

Ombudsman's Determination

Applicant	Mr D
Scheme	NEST (the Scheme)
Respondent	NRS Northern Limited (the Employer)

Outcome

1. Mr D's complaint is upheld and, to put matters right, the Employer shall pay £3,613.48 into the Scheme. The Employer shall also ensure that Mr D is not financially disadvantaged by its maladministration. So, it shall arrange for any investment loss to be calculated and paid into the Scheme.
2. In addition, the Employer shall pay Mr D £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

3. Mr D has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points.
5. In March 2019, Mr D began his employment with the Employer.
6. From January 2020 to October 2020 and March 2021 to July 2021, the Employer failed to pay pension contributions into the Scheme.
7. On 13 December 2021, Mr D brought his complaint to The Pensions Ombudsman (**TPO**).
8. Mr D provided copies of some of the payslips that he held for the period from September 2019 and August 2021, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. A breakdown of the deductions has been included in the Appendix.
9. On 14 June 2023, the Employer accepted that there were pension contributions outstanding and offered to make a lump sum payment to the Scheme. It agreed to

make a payment of £3,613.48 to clear the outstanding pension contributions. TPO wrote to the Employer and said that the payment should be paid directly to the Scheme, however the Employer failed to make payment.

10. Between 19 January 2024 and 5 February 2024, TPO contacted the Employer via telephone and email to ask whether it had made the payment to Mr D.
11. On 15 February 2024, the Employer responded and said that it had been served notice to leave its premises.
12. TPO sent follow up emails on 15 and 29 February 2024 and asked the Employer when the outstanding contributions would be paid to the Scheme. TPO also asked that the Employer provided all relevant payslips. The Employer did not respond to these requests.

Caseworker's Opinion

13. Mr D'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 the Employer had accepted that £3,613.48 of the contributions had not been paid.
 - As the Employer accepted contributions had been deducted from Mr D's salary but had not been paid into the Scheme, the Caseworker was of the view that there had been maladministration. Consequently, Mr D was not in the financial position he ought to be in.
 - In the Caseworker's view, Mr D 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.
14. In response to the Caseworker's Opinion, the Employer informed TPO it was in the process of liquidating the company, so it could not take the steps required to put the matter right. The Caseworker reviewed Companies House and could not find any evidence of the liquidation.
15. The complaint was then passed to me to consider. I agree with the Caseworker's Opinion.

Ombudsman's decision

16. Mr D has complained that the Employer has not paid all the contributions due to his Scheme account.
17. I find 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 fully with TPO.
18. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr D to suffer a financial loss. The Employer shall take remedial action to put this right.
19. Mr D 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 engage fully with TPO's investigation into Mr D's complaint.

Directions

20. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Mr D £1,000 for the serious distress and inconvenience he has experienced;
 - (ii) pay £3,613.48 into Mr D's Scheme account. This figure represents the amount the Employer has agreed was deducted from Mr D's pay, but not paid into the Scheme account. It also includes the employer contributions for the relevant period which should also have been paid but have not been paid to date;
 - (iii) establish with the Scheme administrator whether the late payment of contributions has meant that fewer units were purchased in Mr D's Scheme account than he would have otherwise secured, had the contributions been paid on time; and
 - (iv) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.
21. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Mr D's units under (iii) above, pay the cost of purchasing any additional units required to make up the shortfall into Mr D's Scheme account.

Anthony Arter CBE

Deputy Pensions Ombudsman

29 April 2024

Appendix

Date	Employee contributions	Employer contributions
September 2019 (Paid to NEST already)	£146.20	£109.65
31 October 2019 (Paid to NEST already)	£146.20	£109.65
November 2019 (Paid to NEST already)	£146.20	£109.65
December 2019 (Paid to NEST already)	£146.20	£109.65
31 March 2020	£146.20	
31 October 2020	£145.88	
30 November 2020 (Paid to NEST already)	£145.88	£109.41
31 December 2020 (Paid to NEST already)	£145.88	£109.41
January 2021(Paid to NEST already)	£145.88	£109.41
February 2021 (Paid to NEST already)	£145.88	£109.41
31 March 2021	£145.88	
August 2021 (Paid to NEST already)	£440.28	£330.21