

Ombudsman's Determination

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| Applicant | Mrs R |
| Scheme | NEST (the Scheme) |
| Respondent | Teddy Bear Corner Ltd (Teddy) |

Outcome

1. Mrs R's complaint is upheld and to put matters right Teddy shall ensure that all of the unpaid employer and employee contributions are paid into Mrs R's Scheme pension. Teddy shall also pay an amount equal to the notional fund value had the contributions been paid into the Scheme at the time when they should have been (if higher than the value of the contributions alone). Teddy shall also pay Mrs R £2,000 for the severe distress and inconvenience caused to her.

Complaint summary

2. Mrs R's complaint against Teddy is that it did not enrol her into the Scheme despite deducting pension contributions from her pay.

Background information, including submissions from the parties

3. Mrs R commenced employment with Teddy in February 2015. As an eligible jobholder, she was due to be automatically enrolled, within the joining window period into a workplace pension scheme, as required under legislation designed to encourage people to save more for their retirement. The Scheme used by Teddy is run by NEST, the National Employment Savings Trust, which is one of a range of suitable workplace pension schemes used for auto-enrolment. It was set up by the Government for any employers who wish to use it to provide a workplace pension scheme for their employees.
4. Mrs R was led to understand, by Teddy's letter of 3 August 2015, that she had been enrolled in the Scheme in August 2015.
5. According to payslips provided by Mrs R, monthly pension contributions had been deducted from her salary as follows:-
 - 30.09.15 £5.40

- 30.10.15 £7.21
- 30.11.15 £7.21
- 31.12.15 £7.72
- 31.01.16 £7.40
- 29.02.16 £8.01
- 31.03.16 £5.67

6. From this point onwards payslips were only made available to employees online, Mrs R did not download copies while she was still working at Teddy and therefore information from April 2016 to August 2016, is unavailable. Mrs R left employment in August 2016. She received a refund of her pension contributions which indicated that a further £36.05 in contributions was deducted, which would give a monthly employee's pension contribution of £7.21 for each of the remaining five months of Mrs R's service with Teddy.
7. Employer pension contributions for each month were shown on the payslips as follows:-
- 30.09.15 £6.75
 - 30.10.15 £9.01
 - 30.11.15 £9.01
 - 31.12.15 £9.55
 - 31.01.16 £9.25
 - 29.02.16 £10.01
 - 31.03.16 £7.09
8. It is reasonable to assume that employer's pension contributions continued to be shown on the online payslips, as if they had been made for the remaining months until Mrs R's resignation, but I have seen no evidence due to the pensions slips only being available online from April 2016 onwards. Further, Teddy said, in its letter of 31 October 2018, that NEST had returned contributions to it, so it seems no actual employer contributions have been made to the Scheme.
9. On 3 April 2018, Teddy refunded the sum of £84.67 into to Mrs R's bank account. This sum represented the total of her pension contributions from inception to the end of her employment with Teddy, as confirmed in Teddy's letter to us dated 31 October 2018.
10. Upon querying the refund with Teddy, Mrs R was told by email that it was a refund of her employee pension contributions. Concerned about this response, Mrs R contacted NEST who informed her that she was not a Scheme member. None of her contributions deducted by Teddy were paid to NEST.

11. Mrs R contacted the Pensions Advisory Service (**TPAS**) and the Pensions Regulator (**TPR**) who advised her that the pension contributions should have been in the order of £300, including employer's contributions. Concerned at the discovery that no pension account had been set up and a possibly insufficient refund had been returned to her, Mrs R wrote to Teddy seeking clarification and the balance of the refund she now believed was due to her. She received no response.
12. Mrs R asked Teddy for a written explanation of the reasons her pension contributions had been returned. Teddy wrote to Mrs R to say that her personal pension contributions had been refunded on the advice of its accounting software provider.
13. Following this response, Mrs R complained to us in July 2018.
14. Following receipt of the complaint, we requested that Teddy provide its response Mrs R's complaint. When none was forthcoming, we issued guidance in our letter to Teddy of 8 October 2018, as to the appropriate steps Teddy should take to put matters right.
15. In its letter to us dated 31 October 2018, Teddy indicated its attempts to set up the Scheme were proving to be problematic. It said it had now set up an account in the Scheme on Mrs R's behalf, but payments out of its bank account were being returned to Teddy by NEST.
16. Despite further requests from us, no further responses and no papers that might offer evidence of Mrs R's enrolment were offered by Teddy after the 31 October 2018 letter aside from an email of 4 September 2019, in which Teddy said it had only just received our earlier correspondence. Mrs R also says that she received no further communication from Teddy.

Adjudicator's Opinion

17. Mrs R's complaint was considered by one of our Adjudicators who emailed Teddy on 30 December 2019, inviting it to respond to Mrs R's complaint. However, no response was received, and as the matter had been unresolved for quite some time, the Adjudicator based her Opinion on the evidence provided by Mrs R; her findings are summarised below:-

- Teddy agreed it had not enrolled Mrs R in the Scheme at the appropriate time.
- Subsequent efforts to do so had failed and Teddy had returned Mrs R's contributions to her when it should not have done so.
- There was a regulatory requirement under the Personal Pension Schemes (Payments by Employers) Regulations 2000, for Teddy to pay the contributions into the Scheme on the due dates. Despite several requests for it to do so, Teddy had failed to provide a satisfactory reason as to why this was not done in Mrs R's case. The Adjudicator concluded that this amounted to maladministration.

- More than three and a half years had elapsed since Mrs R ceased to work for Teddy, yet the matter had not been resolved, despite several requests from Mrs R.
 - Teddy failed to respond to our requests for information, despite several chasers. Further, it had failed to carry out our suggested remedy of creating an account in the Scheme for Mrs R and making good the employer and employee contributions, plus compensation for any investment growth that may have been obtained had the pension account been set up in the Scheme and properly funded from the outset.
 - The Adjudicator was of the view that the complaint should be upheld. Mrs R had suffered severe distress and inconvenience as a result of Teddy's failure to pay contributions to the Scheme, which warranted an award of £2,000.
18. Mrs R accepted the Adjudicator's Opinion. She also agreed that she would return the contributions paid to her in error by Teddy so that they could be invested in the Scheme. However, Teddy did not respond to the Adjudicator's Opinion and the complaint was passed to me to consider. Having done so, I agree with the Adjudicator's Opinion.

Ombudsman's decision

19. Teddy acknowledged that neither the pension contributions deducted from Mrs R's salary, nor the employer's contributions, were paid into the Scheme. Further, that Mrs R was not enrolled in the Scheme and Mrs R has been disadvantaged as a result.
20. Mrs R's employment with Teddy ceased in August 2016. Since then, she has been trying to establish, without success, what had happened to her pension contributions.
21. Following Teddy's failure to respond to her questions in any meaningful way, Mrs R contacted TPAS before approaching us for assistance in resolving matters. Despite multiple requests, Teddy has failed to provide a substantive response. It has also failed to respond to the Adjudicator's Opinion and has not remedied matters, as recommended by the Adjudicator. This amounts to maladministration.
22. Teddy's failure to respond to requests for information, despite several chasers and failure to remedy matters when requested to do so, has caused Mrs R severe distress and inconvenience.
23. I shall report Teddy to The Pensions Regulator in respect of its, apparent, complete disregard of the auto enrolment Regulations.
24. I uphold the complaint.

Directions

25. Within 21 days of the date of this Determination, Teddy shall:-

- Obtain Mrs R's authority to contact the Scheme and ask it to calculate the sum of the total regular contributions required from both employer and employee in order to fund Mrs R's correct Scheme entitlement between the date the first contribution should have been made and the due date of the last contribution payable before Mrs R left Teddy's service.
- Establish with Mrs R which fund or funds she wishes to have the contributions invested into.
- Having established which fund Mrs R wants to use, Teddy shall make up any shortfall in the value that her Scheme entitlement would be worth had it been invested throughout the relevant period. Mrs R has indicated a willingness to return the contributions wrongly refunded to her after she resigned from her employment. Teddy should liaise with her on this matter.
- Teddy shall pay the total value of the employer and employee contributions together with additional monies, if required, to make good any loss of investment from inception to the date the contributions are paid into the Scheme. This should be paid to the Scheme as a lump sum to be invested in Mrs R's account, within 21 days of receiving the calculations from the Scheme.
- If the Scheme charges an administrative fee for the calculations, this should be paid by Teddy.
- Pay Mrs R £2,000 for the severe distress and inconvenience caused by its maladministration.

Anthony Arter

Pensions Ombudsman
24 April 2020