

CAS-82123-F4Y1

Ombudsman's Determination

Applicant	Mr N
Scheme	NEST (the Scheme)
Respondent	Town Wall Tavern 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 them into the Scheme.
3. Mr N has said that the missing contributions amounted to £2,093.95.

Background information, including submissions from the parties

4. In September 2019, Mr N was employed by the Employer and enrolled into the Scheme. He has said that pension contributions were either paid late into the Scheme or not paid at all.
5. On 10 March 2020, the contributions for September 2019 and October 2019 were paid into the Scheme.
6. On 16 October 2020, the contributions for November 2019 were paid. This was the last payment the Employer made into the Scheme.
7. In November 2020, the Scheme reported the Employer to The Pensions Regulator (TPR).
8. In July 2021, Mr N left his employment with the Employer.
9. On 24 September 2021, Mr N raised a complaint with the Employer regarding the unpaid pension contributions. No response was received.

10. On 9 December 2021, Mr N brought his complaint to The Pensions Ombudsman (**TPO**).
11. Mr N provided copies of the payslips that he held for the period from 1 September 2019 to 30 June 2021, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These deductions amounted to £1,268.31. A breakdown of the deductions and the associated employer contributions has been included in the Appendix.
12. On 26 September 2022, TPO asked the Employer for its response to Mr N's complaint. This request was repeated on 10 October 2022. However, the Employer failed to respond.

Caseworker's Opinion

13. 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 on the facts of the complaint, including the dates and amounts of contributions involved. She said that, as the Employer had not responded to any of TPO's communications, she had to base her Opinion solely on the information provided by Mr N.
 - The Caseworker said that she had no reason to doubt the information provided by Mr N. So, in the Caseworker's opinion, on the balance of probabilities, contributions had been deducted from Mr N'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. The Caseworker also noted that it appeared that some of the contributions were paid late. As a result of its maladministration, Mr N was not in the financial position he ought to be in.
 - In the Caseworker's view, Mr N 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. 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

15. Mr N has complained that the Employer has not paid all the contributions due to his Scheme account.

16. 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 with either my Office or Mr N. It has also failed to respond to the Caseworker's Opinion.
17. The Employer's failure to pay employee and employer contributions into 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.
18. 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 exacerbated by the Employer's failure to respond during my Office's investigation into Mr N's complaint.

Directions

19. To put matters right, the Employer shall, within 28 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.
20. 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.
21. 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 into 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.

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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
19 December 2022

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Appendix

Pay for	Employee contributions	Employer contributions	Date due to be paid to the Scheme	Date paid
September 2019	£58.21	£43.66	10 October 2019	10 March 2020
October 2019	£76.11	£57.08	10 November 2019	10 March 2020
November 2019	£76.11	£57.08	10 December 2019	16 October 2020
December 2019	No payslip held	No payslip held	10 January 2020	Not paid
January 2020	No payslip held	No payslip held	10 February 2020	Not paid
February 2020	No payslip held	No payslip held	10 March 2020	Not paid
March 2020	£52.44	£39.33	10 April 2020	Not paid
Total contributions payable to date on March 2020 payslip	£420.95	£315.70		Not paid
April 2020	£44.17	£33.12	10 May 2020	Not paid
May 2020	£44.17	£33.12	10 June 2020	Not paid
June 2020	£44.17	£33.12	10 July 2020	Not paid

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July 2020	£44.17	£33.12	10 August 2020	Not paid
August 2020	£44.17	£33.12	10 September 2020	Not paid
September 2020	£85.86	£51.52	10 October 2020	Not paid
October 2020	£86.15	£51.69	10 November 2020	Not paid
November 2020	£81.21	£48.73	10 December 2020	Not paid
December 2020	£81.21	£48.73	10 January 2021	Not paid
January 2021	£81.21	£48.73	10 February 2021	Not paid
February 2021	£81.21	£48.73	10 March 2021	Not paid
March 2021	£81.21	£48.73	10 April 2021	Not paid
April 2021	£81.21	£48.73	10 May 2021	Not paid
May 2021	£86.78	£52.07	10 June 2021	Not paid
June 2021	£90.89	£54.53	10 July 2021	Not paid
Total contributions payable to the Scheme	<u>£1,478.74</u>	<u>£983.46</u>		
Contributions paid to the Scheme	(£210.43)	(£157.82)		Paid
Total contributions outstanding	<u>£1,268.31</u>	<u>£825.64</u>		Not paid