

CAS-86135-X4W1

Ombudsman's Determination

Applicant	Mrs T
Scheme	NEST (the Scheme)
Respondent	Martin Support Services Ltd (the Employer)

Outcome

1. Mrs T'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 Mrs T £1,000 for the serious distress and inconvenience it has caused her.

Complaint summary

2. Mrs T has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
3. Mrs T has said that the missing contributions amounted to £1,471.91.

Background information, including submissions from the parties

4. On 17 January 2017, Mrs T was enrolled into the Scheme.
5. Between 17 January 2017 and 31 December 2021, the Employer deducted contributions from Mrs T's pay.
6. From April 2020, the Employer failed to pay pension contributions into the Scheme.
7. In May 2020, Mrs T noticed that contributions were not being paid to the Scheme and asked the Employer to explain this, but the Employer failed to respond.
8. On 26 March 2021, the Employer paid the contributions for April 2020 and May 2020 to the Scheme.
9. In August 2021, Mrs T went on paid maternity leave.
10. On 20 January 2022, Mrs T contacted the Employer regarding the outstanding contributions, again, the Employer failed to respond.

11. On 27 March 2022, Mrs T brought her complaint to The Pensions Ombudsman (TPO).
12. Mrs T provided copies of some of the payslips that she held for the period from June 2020 to December 2021, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. These deductions amounted to £754.84. A breakdown of the deductions has been included in the Appendix.
13. In May 2022, Mrs T left the employment of the Employer.
14. On 13 September 2022, Mrs T contacted the Employer and asked for copies of her payslips for April 2020 to July 2020. She also asked why her contributions ceased to be deducted from her pay from 1 January 2022.
15. On 14 September 2022, the Employer responded stating, "I will need to get these from our archiving, however, I'm extremely busy at the moment out on shift. I will search for them at the earliest convenience. Regarding the pension whilst you were on maternity, your SMP was not enough to be taking pension payments out of."
16. On 11 October 2022, TPO contacted the Employer to chase copies of Mrs T's payslips.
17. On 14 November 2022, TPO asked the Employer for its response to Mrs T's complaint. However, the Employer failed to respond by the deadline.
18. On 28 November 2022, TPO chased the Employer for its response.
19. On 11 December 2022, the Employer responded and stated, "if we could set up some sort of payment with Mrs T that would be great, I do however question some of the dates and payments as Mrs T opted out of pensions in 2021, I'm trying to get the info now from the payroll software to confirm these dates." The Employer did not provide any evidence to show that Mrs T had opted out of the Scheme.
20. On 12 December 2022, TPO asked Mrs T if she had opted out of the Scheme. She said that she had not..
21. Also on 12 December 2022, TPO responded to the Employer and asked what the suggested payment plan would look like. It set a deadline of 19 December 2022 for a response. However, the Employer failed to respond.

Caseworker's Opinion

22. Mrs T'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 fully responded to any of TPO's communications, she had to base her Opinion solely on the information provided by Mrs T.

- The Caseworker said that she had no reason to doubt the information provided by Mrs T. So, in the Caseworker's opinion, on the balance of probabilities, contributions had been deducted from Mrs T'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, Mrs T was not in the financial position she ought to be in.
- In the Caseworker's view, Mrs T 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.

23. 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

24. Mrs T has complained that the Employer has not paid all the contributions due to her Scheme account.
25. Although the Employer has argued that Mrs T opted out of the Scheme, it has failed to provide evidence of this. Furthermore, from the evidence I have seen, employee contributions continued to be deducted but held back by the Employer and not paid into the Scheme. The Employer failed to rectify this and did not fully engage with either my Office or Mrs T. It has also failed to respond to the Caseworker's Opinion.
26. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mrs T to suffer a financial loss. The Employer shall take remedial action to put this right.
27. Mrs T is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which she has suffered. This was exacerbated by its failure to respond during my Office's investigation into Mrs T's complaint.

Directions

28. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mrs T £1,000 for the serious distress and inconvenience she has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mrs T'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 Mrs T.

29. The Employer shall, within 14 days of receiving a request by Mrs T, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.

30. Within 14 days of receiving confirmation from Mrs T that she 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 Mrs T's Scheme account than she 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.

Anthony Arter CBE

Deputy Pensions Ombudsman
30 January 2023

Appendix

Pay for	Employee contributions	Employer contributions
1 June 2020 to 30 June 2020	£47.46	£35.60
1 July 2020 to 31 July 2020	£49.01	£36.76
1 August 2020 to 31 August 2020	£47.41	£35.56
1 September 2020 to 30 September 2020	£47.48	£35.61
1 October 2020 to 31 October 2020	£0.00	£36.76
1 November 2020 to 30 November 2020	£48.21	£36.16
1 December 2020 to 31 December 2020	£50.88	£38.16
1 January 2021 to 31 January 2021	£52.48	£39.36
1 February 2021 to 28 February 2021	£52.88	£39.66
1 March 2021 to 31 March 2021	£50.14	£37.61
1 April 2021 to 30 April 2021	£52.48	£39.36
1 May 2021 to 31 May 2021	£52.48	£39.36
1 June 2021 to 30 June 2021	£52.88	£39.66
1 July 2021 to 31 July 2021	£50.54	£37.91
1 August 2021 to 31 August 2021	£44.76	£37.91
1 September 2021 to 30 September 2021	£39.11	£37.91
1 October 2021 to 31 October 2021	£3.52	£37.91
1 November 2021 to 30 November 2021	£9.60	£37.91
1 December 2021 to 31 December 2021	£3.52	£37.91
1 January 2022 to 31 January 2022	£0.00	£0.00
1 February 2022 to 28 February 2022	£0.00	£0.00
1 March 2022 to 31 March 2022	£0.00	£0.00
1 April 2022 to 30 April 2022	£0.00	£0.00

CAS-86135-X4W1

1 May 2022 to 31 May 2022	£0.00	£0.00
---------------------------	-------	-------