

Ombudsman's Determination

Applicant	Mr S
Scheme	NEST Pension Scheme (the Scheme)
Respondent	Bionica Systems Limited (the Employer)

Outcome

1. Mr 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 S £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

2. Mr S has complained that the Employer, despite deducting contributions from his pay, has failed to pay into the Scheme.
3. Mr S has said that the missing contributions amounted to £2,311.86.

Background information, including submissions from the parties

4. In June 2009, Mr S began his employment with the Employer.
5. Mr S has said that the Employer failed to pay pension contributions into the Scheme between August 2018 and July 2020.
6. On 9 April 2020, Mr S brought his complaint to The Pensions Ombudsman (**TPO**).
7. Mr S provided copies of the payslips that he held for the period from August 2018 to July 2020 which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These deductions amounted to £2,311.86. A breakdown of the deductions has been included in the Appendix. Mr S has said that none of these contributions have been paid into the Scheme.
8. On 17 September 2020, the Employer sent an email to Mr S and said that it never paid into NEST. The Employer said that it had appointed Aviva as the selected scheme administrator. However, the Employer did not provide any evidence to show that it had paid the contributions to Aviva.

9. On 22 August 2022, TPO asked the Employer for its response to Mr S' complaint.
10. On 5 September 2022, TPO chased the Employer again. But the Employer failed to respond by the deadline.

Caseworker's Opinion

11. Mr S'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 S.
 - The Caseworker said that she had no reason to doubt the information provided by Mr S. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr S' salary, that 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 S was not in the financial position he ought to be in.
 - In the Caseworker's view, Mr S had suffered severe distress and inconvenience due to the Employer's maladministration. The Caseworker was of the view that an award of £1,000 for non-financial injustice was appropriate in the circumstances.
12. 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.

Ombudsman's decision

13. Mr S has complained that the Employer has not paid all the contributions due to his Scheme account.
14. The available evidence supports the view that employee contributions were deducted but held back by the Employer and not paid into the Scheme. The Employer failed to rectify this and did not engage with either my Office or Mr S. It has also failed to respond to the Caseworker's Opinion.
15. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr S to suffer a financial loss. The Employer shall take remedial action to put this right.

16. Mr S 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 S's complaint.

Directions

17. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mr S £1,000 for the serious distress and inconvenience he has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr S'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 S.
18. The Employer shall, within 14 days of receiving a request by Mr S, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.
19. Within 14 days of receiving confirmation from Mr S 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 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.
20. Within 14 days of receiving confirmation from NEST of any shortfall in Mr S' units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter

Pensions Ombudsman

31 October 2022

Appendix

Date	Employee contributions	Employer contributions
August 2018	£37.93	£31.61
September 2018	£37.19	£31.61
October 2018	£37.19	£31.61
November 2018	£37.19	£31.61
December 2018	£37.93	£31.61
January 2019	£37.93	£31.61
February 2019	£37.93	£31.61
March 2019	£37.93	£31.61
April 2019	£62.86	£47.14
May 2019	£62.86	£47.14
June 2019	£62.86	£47.14
July 2019	£62.86	£47.14
August 2019	£62.86	£47.14
September 2019	£62.86	£47.14
October 2019	£62.86	£47.14
November 2019	£62.86	£47.14
December 2019	£62.86	£47.14
January 2020	£62.86	£47.14
February 2020	£62.86	£47.14
March 2020	£62.86	£47.14
April 2020	£62.54	£46.90
May 2020	£62.54	£46.90
June 2020	£62.54	£46.90
July 2020	£62.54	£46.90
Total	£1,305.70	£1,006.16