

Ombudsman's Determination

Applicant	Miss T
Scheme	NEST Pension Scheme (the Scheme)
Respondent	John Abbott Flooring (the Employer)

Outcome

1. Miss T'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 T £1,000 for the serious distress and inconvenience it has caused her.

Complaint summary

2. Miss T has complained that the Employer, despite deducting contributions from her pay, has failed to pay the contributions into the Scheme.
3. Miss T has said that the missing contributions amounted to around £500.

Background information, including submissions from the parties

4. On 3 April 2017, Miss T began her employment with the Employer.
5. The Employer's staging date was April 2017. However, the Employer has acknowledged that it failed to enrol its employees at this time.
6. From the start of her employment until September 2017, no pension deductions were taken from Miss T's salary.
7. From October 2017 until January 2019, pension deductions and employer contributions were included on Miss T's payslips. The Employer has provided evidence of what the deductions were, these have been listed in the Appendix.
8. On 18 January 2019, Miss T left her employment with the Employer.
9. On February 2020, Miss T was enrolled into the Scheme.
10. On 15 September 2020, the Employer paid contributions totalling £77.04 into the Scheme. It said that this was for the period of October 2017 to December 2017.

11. On 23 September 2020, the Employer made a further contribution of £25.68. This was for January 2018.
12. On 5 February 2021, the Employer paid contributions totalling £99.56. This was for the period of February 2018 to April 2018.
13. On 21 September 2021, the Employer paid contributions for the period of May 2018 to June 2018. This payment totalled £124.40.
14. Miss T was unhappy that some of her pension contributions had not been paid into the Scheme. So, on 2 August 2021, she raised a complaint with The Pensions Ombudsman (**TPO**).
15. On 22 December 2021, the Employer responded to the complaint. It accepted that pension contributions were outstanding and said that it understood its obligation to pay.
16. On 3 May 2022, TPO contacted the Employer and asked whether there had been an update on the payment of the unpaid contributions. The Employer failed to respond by the deadline.
17. On 17 May 2022, TPO chased the Employer for a response. But the Employer failed to respond.

Caseworker's Opinion

18. Miss T'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 Employer had accepted that contributions had been deducted from Miss T'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. So, it was clear that there had been maladministration and Miss T was not in the financial position she ought to be in.
 - In the Caseworker's view, Miss T 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.
19. 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 for the level of award for maladministration.

Ombudsman's decision

20. Miss T has complained that the Employer has failed to pay contributions due to his Scheme account.
21. 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 Miss T. It has also failed to respond to the Caseworker's Opinion.
22. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Miss T to suffer a financial loss. The Employer shall take remedial action to put this right.
23. Miss T 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 T's complaint.

Directions

24. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Miss T £1,000 for the serious distress and inconvenience she has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Miss T's pay in respect of the period of her employment. The Schedule shall also include the corresponding employer contributions that were due to the Scheme; and
 - (iii) forward the Schedule to Miss T.
25. The Employer shall, within 14 days of receiving a request by Miss T, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.
26. Within 14 days of receiving confirmation from Miss T that she 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 Miss T's Scheme account than she 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.

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27. Within 14 days of receiving confirmation from NEST of any shortfall in Miss T's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter

Pensions Ombudsman
31 October 2022

Appendix

Pay Period	Employer Contributions	Employee Contributions	Date Payment Received (Amount)
Oct-17	14.27	11.41	15/09/2020 (£25.68)
Nov 17	14.27	11.41	15/09/2020 (£25.68)
Dec 17	14.27	11.41	15/09/2020 (£25.68)
Jan 18	14.27	11.41	23/09/2020 (£25.68)
Feb 18	14.27	11.41	05/02/2021 (£25.68)
Mar 18	14.27	11.41	05/02/2021 (£25.68)
Apr 18	14.27	33.93	05/02/2021 (£48.20)
May 18	28.27	33.93	21/09/2021 (£62.20)
Jun 18	28.27	33.93	21/09/2021 (£62.20)
Jul 18	28.27	33.93	
Aug 18	28.27	33.93	
Sep-18	28.27	33.93	
Oct-18	28.27	33.93	
Nov-18	28.27	33.93	
Dec-18	28.27	33.93	
Jan-19	14.71	17.65	
Total	£417.08	£391.48	£326.68