

Ombudsman's Determination

Applicant	Mr L
Scheme	NEST (the Scheme)
Respondent	Premier Group Recycling Ltd (the Employer)

Outcome

1. Mr L's complaint is upheld and, to put matters right, the Employer shall pay £3,988.60 into the Scheme. The Employer shall ensure that Mr L is not financially disadvantaged by its maladministration. So, it shall arrange for any investment loss to be calculated and paid into the Scheme.
2. In addition, the Employer shall pay Mr L £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

3. Mr L has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme. He says that pension contributions were not paid into the Scheme between February 2020 and June 2022.
4. The available evidence shows that the missing contributions amounted to £3,988.60. This figure consists of £2,279.05 in employee contributions and £1,709.55 in employer 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. On 1 April 2003, Mr L began his employment with the Employer.
7. Mr L's contract of employment states in relation to pensions:-

"PENSION AND PENSION SCHEME

There is a stakeholder pension scheme applicable to your employment. A Pensions Scheme contracting-out certificate is not in force in respect of your employment."

8. Mr L also provided a copy of an employee handbook that he said he was provided, together with his contract of employment. The employee handbook states, amongst other things:-

“STAKEHOLDER PENSION

We operate a stakeholder pension scheme that enables you to save for your retirement using your own money, together with tax relief and investment returns. You can build up a pension fund which you may use to buy an annuity when you are older or retire. The scheme is operated separately to any other pension provision and it is at your discretion and risk whether or not you contribute. The pension provider details are available from the Operations Manager.”

9. On 9 November 2017, Mr L was enrolled into the Scheme.
10. On 26 November 2019, Mr L received a letter from the Scheme administrator which said it had reported the Employer to The Pensions Regulator (**TPR**) for failure to pay contributions between 3 August 2019 to 9 August 2019.
11. On 23 March 2021, Mr L received a further letter from the Scheme administrator which said it had reported the Employer to TPR for non-payment of contributions into the Scheme.
12. The last payment the Employer made into the Scheme was in May 2022. Mr L says this was for three outstanding weeks of contributions.
13. On 14 June 2022, Mr L left his employment with the Employer.
14. On 29 June 2022, Mr L contacted the Scheme administrator about the unpaid contributions. He was told it only reported employers to TPR regarding non-payments of contributions and was advised to speak to TPR.
15. On 30 June 2022, Mr L submitted an online complaint to TPR.
16. On 20 February 2023, Mr L complained to The Pensions Ombudsman (**TPO**).
17. On 15 January 2023, Mr L submitted a formal complaint to the Employer. Mr L stated that between February 2020 and June 2022, the Employer did not pay pension contributions due to the Scheme.
18. On 1 March 2023, Mr L wrote to the Employer and requested that his complaint be responded to before 13 March 2023.
19. On 8 March 2023, the Employer responded to Mr L and said it would make sure all outstanding pension contributions were paid into the Scheme before 31 March 2023.
20. On 23 April 2023, Mr L contacted TPO and asked for an investigation into his complaint as the missing contributions had not been paid.

21. Between 12 June 2024 and 19 August 2024, there was email correspondence between Mr L, the Employer and TPO. In summary:-
- The Employer provided TPO with a spreadsheet from the Scheme administrator (**the Spreadsheet**). The Spreadsheet outlined Mr L's pensionable pay and showed that £2,279.05 in employee contributions and £1,709.55 in employer contributions, a total of £3,988.60 was due to the Scheme. This is shown in Appendix One.
 - The Employer agreed to make a payment into the Scheme for the unpaid contributions.
22. On 6 September 2024, Mr L emailed TPO and confirmed he had not received any payments into the Scheme from the Employer and requested a formal investigation into his complaint.
23. Mr L provided copies of the payslips issued to him in respect of his service with the Employer for the period from October 2020 to June 2022. Mr L was unable to provide payslips for the following weeks:-
- February 2020 to October 2020
 - 13 November 2020
 - 20 November 2020
 - 12 February 2021
 - 30 April 2021
 - 14 May 2021
 - 28 May 2021
 - 4 June 2021
 - 27 August 2021
 - 31 December 2021.
24. The available payslips show the pension contributions deducted from Mr L's pay during this period, however they do not show the corresponding employer contributions which would also have been due to the Scheme. The information from the payslips which show the employee contributions deducted from Mr L's pay is provided in Appendix Two.
25. Mr L also provided copies of his bank statements between February 2020 and June 2022, which showed his net salary, including the weeks where Mr L was unable to provide payslips.

Adjudicator's Opinion

26. Mr L's complaint was considered by one of our Adjudicators 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 Adjudicator's findings are summarised below:-
- The Adjudicator 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 Adjudicator said that he had no reason to doubt the information provided by Mr L. The Spreadsheet also showed the outstanding employer and employee contributions due to the Scheme which the Employer did not dispute. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Mr L'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 L was not in the financial position he ought to be in.
 - In the Adjudicator's view, Mr L had suffered serious distress and inconvenience due to the Employer's maladministration. The Adjudicator was of the opinion that an award of £1,000 for non-financial injustice was appropriate in the circumstances.
27. Although the Employer accepted the Adjudicator's Opinion, it did not adhere to the actions outlined in the 'Putting Matters Right' section, so the complaint was passed to me to consider. I agree with the Adjudicator's Opinion.

Ombudsman's decision

28. Mr L has complained that the Employer has not paid all the contributions due to the Scheme between February 2020 and June 2022.
29. 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 adequately engage with TPO or Mr L during the complaints process.
30. The Spreadsheet shows that £2,279.05 in employee contributions and £1,709.55 in employer contributions, a total of £3,988.60 was due to the Scheme between February 2020 and June 2022. The Employer has not provided any information to dispute this position. In addition, it accepted the Adjudicator's Opinion but failed to adhere to the actions outlined in the 'Putting Matters Right' section.
31. I therefore agree with the Adjudicator that on the balance of probabilities, £2,279.05 in employee contributions and £1,709.55 in employer contributions, a total of £3,988.60 has not been remitted to the Scheme.

32. Mr L was enrolled into the Scheme in November 2017. Under the rules of the Scheme (**the Scheme Rules**) the Employer was obliged to pay to the Scheme, at least 8% of Mr L's qualifying earnings in the relevant pay reference period. As it has acted in breach of the Scheme Rules this amounts to maladministration. The relevant provisions of the Scheme Rules are outlined in Appendix Three.
33. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr L to suffer a financial loss. The Employer shall take remedial action to put this right.
34. Mr L 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 fully respond during TPO's investigation into Mr L's complaint and failure to implement the steps outlined in the Adjudicator's Opinion.

Directions

35. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Mr L £1,000 for the serious distress and inconvenience he has experienced;
 - (ii) pay £3,988.60 into the Scheme. This figure represents employee contributions of £2,279.05 and employer contributions of £1,709.55.
 - (iii) establish with the Scheme administrator whether the late payment of contributions has meant that fewer units were purchased in Mr L's Scheme account than he would have otherwise secured, had the contributions been paid on time; and
 - (iv) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.
36. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Mr L's units, pay the cost of purchasing any additional units required to make up the shortfall.

Dominic Harris

Pensions Ombudsman

15 January 2025

Appendix One

Date of Payment	Pay Period	NEST Pensionable Pay	Employee Contributions	Employer Contributions
21/02/2020	46	£519.70	£20.79	£15.60
28/02/2020	47	£519.70	£20.79	£15.60
06/03/2020	48	£519.70	£20.79	£15.60
13/03/2020	49	£519.70	£20.79	£15.60
20/03/2020	50	£455.20	£18.21	£13.66
27/03/2020	51	£455.20	£18.21	£13.66
03/04/2020	52	£193.68	£7.75	£5.82
10/04/2020	1	£249.26	£6.10	£4.67
17/04/2020	2	£354.67	£14.19	£10.65
24/04/2020	3	£354.64	£14.19	£10.64
01/05/2020	4	£354.64	£14.19	£10.64
08/05/2020	5	£354.64	£14.19	£10.64
15/05/2020	6	£354.64	£14.19	£10.64
22/05/2020	7	£356.64	£14.27	£10.70
29/05/2020	8	£356.64	£14.27	£10.70
05/06/2020	9	£356.64	£14.27	£10.70
12/06/2020	10	£356.64	£14.27	£10.70
19/06/2020	11	£356.64	£14.27	£10.70
26/06/2020	12	£356.64	£14.27	£10.70
03/07/2020	13	£356.64	£14.27	£10.70
10/07/2020	14	£356.64	£14.27	£10.70
17/07/2020	15	£356.64	£14.27	£10.70
24/07/2020	16	£356.64	£14.27	£10.70
31/07/2020	17	£356.64	£14.27	£10.70

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07/08/2020	18	£457.57	£18.31	£13.73
14/08/2020	19	£453.20	£18.13	£13.60
21/08/2020	20	£453.20	£18.13	£13.60
28/08/2020	21	£474.70	£18.99	£14.20
04/09/2020	22	£485.45	£19.42	£14.57
11/09/2020	23	£453.2	£18.13	£13.6
18/09/2020	24	£453.2	£18.13	£13.6
25/09/2020	25	£485.45	£19.42	£14.57
02/10/2020	26	£517.7	£20.71	£15.54
09/10/2020	27	£517.7	£20.71	£15.54
16/10/2020	28	£517.70	£20.71	£15.54
23/10/2020	29	£453.20	£18.13	£13.60
30/10/2020	30	£453.20	£18.13	£13.60
06/11/2020	31	£496.2	£19.85	£14.89
12/11/2020	32	£517.7	£20.71	£15.54
20/11/2020	33	£430.27	£17.22	£12.91
27/11/2020	34	£430.27	£17.22	£12.91
04/12/2020	35	£453.19	£18.13	£13.60
11/12/2020	36	£453.19	£18.13	£13.60
18/12/2020	37	£453.19	£18.13	£13.60
29/12/2020	38	£453.19	£18.13	£13.60
30/12/2020	39	£453.19	£18.13	£13.60
08/01/2021	40	£451.04	£18.05	£13.54
15/01/2021	41	£450.33	£18.02	£13.51
22/01/2021	42	£453.19	£18.13	£13.60
29/01/2021	43	£453.19	£18.13	£13.60
05/02/2021	44	£453.19	£18.13	£13.60

12/02/2021	45	£453.19	£18.13	£13.60
19/02/2021	46	£453.19	£18.13	£13.60
26/02/2021	47	£453.19	£18.13	£13.60
05/03/2021	48	£453.19	£18.13	£13.60
12/03/2021	49	£453.19	£18.13	£13.60
19/03/2021	50	£821.53	£32.87	£24.65
26/03/2021	51	£821.53	£32.87	£24.65
31/03/2021	52	£453.19	£18.13	£13.60
09/04/2021	1	£454.63	£18.19	£13.64
16/04/2021	2	£454.63	£18.19	£13.64
23/04/2021	3	£453.19	£18.13	£13.60
30/04/2021	4	£453.19	£18.13	£13.60
07/05/2021	5	£453.19	£18.13	£13.60
14/05/2021	6	£453.19	£18.13	£13.60
21/05/2021	7	£453.19	£18.13	£13.60
28/05/2021	8	£453.19	£18.13	£13.60
04/06/2021	9	£453.19	£18.13	£13.60
11/06/2021	10	£454.63	£18.19	£13.64
18/06/2021	11	£453.19	£18.13	£13.60
24/06/2021	12	£453.19	£18.13	£13.60
01/07/2021	13	£453.19	£18.13	£13.60
08/06/2021	14	£453.19	£18.13	£13.60
16/07/2021	15	£453.19	£18.13	£13.60
23/07/2021	16	£453.19	£18.13	£13.60
30/07/2021	17	£453.19	£18.13	£13.60
06/08/2021	18	£453.19	£18.13	£13.60
13/08/2021	19	£453.19	£18.13	£13.60

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20/08/2021	20	£453.19	£18.13	£13.60
27/08/2021	21	£453.19	£18.13	£13.60
03/09/2021	22	£453.19	£18.13	£13.60
10/09/2021	23	£453.19	£18.13	£13.60
17/09/2021	24	£453.20	£18.13	£13.60
24/09/2021	25	£489.03	£19.57	£14.68
01/10/2021	26	£521.27	£20.86	£15.64
08/10/2021	27	£560.68	£22.43	£16.83
15/10/2021	28	£560.68	£22.43	£16.83
22/10/2021	29	£474.70	£18.99	£14.25
29/10/2021	30	£524.85	£21.00	£15.75
05/11/2021	31	£575.01	£23.01	£17.26
12/11/2021	32	£453.2	£18.13	£13.60
19/11/2021	33	£453.2	£18.13	£13.60
26/11/2021	34	£575.01	£23.01	£17.26
03/12/2021	35	£453.20	£18.13	£13.60
10/12/2021	36	£625.16	£25.01	£18.76
17/12/2021	37	£503.36	£20.14	£15.11
24/12/2021	38	£456.78	£18.28	£13.71
31/12/2021	39	£453.20	£18.13	£13.60
07/01/2022	40	£453.20	£18.13	£13.60
14/01/2022	41	£467.53	£18.71	£14.03
21/01/2022	42	£474.70	£18.99	£14.25
28/01/2022	43	£517.69	£20.71	£15.54
04/02/2022	44	£467.53	£18.71	£14.03
11/02/2022	45	£521.27	£20.86	£15.64
18/02/2022	46	£478.28	£19.14	£14.35

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25/02/2022	47	£460.37	£18.42	£13.82
04/03/2022	48	£496.19	£19.85	£14.89
11/03/2022	49	£528.43	£21.14	£15.86
18/03/2022	50	£474.70	£18.99	£14.25
25/03/2022	51	£453.20	£18.13	£13.60
01/04/2022	52	£532.02	£21.29	£15.97
08/04/2022	1	£499.77	£20.00	£15.00
14/04/2022	2	£492.61	£19.71	£14.78
22/04/2022	3	£496.19	£19.85	£14.89
29/04/2022	4	£539.18	£21.57	£16.18
06/05/2022	5	£592.92	£23.72	£17.79
13/05/2022	6	£453.20	£18.13	£13.60
20/05/2022	7	£567.84	£22.72	£17.04
27/05/2022	8	£532.02	£21.29	£15.97
01/06/2022	9	£614.41	£24.58	£18.44
10/06/2022	10	£478.28	£19.14	£14.35
17/06/2022	11	£546.35	£21.86	£16.40
24/06/2022	12	£295.57	£11.83	£8.87
			<u>£2,279.05</u>	<u>£1,709.55</u>
Total Unpaid Contributions: £3,988.60				

Appendix Two

Date	Pay Week	Employee contributions	Employer contributions
21/02/2020 – 09/10/2020	Payslips unavailable.		
16/10/2020	28	£20.71	Not shown
23/10/2020	29	£18.13	Not shown
30/10/2020	30	£19.85	Not shown
06/11/2020	31	£20.71	Not shown
13/11/2020	Payslip unavailable.		
20/11/2020	Payslip unavailable.		
27/11/2020	34	£18.13	Not shown
04/12/2010	35	£18.13	Not shown
11/12/2020	36	£18.13	Not shown
18/12/2020	37	£18.13	Not shown
25/12/2020	38	£18.13	Not shown
01/01/2021	39	£18.05	Not shown
08/01/2021	40	£18.02	Not shown
15/01/2021	41	£18.13	Not shown
22/01/2021	42	£18.13	Not shown
29/01/2021	43	£18.13	Not shown
05/02/2021	44	£18.13	Not shown
12/02/2021	Payslip unavailable.		
19/02/2021	46	£18.13	Not shown
26/02/2021	47	£18.13	Not shown
05/03/2021	48	£18.13	Not shown
12/03/2021	49	£32.87	Not shown
19/03/2021	50	£32.87	Not shown
26/03/2021	51	£18.13	Not shown

02/04/2021	52	£18.13	Not shown
09/04/2021	1	£18.19	Not shown
16/04/2021	2	£18.19	Not shown
23/04/2021	3	£18.13	Not shown
30/04/2021	Payslip unavailable.		
07/05/2021	5	£18.13	Not shown
14/05/2021	Payslip unavailable.		
21/05/2021	7	£18.13	Not shown
28/05/2021	Payslip unavailable.		
04/06/2021	Payslip unavailable.		
11/06/2021	10	£18.19	Not shown
18/06/2021	11	£18.13	Not shown
25/06/2021	12	£18.13	Not shown
02/07/2021	13	£18.13	Not shown
09/07/2021	14	£18.13	Not shown
16/07/2021	15	£18.13	Not shown
23/07/2021	16	£18.13	Not shown
30/07/2021	17	£18.13	Not shown
06/08/2021	18	£18.13	Not shown
13/08/2021	19	£18.13	Not shown
20/08/2021	20	£18.13	Not shown
27/08/2021	Payslip unavailable.		
03/09/2021	22	£18.13	Not shown
10/09/2021	23	£18.13	Not shown
17/09/2021	24	£18.13	Not shown
24/09/2021	25	£19.57	Not shown
01/10/2021	26	£20.86	Not shown

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08/10/2021	27	£22.43	Not shown
15/10/2021	28	£22.43	Not shown
22/10/2021	29	£18.99	Not shown
29/10/2021	30	£21.00	Not shown
05/11/2021	31	£23.01	Not shown
12/11/2021	32	£18.13	Not shown
19/11/2021	33	£18.13	Not shown
26/11/2021	34	£23.01	Not shown
03/12/2021	35	£18.13	Not shown
10/12/2021	36	£25.01	Not shown
17/12/2021	37	£20.14	Not shown
24/12/2021	38	£18.28	Not shown
31/12/2021	Payslip unavailable.		
07/01/2022	40	£18.13	Not shown
14/01/2022	41	£18.71	Not shown
21/01/2022	42	£18.99	Not shown
28/01/2022	43	£20.71	Not shown
04/02/2022	44	£18.71	Not shown
11/02/2022	45	£20.86	Not shown
18/02/2022	46	£19.14	Not shown
25/02/2022	47	£18.42	Not shown
04/03/2022	48	£19.85	Not shown
11/03/2022	49	£21.14	Not shown
18/03/2022	50	£18.99	Not shown
25/03/2022	51	£18.13	Not shown
01/04/2022	52	£21.29	Not shown
08/04/2022	1	£20.00	Not shown

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15/04/2022	2	£19.71	Not shown
22/04/2022	3	£19.85	Not shown
29/04/2022	4	£21.57	Not shown
06/05/2022	5	£23.72	Not shown
13/05/2022	6	£18.13	Not shown
20/05/2022	7	£22.72	Not shown
27/05/2022	8	£21.29	Not shown
03/06/2022	9	£24.58	Not shown
10/06/2022	10	£19.14	Not shown
17/06/2022	11	£21.86	Not shown
24/06/2022	12	£11.83	Not shown

Appendix Three

NEST Scheme Rules

Rule 7.1.1

Where in respect of a member a participating employer has elected to use the Scheme to:

1. (a) fulfil its duties under:(i) in relation to Great Britain, section 2(1) (by virtue of section), 3(2), 5(2) or 7(3) of the 2008 Act; or(ii) in relation to Northern Ireland, section 2(1) (by virtue of section), 3(2), 5(2) or 7(3) of the 2008 NI Act), or
1. (b) arrange for a worker to become a member of the Scheme within article 19(2A) of the Order,

from the date that admission to membership or the making of contribution arrangements in relation to that member takes effect, the participating employer shall pay and the Trustee shall accept such contributions as may be required in order for the Scheme to meet the quality requirement referred to in Part 1 of the 2008 Act (Part 1 of the 2008 NI Act), or the alternative requirement referred to in Part 1 of the 2008 Act (or Part 1 of the 2008 NI Act), in relation to the member, having regard to the contributions being paid by the member under rule 9.1.

Section 20 Pensions Act 2008

20 Quality requirement: UK money purchase schemes

(1) A money purchase scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if under the scheme—

- (a) the jobholder's employer must pay contributions in respect of the jobholder;
- (b) the employer's contribution, however calculated, must be equal to or more than 3% of the amount of the jobholder's qualifying earnings in the relevant pay reference period;
- (c) the total amount of contributions paid by the jobholder and the employer, however calculated, must be equal to or more than 8% of the amount of the jobholder's qualifying earnings in the relevant pay reference period.