

Ombudsman's Determination

Applicant	Miss L
Scheme	NEST (the Scheme)
Respondents	Beckhall Properties Limited (the Employer)

Outcome

1. Miss L's complaint is upheld and, to put matters right, the Employer shall pay the missing contributions in respect of her pension and make good any shortfall in units. In addition, the Employer shall pay Miss L £500 for the significant distress and inconvenience it has caused her.

Complaint summary

2. Miss L complained that the Employer, despite deducting contributions from her pay, has failed to pay the full amount into the Scheme.
3. Miss L said that she has been unable to quantify what contributions are outstanding because the Employer has not provided all the relevant payslips.

Background information, including submissions from the parties

4. Miss L said that she started working for the Employer around 2006.
5. In May 2019, the Employer stopped paying pension contributions into the Scheme.
6. Miss L told The Pensions Ombudsman (**TPO**) that the Employer has been unable to provide most of her payslips, so she is unable to ascertain the amount of contributions that are outstanding. Miss L provided a copy of her January 2022 payslip. The payslip showed that the employee contribution deducted amounted to £40.24. The Employer's contribution is not recorded on this payslip. Miss L has said that this is the only payslip she has as her Employer has failed to provide regular payslips.
7. Miss L has also provided TPO with screenshots of her NEST dashboard which shows that no contributions were paid into the Scheme after May 2019. despite deductions being taken out of Miss L's salary.

8. On 27 June 2022, TPO wrote to the Employer to ask for more information in response to Miss L's complaint. After not receiving a response, the request was resent on 19 August 2022.
9. On 24 August 2022, the Employer responded and said that errors had been made, and the contributions have now been paid.
10. On 7 September 2022, Miss L wrote to TPO and said that, although the contributions had been paid, the Employer had failed to pay the correct level of contributions. She said that it only paid a contribution of 4% total for both employee and employer contributions, when the minimum contributions were a 3% employer contribution and a 5% employee contribution. She also said that the Employer did not make good any potential investment loss that was caused by the late payments.
11. On 8 September 2022, TPO wrote to the Employer and asked for copies of all Miss L's payslips to determine what level of contributions had been deducted. TPO also asked what the Employer was intending to do to account for any potential financial loss. The Employer did not respond by the deadline.

Adjudicator's Opinion

12. Miss L'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 on time. The Adjudicator's findings are summarised below:-
 - The Adjudicator said that TPO's normal approach in cases such as this was to seek agreement from all parties on the facts of the complaint, including the dates and amounts of contributions involved. She said that the Employer had not responded to TPO's communications to address the points raised by Miss L on the shortfall in her pension contributions. Due to this, she had to base her Opinion solely on the information provided by Miss L.
 - The Adjudicator said that she had no reason to doubt the information provided by Miss L. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Miss L's salary but had not been paid into the Scheme correctly. In addition, the Employer had not correctly paid any of the Employer contributions that were due over the same period. As a result of its maladministration, Miss L was not in the financial position she ought to be in.
 - In the Adjudicator's view, Miss L had suffered significant distress and inconvenience due to the Employer's maladministration. The Adjudicator was of the opinion that an award of £500 for non-financial injustice was appropriate.
13. The Employer did not respond or accept the Adjudicator's Opinion and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion.

Ombudsman's decision

14. Miss L complained that the Employer has not paid all the contributions due to her account in the Scheme.
15. I find that pension contributions were deducted but held back by the Employer and not paid into the Scheme as they should have been. Although the Employer has made a payment to make up the shortfall, it is unclear whether the correct amount has been paid. Miss L has said that there is still a shortfall as the Employer failed to pay the correct level of contributions. She said that it only paid a total contribution of 4%, when the total minimum contributions should have been 8%. She also said that the Employer did not make good any potential investment loss that was caused by the late payments.
16. The Employer did not actively engage with TPO during the investigations and has failed to provide evidence that it has now paid the minimum level of contributions to the Scheme, which is currently set at 8%, to rectify its error. It also failed to provide a response to the Adjudicator's Opinion.
17. The Employer's failure to pay pension contributions into the Scheme correctly amounts to unjust enrichment and has caused Miss L to suffer financial loss. The Employer shall take remedial action to put this right.
18. Miss L is entitled to a distress and inconvenience award in respect of the significant ongoing non-financial injustice which she has suffered. This was exacerbated by the Employer's failure to provide a substantive response during TPO's investigation into Miss L's complaint.
19. I uphold Miss L's complaint.

Directions

20. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Miss L £500 for the significant distress and inconvenience she has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Miss L's pay in respect of the period of her employment. The Schedule shall also include the corresponding Employer contributions that were due to the Scheme; and
 - (iii) forward the Schedule to Miss L.
21. The Employer shall, within 14 days of receiving a request by Miss L, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.

22. Within 14 days of receiving confirmation from Miss L that she agrees with the information on the Schedule, the Employer shall:
- (i) pay the missing contributions at the correct level to the Scheme;
 - (ii) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Miss L's account in the Scheme than she 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.
23. Within 14 days of receiving confirmation from NEST of any shortfall in Miss L's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman
21 November 2023