

Ombudsman's Determination

Applicant	Mr Y
Scheme	NEST Pension Scheme (the Scheme)
Respondent	John Abbott (Flooring Contractors) Ltd (the Employer)

Outcome

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

Complaint summary

2. Mr Y has complained that the Employer, despite deducting contributions from his pay, has failed to pay the contributions into the Scheme.
3. Mr Y has said that the missing contributions amounted to £3,017.61.

Background information, including submissions from the parties

4. In November 2002, Mr Y began his employment with the Employer.
5. On 9 May 2014, Mr Y received a memo from the Employer about auto-enrolment, giving him an opportunity to contact it before May 2014 if he wished to opt out. In October 2017, Mr Y says he was originally enrolled into a workplace pension with the People's Pension and the Employer began to make contributions.
6. Mr Y says employee contributions were not paid into this scheme between October 2017 and March 2020. Employer contributions during this period stopped after an initial payment of £26.35 was made in October 2017.
7. On 27 February 2020, Mr Y received a welcome letter from NEST. This was due to a new pensions scheme with NEST being set up by the employer.
8. On 23 March 2020, Mr Y received correspondence from the Employer informing him that errors had occurred with the pension scheme, which were due to system and human errors. The Employer stated it had started to address the situation. It said that

it had set up a new pension scheme with NEST and would ensure that all missing contributions would be brought up to date. It also said it had agreed a payment arrangement with The Pensions Regulator (**TPR**).

9. On 8 July 2021, Mr Y first raised the issue of the unpaid contributions with the Employer.
10. On 22 July 2021, the Employer responded and reiterated it had an arrangement in place with TPR and was making payments in accordance with this. Mr Y said he has spoken to TPR and there is no such arrangement in place, nor has he received any payments from any such arrangement.
11. On 26 August 2021, Mr Y checked his NEST account. He says this showed employee contributions of £1,914.45, employer contributions of £1,263.54 and tax relief of £478.62. Mr Y checked his payslips and said a shortfall of £3,017.61 remained unpaid to either of his pensions.
12. The shortfall consisted of both employee and employer contributions. These were a result of the unpaid contributions to the People's Pension scheme between October 2017 to March 2020, which remained unpaid.
13. Mr Y provided copies of the payslips that he held for the period from October 2017 to March 2020, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These deductions amounted to £3,017.61. A breakdown of the deductions has been included in the Appendix.
14. On 17 May 2022, The Pensions Ombudsman (**TPO**) wrote to the Employer to ask for more information in response to Mr Y's complaint. This request was repeated on 27 May 2022. Neither of these requests received a response.

Adjudicator's Opinion

15. Mr Y's complaint was considered by one of our Adjudicators 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 Adjudicator's findings are summarised below:-
 - The Adjudicator 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. 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 Mr Y.
 - The Adjudicator said that he had no reason to doubt the information provided by Mr Y. In the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Mr Y'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 Y was not in the financial position he ought to be in.

- In the Adjudicator's view, Mr Y had suffered significant distress and inconvenience due to the Employer's maladministration. The Adjudicator was of the view that an award of £500 for non-financial injustice was appropriate in the circumstances.
16. The Employer did not respond to the Adjudicator's Opinion and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion, except the level of award for maladministration.

Ombudsman's decision

17. Mr Y has complained that the Employer has not paid all the contributions due to his Scheme account.
18. The available evidence indicates 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 Y. It has also failed to respond to the Adjudicator's Opinion.
19. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr Y to suffer a financial loss. The Employer shall take remedial action to put this right.
20. Mr Y 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 Y's complaint.

Directions

21. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mr Y £1,000 for the significant distress and inconvenience he has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr Y'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 Y.
22. The Employer shall, within 14 days of receiving a request by Mr Y, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.
23. Within 14 days of receiving confirmation from Mr Y that he agrees with the information on the Schedule, the Employer shall:

- (i) pay the missing contributions to the Scheme;
 - (ii) establish with NEST whether the late payment of contributions has meant that fewer units were purchased in Mr Y'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.
24. Within 21 days of receiving confirmation from NEST of any shortfall in Mr Y's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter

Pensions Ombudsman
28 September 2022

Appendix

Date	Employee contributions	Employer contributions
31/10/2017	£26.35	£26.35 (Paid)
28/11/2017	£21.08	£26.35
22/12/2017	£21.08	£26.35
30/01/2018	£21.08	£26.35
27/02/2018	£21.08	£26.35
04/04/2018	£21.08	£26.35
01/05/2018	£62.93	£26.22
30/05/2018	£66.39	£55.32
03/07/2018	£62.93	£52.44
31/07/2018	£62.93	£52.44
04/09/2018	£62.93	£52.44
02/10/2018	£62.93	£52.44
30/10/2018	£62.93	£52.44
04/12/2018	£62.93	£52.44
24/12/2018	£62.93	£52.44
29/01/2019	£62.93	£52.44
26/02/2019	£62.93	£52.44
02/04/2019	£62.93	£52.44
30/04/2019	£62.71	£52.26
04/06/2019	£62.71	£52.26
02/07/2019	£66.17	£55.14
30/07/2019	£64.66	£53.88
03/09/2019	£62.71	£52.26
01/10/2019	£62.71	£52.26
25/10/2019	£62.71	£52.26

29/11/2019	£62.71	£52.26
20/12/2019	£62.71	£52.26
03/02/2020	£62.71	£52.26
02/03/2020	£62.71	£52.26
31/03/2020	£62.71	£52.26
Total unpaid employee contributions	<u>£1648.30</u>	
Total unpaid employer contributions		<u>£1369.31</u>