

Ombudsman's Determination

Applicant	Ms N
Scheme	NEST (the Scheme)
Respondent	Hiring Heroes Limited (the Employer)

Outcome

1. Ms N's complaint is upheld and, to put matters right, the Employer shall make good any shortfall in units due to its late pension payments to the Scheme.
2. In addition, the Employer shall pay Ms N £500 for the significant distress and inconvenience it has caused her.

Complaint summary

3. Ms N has complained that the Employer, despite deducting contributions from her pay, has failed to pay these into the Scheme on time.
4. In September 2023, the Employer paid all the outstanding pension contributions. However, the Employer has not addressed the possibility that Ms N has suffered financial loss due to late payment of contributions.

Background information, including submissions from the parties

5. The sequence of events is not in dispute, so I have only set out the salient points.
6. In June 2021, Ms N began her employment with the Employer.
7. Ms N has said that between June 2021 to June 2022, the Employer failed to pay pension contributions into the Scheme.
8. In August 2022, Ms N brought her complaint to the Pensions Ombudsman (**TPO**).
9. Ms N provided copies of the payslips that she held for the period from June 2021 to June 2022, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. These deductions amounted to £1,846.91.

10. On 15 May 2023, TPO asked the Employer for its formal response to Ms N's complaint.
11. On 16 May 2023, the Employer responded and sent a statement that it said showed it had paid the outstanding contributions.
12. On 22 May 2023, TPO responded and said that the Employer needed to provide evidence to show that all contributions owed to Ms N had been paid into the Scheme. This request was repeated on 17 July 2023 and 4 August 2023.
13. On 4 August 2023, the Employer responded and asked what other evidence it could provide to show that all of Ms N's contributions had been paid.
14. On 24 August 2023, TPO responded and said that the evidence needed to include the payment amounts, where the payment was made and who the payment applied to.
15. On 16 October 2023, the Employer said that important evidence that it provided TPO on 24 August 2023 had been disregarded. It provided a copy of the email it had sent on 24 August 2023 and confirmed that all payments had been made.
16. On 18 October 2023, Ms N confirmed to TPO that her Scheme account showed two entries from the Employer dated 11 September 2023. These two payments were for the full amount in dispute (£1,154.32 for employee pension contributions and £692.59 for employer pension contributions) covering the period for June 2021 to June 2022.
17. On 24 October 2023, TPO explained to the Employer that there was no record of receiving evidence on 24 August 2023 to show that all pension contributions had been paid. TPO asked the Employer whether it had contacted the Scheme administrator to establish whether there was any investment loss.
18. No response was received from the Employer about this.

Caseworker's Opinion

19. Ms N's complaint was considered by one of our Caseworkers who concluded that further action was required by the Employer as it had paid the contributions late 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.
 - The Caseworker said that it was accepted that all the pension contributions had been paid into the Scheme in September 2023. However, he was of the view that there was maladministration by the Employer due to contributions being deducted from Ms N's salary and not being paid into the Scheme on time. He said that in addition, the Employer contributions that were due over the same period were also paid late.

- As a result of its maladministration, the Caseworker said that Ms N may not be in the financial position she ought to be in. He said that the Employer should establish this by contacting the Scheme administrator and agree to purchase any additional units which would put Ms N back in the correct financial position.
 - In the Caseworker's view, Ms N had suffered significant distress and inconvenience due to the Employer's maladministration. The Caseworker was of the opinion that an award of £500 for non-financial injustice was appropriate in the circumstances.
20. The Employer responded to the Caseworker's Opinion, it said that Ms N needed to prove what date the Scheme processed the payments it made to her Scheme account and when the Scheme had received this from the Employer. In addition, the Employer said it would not pay any compensation for the distress suffered by Ms N as she had received all the money, she was due. The Employer was of the view that the complaint should not be upheld.
21. The Caseworker replied to the Employer. He reiterated that the unpaid contributions were for the period of June 2021 to June 2022. He shared a screenshot provided by Ms N that showed the Scheme processed payments from the Employer on 11 September 2023.
22. The complaint was passed to me to consider. I agree with the Caseworker's Opinion.

Ombudsman's decision

23. Ms N has complained that the Employer has not paid all the contributions due to her Scheme account on time.
24. I find that employee contributions were deducted but held back by the Employer and not paid into the Scheme for a significant period of time.
25. The Employer's failure to pay employee and employer contributions into the Scheme on time, amounts to unjust enrichment and may have caused Ms N to suffer a financial loss. The Employer shall take remedial action to establish if the late payment of contributions has meant that fewer units were purchased in the Scheme.
26. Ms N is entitled to a distress and inconvenience award in respect of the significant ongoing non-financial injustice which she has suffered. In my view, Ms N's distress and inconvenience was exacerbated by the Employer's failure to fully engage with Ms N and TPO during the complaints process.

Directions

27. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Ms N £500 for the significant distress and inconvenience she has experienced;

(ii) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Ms N's Scheme account 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.

28. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Ms N's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman

12 July 2024

Date	Employee contributions	Employer contributions
June 2022	£101.44	£60.86
May 2022	£90.67	£54.40
April 2022	£110.68	£66.41
March 2022	£90.67	£54.40
February 2022	£90.67	£54.40
January 2022	£119.70	£71.82
December 2021	£89.83	£53.90
November 2021	£82.33	£49.40
October 2021	£82.33	£49.40
September 2021	£74.00	£44.40
August 2021	£74.00	£44.40
July 2021	£74.00	£44.40
June 2021	£74.00	£44.40
Total unpaid employee contributions	<u>£0.00</u>	
Total unpaid employer contributions		<u>£0.00</u>