

## Ombudsman's Determination

Applicant	Mr R
Scheme	NEST <b>(the Scheme)</b>
Respondents	Training in Electrical Limited <b>(the Employer)</b>

## Outcome

1. Mr R'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 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 these into the Scheme.
3. Mr R has said that the missing contributions amount to £513.34.

## Background

4. Mr R left employment with the Employer in March 2021. Upon leaving, Mr R received letters from the Scheme administrator informing him that it was going to report the Employer to The Pensions Regulator as it had failed to pay contributions into the Scheme.
5. On 14 July 2021, Mr R brought his complaint to The Pensions Ombudsman (**TPO**).
6. Mr R provided copies of the payslips that he held for February and March 2021 which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These contributions amounted to £513.34. A breakdown of the contributions has been included in the Appendix.
7. On 25 April 2022, TPO wrote to the Employer to ask for more information in response to Mr R's complaint. This request was repeated on 23 August 2022.
8. On 29 September 2022 TPO issued its Opinion on the outcome of Mr R's complaint.

## **Caseworker's Opinion**

9. 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 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.
  - The Caseworker said that she had no reason to doubt the information provided by Mr R, so, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr R'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. 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 serious distress and inconvenience due to the Employer's maladministration. The Caseworker was of the opinion that an award of £1,000 for non-financial injustice was appropriate in the circumstances.
10. The Employer responded to the Caseworker's Opinion and said that it disagreed with the outcome. It said that no payment was due because Mr R's Scheme account had been closed.
11. The Caseworker explained that the Employer still has responsibility to ensure that all contributions are remitted to the Scheme. It cannot absolve itself of this duty just because the Scheme has now closed. The Employer should take steps to ensure that it pays the contributions and any associated financial loss into the Scheme.
12. On 25 November 2022, the Employer responded to TPO and said that after speaking with the Scheme Administrator, no payment was due to Mr R as his account had been closed.
13. On 6 February 2023 TPO wrote to the Scheme Administrator who confirmed that pensions contributions were not paid by the Employer in February and March 2021.
14. On 6 March 2023, TPO shared the Scheme Administrator's communication with the Employer and gave a breakdown of what was owed to Mr R. The Employer did not respond.
15. TPO wrote to the Employer again on 27 March 2023. TPO received a response from the Employer indicating it had telephoned the Scheme Administrator who had agreed that no contributions were outstanding for Mr R.
16. On 29 March 2023 TPO wrote to the Employer reiterating what was owed to Mr R and to confirm whether they agreed to paying the contributions. The Employer responded on 14 April 2023 and said it would pay the outstanding contributions. TPO

has not been informed that the outstanding contributions have since been paid to the Scheme.

17. The complaint was passed to me to consider. I agree with the Caseworker's Opinion.

### **Ombudsman's decision**

18. Mr R has complained that the Employer has not paid all the contributions due to his Scheme account.
19. I find that employee contributions were deducted but held back by the Employer and not paid into the Scheme. The Employer accepted that contributions were outstanding but failed to rectify this.
20. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr R to suffer a financial loss. The Employer shall take remedial action to put this right.
21. Mr R is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which he has suffered.

### **Directions**

22. 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;
23. Within 14 days 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 R'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.

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

**Dominic Harris / Anthony Arter CBE**

Pensions Ombudsman / Deputy Pensions Ombudsman

29 August 2023

## Appendix

<b>Date</b>	<b>Employee contributions</b>	<b>Employer contributions</b>
28 February 2021	£166.67	£110.00
28 March 2021	£126.67	£110.00