

Ombudsman's Determination

Applicant	Miss E
Scheme	NEST (the Plan)
Respondent	Paint Hale Ltd (the Employer)

Outcome

1. Miss E's complaint is upheld and, to put matters right, the Employer shall pay the missing contributions in respect of her pension and make good any shortfall in units. In addition, the Employer shall pay Miss E £1,000 for the serious distress and inconvenience it has caused her.

Complaint summary

2. Miss E has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Plan.
3. Miss E has said that the missing contributions amounted to £302.46.

Background information, including submissions from the parties

4. In March 2020, Miss E was employed by the Employer.
5. On 27 March 2020, Miss E was enrolled into the Plan.
6. In April 2020, Miss E first discovered contributions were not being paid into the Plan.
7. In August 2020, Miss E left her employment with the Employer.
8. On 21 October 2020, Miss E made a formal complaint to the Employer.
9. On 22 October 2020, Miss E submitted an application to The Pensions Ombudsman (**TPO**).
10. Miss E provided copies of the payslips that she held for the period from 31 March 2020 to 31 August 2020, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. These deductions amounted to £302.46. A breakdown of the deductions has been included in the Appendix.

11. On 12 October 2021, TPO asked the Employer for its formal response to Miss E's complaint. This request was repeated on 24 November 2021. Neither of these requests received a response.
12. On 2 August 2022, TPO wrote to the Employer to ask for more information in response to Miss E's complaint. This request was repeated on 16 August 2022. Again, the Employer failed to respond.

Caseworker's Opinion

13. Miss E'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 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 Miss E.
 - The Caseworker said that he had no reason to doubt the information provided by Miss E. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Miss E's salary, that had not been paid into the Plan. 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, Miss E was not in the financial position she ought to be in.
 - In the Caseworker's view, Miss E 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.
14. 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

15. Miss E has complained that the Employer has not paid all the contributions due to her Plan account.
16. The available evidence supports the view that employee contributions were deducted but held back by the Employer and not paid into the Plan. The Employer failed to rectify this and did not engage with either my Office or Miss E. It has also failed to respond to the Caseworker's Opinion.

17. The Employer's failure to pay employee and employer contributions into the Plan amounts to unjust enrichment and has caused Miss E to suffer a financial loss. The Employer shall take remedial action to put this right.
18. Miss E is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which she has suffered. This was exacerbated by its failure to respond during my Office's investigation into Miss E's complaint.

Directions

19. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Miss E £1,000 for the serious distress and inconvenience she has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Miss E's pay in respect of the period of her employment. The Schedule shall also include the corresponding employer contributions that were due to the Plan; and
 - (iii) forward the Schedule to Miss E.
20. The Employer shall, within 14 days of receiving a request by Miss E, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.
21. Within 14 days of receiving confirmation from Miss E that she agrees with the information on the Schedule, the Employer shall:
 - (i) pay the missing contributions to the Plan;
 - (ii) establish with the Plan whether the late payment of contributions has meant that fewer units were purchased in Miss E's Plan account than she 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.
22. Within 14 days of receiving confirmation from NEST of any shortfall in Miss E's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter

Pensions Ombudsman
2 November 2022

Appendix

Date	Employee contributions	Employer contributions
Date	Employee contributions	Employer contributions
31/03/2020	£56.01 (Paid)	£42.01 (Paid)
30/04/2020	£43.38	£32.53
31/05/2020	£43.38	£32.53
30/06/2020	£43.38 (Paid July 2020)	£32.53 (Paid July 2020)
31/07/2020	£41.28	£30.96
31/08/2020	£47.44	£36.58
Unpaid Contributions	£175.48	£126.98
Total Unpaid Contributions: £302.46		