

Ombudsman's Determination

Applicant	Mr S
Scheme	NEST (the Scheme)
Respondent	DPS Pipework Ltd (the Employer)

Outcome

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

Complaint summary

2. Mr S has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme.
3. Mr S has said that the Employer failed to pay all pension contributions between April 2020 to April 2021. A payslip for week ending 28 March 2021 showed the employee and employer pension year to date amounted to £2,132.84.

Background information, including submissions from the parties

4. In April 2018, the Employer enrolled Mr S into the Scheme and began paying weekly pension contributions.
5. Between April 2020 and April 2021, the Employer failed to pay pension contributions to the Scheme.
6. On 4 January 2023, Mr S brought his complaint to The Pensions Ombudsman (**TPO**).
7. Mr S provided copies of the payslips that he held for weeks ending 29 March 2020, 12 April 2020, 19 April 2020, 26 April 2020, 3 May 2020 and 28 March 2021. The payslips detailed the weekly pension deductions and the year to date employee and employer's contributions. A breakdown of the deductions has been included in the Appendix.

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8. On 31 May 2023, TPO wrote to the Employer's registered address to ask for more information in response to Mr S' complaint. This request was repeated on 4 July 2023. Neither of the requests received a response.
9. On 3 August 2023, Mr S told TPO that the Employer had ceased trading. He said that the Director of the Employer had retired and the business was no longer trading. He gave TPO his Employer's email address, but TPO's attempt to contact it was unsuccessful. Mr S also provided his Employer's address which differed to the registered office on Companies House. TPO wrote to the address provided by Mr S, via recorded delivery, on the same day. Again, no response was received.
10. Mr S did not have any further contact information for the Employer. However, the Employer is still showing as active on Companies House and, in light of this, TPO continued its investigation into the complaint.

Caseworker's Opinion

11. Mr 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 S.
 - The Caseworker said that she had no reason to doubt the information provided by Mr S. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr S' salary but 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 S was not in the financial position he ought to be in.
 - In the Caseworker's view, Mr S 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.
12. 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

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

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14. 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 S. It has also failed to respond to the Caseworker's Opinion.
15. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr S to suffer a financial loss. The Employer shall take remedial action to put this right.
16. Mr S 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 its failure to respond during TPO's investigation into Mr S' complaint.

Directions

17. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Mr S £1,000 for the serious distress and inconvenience he has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr 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 S.
18. The Employer shall, within 14 days of receiving a request by Mr S, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.
19. Within 14 days of receiving confirmation from Mr S 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 S'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.

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20. Within 14 days of receiving confirmation from Scheme administrator of any shortfall in Mr S' units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman
9 November 2023

Appendix

Week ending	Weekly Pension Deductions	Year to Date Employee and Employer Pension
29 March 2020	£25.02	
12 April 2020 *New Financial Year	£21.17	£73.45
19 April 2020	£21.17	£110.5
26 April 2020	£21.26	£147.71
3 May 2020	£21.26	£184.92
28 March 2021	£20.80	£2,132.84