in the circumstances.

17. Mrs Y accepted the Adjudicator's Opinion. BTGL did not provide a response.

Ombudsman's decision

18. Mrs Y complained that BTGL failed to pay the correct contributions into NEST since September 2018. She also complained that in attempting to resolve the complaint, she suffered serious distress and inconvenience.
19. The available evidence shows that BTGL has failed to pay the correct contributions into NEST since September 2018, but employee contributions continued to be deducted from Mrs Y's salary from 19 September 2018 up to 3 May 2019. There were no contributions deducted at all from May 2019 onwards.
20. There is no doubt that maladministration has occurred and that BTGL has failed in its legal duties as an employer. BTGL could have resolved the situation when Mrs Y brought the matter to its attention as early as December 2018, but it actively decided not to do so. I have no doubt that BTGL's inaction, in addition to its responses since the initiation of this complaint, will have caused Mrs Y serious distress and inconvenience..

21. I uphold Mrs Y's complaint.

Directions

22. Within 28 days of the date of this Determination BTGL shall:

- pay Mrs Y £1,000 for the serious distress and inconvenience caused to her.
- produce a schedule showing the employee contributions deducted from Mrs Y's salary that have not been remitted to NEST for each month of her employment. The schedule should also include the corresponding employer contributions that were due.
- forward the schedule to Mrs Y for her to agree.
- within 14 days of Mrs Y's agreement to the schedule, it shall pay the missing employer and employee contributions to NEST.
- within 14 days of paying the missing contributions, it shall also establish with NEST whether the late payment of contributions has meant fewer units were purchased in Mrs Y's NEST account than would have been bought if the contributions had been paid on time;
- if a unit shortfall is identified, BTGL shall meet the cost of correcting it.

Anthony Arter

Pensions Ombudsman
3 March 2022