

Ombudsman's Determination

Applicant	Mr O
Scheme	NEST (the Scheme)
Respondent	Prasinus Limited (the Employer)

Outcome

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

Complaint summary

2. Mr O has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme.
3. Mr O has said that the missing contributions amounted to £1,289.99.

Background information, including submissions from the parties

4. In October 2020, Mr O began his employment with the Employer.
5. On 15 February 2021, NEST enrolled Mr O into the Scheme.
6. In April 2021, Mr O complained to the Employer that his contributions had not been paid into the Scheme.
7. On 6 April 2021, Mr O emailed the Employer and asked for an update.
8. On 20 July 2021, Mr O said he called the Employer about the missing contributions.
9. On 15 December 2021, the Employer emailed Mr O. It said it had paused payments to NEST during the recent turbulence to maximise money for wages. The Employer said that it had made an arrangement with NEST to pay an initial payment soon and to clear the balance within the next three to six months. It said it was happy to send Mr O a note outlining its arrangement with NEST.

10. On 16 December 2021, Mr O asked the Employer for confirmation of its arrangement with NEST.
11. In December 2021, Mr O left his employment with the Employer.
12. On 19 April 2022, the Employer emailed Mr O to tell him that it was clearing the balance of the outstanding contributions over the rest of the year.
13. On 23 April 2022, Mr O made an application to The Pensions Ombudsman (**TPO**). He provided a payslip which showed that pension contributions had been deducted from his pay. A summary of the deduction is included in the Appendix.
14. On 20 July 2022, TPO asked the Employer for its response to the complaint.
15. On 2 August 2022, the Employer emailed TPO to say he was the only employee in the company and he had been incapacitated, but he would look to resolve the situation.
16. On 23 August 2022, TPO repeated its request to the Employer for its response to the complaint. This was repeated on 30 August 2022 and 14 November 2022. None of these requests received a response.

Caseworker's Opinion

17. Mr O'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 said 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. He said that, as the Employer had not responded fully to any of TPO's communications, he had to base his Opinion solely on the information provided by Mr O.
 - The Caseworker said that he had no reason to doubt the information provided by Mr O. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr O'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 O was not in the financial position he ought to be in.
 - In the Caseworker's view, Mr O had suffered serious distress and inconvenience due to the Employer's maladministration. The Caseworker was of the view that an award of £1,000 for non-financial injustice was appropriate in the circumstances.
18. 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

19. Mr O has complained that the Employer has not paid all the contributions due to his Scheme account.
20. The available evidence supports the view 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 either my Office or Mr O. It has also failed to respond to the Caseworker's Opinion.
21. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr O to suffer a financial loss. The Employer shall take remedial action to put this right.
22. Mr O is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which he has suffered. In my view, Mr O's distress and inconvenience was exacerbated by the Employer's failure to fully respond during my Office's investigation into Mr O's complaint, which elongated the complaint for Mr O.

Directions

23. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Mr O £1,000 for the serious distress and inconvenience he has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr O'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 O.
24. The Employer shall, within 14 days of receiving a request by Mr O, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.
25. Within 14 days of receiving confirmation from Mr O that he agrees with the information on the Schedule, the Employer shall:
 - (i) pay the missing contributions to the Scheme;
 - (ii) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Mr O's Scheme account than he 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.

CAS-88396-V6M9

26. Within 14 days of receiving confirmation from NEST of any shortfall in Mr O's units, pay the cost of purchasing any additional units required to make up the shortfall.

Dominic Harris

Pensions Ombudsman
9 February 2023

Appendix

Date	Employee contributions	Employer contributions
November 2021	£83.34	£ Not shown on payslip