

Ombudsman's Determination

Applicant	Mr R
Scheme	NEST Pension Plan (the Plan)
Respondent	M.A.G Engineering Company Ltd (the Employer)

Outcome

1. Mr R's complaint is upheld and, to put matters right, the Employer shall pay any missing contributions in respect of his pension and make good any shortfall in units for any contributions that were paid late. In addition, the Employer shall pay Mr R £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

2. Mr R has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Plan on time.
3. Mr R has said that the late contributions amounted to £599.13.

Background information, including submissions from the parties

4. On 11 July 2019, the Employer stopped paying contributions into the Plan.
5. In January 2020, Mr R first became aware pension contributions were not being paid into the Plan.
6. On 16 January 2020, Mr R was suspended from his employment with the Employer.
7. On 24 January 2020, Mr R wrote a letter to the Employer and raised the issue of unpaid pension contributions.
8. On 10 February 2020, Mr R left his employment with the Employer.
9. On 3 March 2020, Mr R received his P45 and two payslips from the Employer. Mr R says the Week 45 payslip showed the year to date pension contributions. These were split into £345.58 employee pension contributions and £259.15 employer pension contributions.
10. On 4 March 2020, Mr R brought his complaint to The Pensions Ombudsman (**TPO**).

11. On 3 July 2020, TPO asked the Employer for further information on Mr R's complaint. This request was repeated on 24 July 2020 and 13 August 2020. None of these requests received a response.
12. On 26 January 2021, Mr R sent TPO an email which said the Employer had paid the outstanding contributions into the Plan. A breakdown of the payments made by the Employer are detailed in the Appendix.
13. On 22 June 2021, TPO asked the Employer for its formal response to Mr R's complaint. This request was repeated on 30 July 2021. Neither of these requests received a response.
14. On 28 July 2022, TPO wrote to the Employer to ask how any financial loss, associated with the late payment of contributions, would be rectified. This request was repeated on 5 September 2022. Neither of these requests received a response.

Caseworker's Opinion

15. Mr R'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 on time that were due to the Plan. 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, as the Employer had not responded to any of TPO's communications, he had to base his Opinion solely on the information provided by Mr R.
 - The Caseworker said that he had no reason to doubt the information provided by Mr R. So, in the Caseworker's Opinion, on the balance of probabilities, contributions were paid late. As a result of its maladministration, Mr R was not in the financial position he ought to be in.
 - In the Caseworker's view, Mr R had suffered significant distress and inconvenience due to the Employer's maladministration. The Caseworker was of the view that an award of £500 for non-financial injustice was appropriate in the circumstances.
16. 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

17. Mr R originally complained that the Employer had not paid all the contributions due to the Plan. During the course of TPO's investigation, the Employer paid the contributions into the Plan. However, it failed to notify TPO that it had done so.
18. The available evidence supports the view that pension contributions were paid a year after they were due. Although pension contributions were eventually paid, the Employer has not sought to address any financial loss that could have stemmed from the late payment of contributions. The Employer shall take remedial action to put this right.
19. Mr R 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 respond during my Office's investigation into Mr R's complaint.

Directions

20. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Mr R £1,000 for the serious distress and inconvenience he has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr R's pay in respect of the period of his employment. The Schedule shall also include the corresponding employer contributions that were due to the Plan. The Schedule shall also include the dates that any payments were made into the Plan; and
 - (iii) forward the Schedule to Mr R.
21. The Employer shall, within 14 days of receiving a request by Mr R, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.
22. Within 14 days of receiving confirmation from Mr R that he agrees with the information on the Schedule, the Employer shall:
 - (i) pay any missing contributions to the Plan;
 - (ii) establish with the Plan whether the late payment of contributions has meant that fewer units were purchased in Mr R's Plan account than he would have otherwise secured, had the contributions been paid on time; and
 - (iii) pay any reasonable administration fee should the Plan administrator charge a fee for carrying out the above calculation.

CAS-48077-K0C6

23. Within 14 days of receiving confirmation from NEST of any shortfall in Mr R's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter

Pensions Ombudsman
15 November 2022

Appendix

Date of Payment	Employee contributions	Employer contributions
12/01/2021	£7.76	£5.82
12/01/2021	£7.19	£5.39
12/01/2021	£7.76	£5.82
12/01/2021	£21.80	£16.35
12/01/2021	£7.76	£5.82
12/01/2021	£8.80	£6.60
12/01/2021	£10.36	£7.77
12/01/2021	£7.19	£5.39
12/01/2021	£18.16	£13.62
12/01/2021	£25.10	£18.82
12/01/2021	£7.76	£5.82
12/01/2021	£13.31	£9.98
12/01/2021	£7.19	£5.39
12/01/2021	£7.76	£5.82
12/01/2021	£7.19	£5.39
12/01/2021	£7.76	£5.82
12/01/2021	£7.76	£5.82
12/01/2021	£7.19	£5.39
12/01/2021	£7.76	£5.82
12/01/2021	£8.28	£6.31
12/01/2021	£17.82	£13.36
12/01/2021	£7.19	£5.39
12/01/2021	£7.76	£5.82
12/01/2021	£15.22	£11.41
13/01/2021	£27.52	£27.52

CAS-48077-K0C6

13/01/2021	£3.60	£2.70
13/01/2021	£16.08	£12.06
13/01/2021	£16.08	£12.06
13/01/2021	£7.76	£5.82
13/01/2021	£7.76	£5.82
15/01/2021	£7.76	£5.82