

Ombudsman's Determination

Applicant Mr N
Scheme NEST (**the Scheme**)
Respondent PJ Bournemouth Ltd (**the Employer**)

Outcome

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

Complaint summary

2. Mr N has complained that the Employer, despite deducting contributions from his pay, has failed to pay the contributions into the Scheme.
3. Mr N has said that the missing contributions amounted to £798.38.

Background information, including submissions from the parties

4. In September 2016, Mr N began his employment with the Employer.
5. In September 2020, Mr N was enrolled into the Scheme. The contributions for September 2020 together with the corresponding employer contributions were paid to the Scheme.
6. From October 2020, contributions continued to be deducted from Mr N's pay but were not paid into the Scheme. The Employer also failed to remit the employer contributions into the Scheme.

7. Mr N provided copies of the payslips that he held for the period from September 2020 to August 2022, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These deductions amounted to £798.38. A breakdown of the deductions has been included in the Appendix.
8. On 4 January 2021, Mr N raised a complaint with the Employer regarding the unpaid contributions.
9. On 5 January 2021, the Employer responded and said that it would forward Mr N's complaint to the relevant employee, but, no further response was sent to Mr N.
10. On 15 April 2021, Mr N chased the Employer for an update. The Employer failed to respond.
11. On 3 November 2021, Mr N brought his complaint to The Pensions Ombudsman (TPO).
12. In January 2022, the Employer stopped deducting contributions from Mr N's pay.
13. On 11 May 2022, TPO asked the Employer for its response to Mr N's complaint.
14. The next day, the Employer responded and stated that the payroll company, it used until January 2022, had not been sending schedules to the Scheme. The Employer said it had stopped using the payroll company in January 2022 and the schedules were being reviewed and that payments would be made. The Employer said an accountant was dealing with the payroll now but it was awaiting the payroll company to correct the problems saying that some employees may have been enrolled when they should not have been. The Employer said it is chasing up the payroll company but cannot give a date of when the issue will be rectified.
15. On 23 May 2022, TPO chased the Employer for a response. This was repeated on 22 June 2022.
16. On 5 July 2022, the Employer responded and apologised for the delay. It stated that it had been waiting for a response from the payroll company. The Employer said all the schedules have been completed and were due to be paid this month. The Employer offered £350 to Mr N for the investment loss.
17. On 8 July 2022, TPO asked the Employer to confirm what was being paid and which months the payment related to.
18. On 11 July 2022, the Employer responded and said that all the payments owed will be made and that the accountant is going back through from January 2020 to the current pay run to make the correct deductions. The Employer said the accountant will submit the schedules to the Scheme so payments will be made.
19. On 18 July 2022, TPO said that all outstanding contributions and investment loss should be paid within 28 days.

20. At the end of July 2022, Mr N saw from his payslip that the Employer had resumed deducting contributions from his pay.
21. On 13 August 2022, Mr N contacted TPO and said that no further contributions have been paid to his Scheme account.
22. On 15 August 2022, TPO asked NEST if there were any contributions waiting to be allocated to Mr N's Scheme account.
23. On 19 August 2022, NEST confirmed that it had not received any contributions since September 2020 for Mr N.
24. On 23 August 2022, TPO contacted the Employer for an update on the outstanding contributions.
25. The next day, the Employer responded stating that as far as it was aware the payment was being made within the time limit. The Employer gave an email address for the person responsible for making payments to the Scheme and the owner's email address. The Employer said it would forward TPO's email of 23 August 2022 to the owner and the person responsible for making payments to the Scheme. The Employer said that these two people were the people who would be able to provide an update.
26. On 5 September 2022, TPO asked for an update. But no response was received.
27. On 20 September 2022, TPO asked Mr N if any contributions had been paid to his Scheme account in the last month.
28. On 4 October 2022, Mr N advised TPO that there had not been any contributions paid into his Scheme account.

Caseworker's Opinion

29. Mr N'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 as to the facts of the case, including the dates and amounts of contributions involved. She said that, as the Employer has not provided a satisfactory response to any of TPO's communications, her Opinion was based solely on the information provided by Mr N.
 - The Caseworker said that she had no reason to doubt the payslips and pay information provided by Mr N. So, in the Caseworker's Opinion, it was likely that the contributions, that had been deducted from Mr N's salary, 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 N had suffered a financial loss.

- In the Caseworker's view, Mr N had experienced serious 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.
30. 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

31. Mr N has complained that the Employer has not paid all the contributions due to his Scheme account.
32. 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 in a meaningful way with either my Office or Mr N.
33. The Employer's failure to pay employee and employer contributions into to the Scheme amounts to unjust enrichment and has caused Mr N to suffer a financial loss. The Employer shall take remedial action to put this right.
34. Mr N is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which he has suffered. This was made worse by the Employer's failure to respond in a meaningful way to my Office's investigation into Mr N's complaint.

Directions

35. To put matters right, the Employer shall, within 14 days of the date of this Determination:
- (i) pay Mr N £1,000 for the serious distress and inconvenience he has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr N'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 N.
36. The Employer shall, within 14 days of receiving a request by Mr N, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.
37. Within 14 days of receiving confirmation from Mr N 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 administrator, NEST, whether the late payment of contributions has meant that fewer units were purchased in Mr N's Scheme account than he would have otherwise secured, had the contributions been paid on time; and

(iii) pay any reasonable administration fee should NEST charge a fee for carrying out the above calculation.

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

Anthony Arter

Pensions Ombudsman
25 November 2022



Appendix

Pay for	Employee contributions	Employer contributions	Paid	Employee contributions to date on payslip	Employer contributions to date on payslip
September 2020	£21.07	£15.80	Yes	£21.07	£15.80
October 2020	No payslip	No payslip	No	N/A	N/A
November 2020	No payslip	No payslip	No	N/A	N/A
December 2020	£9.92	£5.95	No	£65.00	£48.75
January 2021	£27.28	£16.37	No	£92.28	£69.21
February 2021	£18.97	£11.38	No	£111.25	£83.44
March 2021	£21.24	£12.74	No	£132.49	£99.37
April 2021	£36.67	£22.00	No	Not stated	Not stated
May 2021	28.97	£17.38	No	Not stated	Not stated
June 2021	£27.75	£16.65	No	Not stated	Not stated
July 2021	No payslip	No payslip	No	Not stated	Not stated
August 2021	No payslip	No payslip	No	Not stated	Not stated
September 2021	£47.75	£28.65	No	Not stated	Not stated
October 2021	£29.16	£17.49	No	Not stated	Not stated

November 2021	£29.25	£17.55	No	Not stated	Not stated
December 2021	£24.83	£14.90	No	Not stated	Not stated
January 2022	£0.00	£0.00	N/A	N/A	N/A
February 2022	£0.00	£0.00	N/A	N/A	N/A
March 2022	£0.00	£0.00	N/A	N/A	N/A
April 2022	£0.00	£0.00	N/A	N/A	N/A
May 2022	£0.00	£0.00	N/A	N/A	N/A
June 2022	£0.00	£0.00	N/A	N/A	N/A
July 2022	£54.48	£32.69	No	£142.48	N/A
August 2022	£28.37	£17.02	No	£170.85	£102.51
Total contributions due	£498.75	£336.50			
Total contributions paid	£21.07	£15.80			
Total contributions outstanding	<u>£477.68</u>	<u>£320.70</u>			