

Ombudsman's Determination

Applicant	Mr S
Scheme	NEST (the Scheme)
Respondent	Digital Express Limited (the Employer)

Outcome

1. Mr S' complaint is upheld and, to put matters right, the Employer shall pay £1,312.50 into the Scheme. The Employer shall ensure that Mr S 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 S £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

3. Mr S has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme.
4. The available evidence shows that the missing contributions amounted to £1,312.50.

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 March 2016, Mr S began his employment with the Employer.
7. In March 2017, Mr S was enrolled into the Scheme.
8. Between July 2020 and September 2022, the Employer failed to pay all pension contributions into the Scheme.
9. In September 2022, Mr S ceased employment with the Employer after he was made redundant.
10. On 6 March 2023, Mr S brought his complaint to The Pensions Ombudsman (**TPO**).

11. Mr S was unable to provide payslips for the period July 2020 to September 2022 because the Employer failed to provide them.
12. The Scheme administrator confirmed to TPO that under the automatic enrolment regulations for the tax year beginning 6 April 2019 onwards, the minimum employee contribution was 5% (including tax relief) of qualifying earnings and the minimum employer contribution was 3% of qualifying earnings.
13. Mr S has provided screenshots of his bank statements between July 2020 and September 2022 which showed his pay from the Employer.
14. Mr S has also provided screenshots of his HMRC PAYE account which showed his taxable earnings in the tax years ending: -
 - 5 April 2020
 - 5 April 2021
 - 5 April 2022
 - 5 April 2023

They also showed his gross pay and pensionable earnings as seen in the appendix.

15. On 12 July 2024, TPO asked the Employer for its formal response to Mr S' complaint.
16. On 22 July 2024, TPO asked the Scheme administrator to confirm the date of the last contribution paid into Mr S' Scheme account and the amount of unpaid contributions.
17. On 26 July 2024, the Scheme administrator said that the Employer last paid contributions to Mr S' Scheme account on 5 July 2021. It also confirmed the following:
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 - In the tax year ending 5 April 2020, the Employer paid £692.62 employee contributions plus employer contributions of £532.00 into the Scheme.
 - In the tax year ending 5 April 2021, the Employer paid £158.16 employee contributions plus £118.62 employer contributions into the Scheme.
 - In the tax year ending 5 April 2022, the Employer paid £46.16 employee contributions and £34.62 employer contributions into the Scheme.
 - Overall, the Employer paid £896.94 in employee contributions and £685.24 in employer contributions, a total of £1,582.18 into the Scheme.
18. On 29 July 2024, TPO repeated its request for the Employer's formal response to Mr S' complaint. No response was received.

Adjudicator's Opinion

19. Mr 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. He said that, as the Employer had not responded to any of TPO's communications, he had to base his Opinion solely on the information provided by Mr S and the Scheme administrator.
 - Mr S was unable to provide payslips for the tax years ending 5 April 2020, 5 April 2021, 5 April 2022, and 5 April 2023. However, he provided bank statements which showed his pay from the Employer during those tax years. Mr S had also provided screenshots of his HMRC PAYE account for the tax years detailed above which showed his gross pay and qualifying earnings.
 - The Appendix showed Mr S' gross pay and qualifying earnings and the contributions which should have been due in each of the tax years. This was based on the statutory minimum of 3% employer contributions and 5% employee contributions. It also showed the employee and employer contributions that the Employer paid into Mr S' Scheme account in each tax year as confirmed by the Scheme administrator.
 - Based on the information provided by Mr S and the Scheme administrator, it was the Adjudicator's view that on the balance of probabilities, £912.25 in employee contributions and £400.25 in employer contributions, a total of £1,312.50 had not been remitted to the Scheme. This was based on deducting the amount that the Employer had paid into the Scheme from the statutory minimum amount of 3% employer contributions and 5% employee contributions due to the Scheme in the relevant tax years.
 - The Adjudicator said that he had no reason to doubt the information provided by Mr S and the Scheme administrator and, despite having been given the opportunity to do so, the Employer had provided no information to dispute the position. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Mr S' wages but had not all been paid into the Scheme. In addition, the Employer had not paid all 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 Adjudicator's view, Mr S 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.

20. The Employer again did not respond to the Adjudicator's Opinion and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion.

Ombudsman's Decision

21. Mr S has complained that the Employer has not paid all the contributions due to his Scheme account.
22. From the evidence available to me, 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 TPO or Mr S. It has also failed to respond to the Adjudicator's Opinion.
23. 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.
24. 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 the Employer's failure to respond during TPO's investigation into Mr S' complaint, which undoubtedly caused Mr S further distress and inconvenience.

Directions

25. 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) pay £1,312.50 into Mr S' Scheme account. This figure represents the amount that, according to the figures provided by Mr S, have been deducted from his pay, but not paid into the Scheme account. It also includes the employer contributions for the relevant period which should have also been paid but have not been to date;
 - (iii) establish with the Scheme administrator whether the late payment of contributions has meant that fewer units were purchased in Mr 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.
26. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Mr S' units, pay the cost of purchasing any additional units required to make up the shortfall.

Dominic Harris

Pensions Ombudsman
2 January 2025

Appendix

Tax Year Ending	Gross Earnings	Qualifying Earnings	Total 8% Contributions due	Employee 5% Contributions due	Employer 3% Contributions due	Paid Employee Contributions to NEST	Paid Employer contribution to NEST
05/04/20	£18,200.04	£12,064.04	£965.12	£603.20	£361.92	£692.62	£532.00
05/04/21	£18,200.04	£11,960.04	£956.80	£598.00	£358.80	£158.16	£118.62
05/04/22	£18,399.94	£12,159.94	£972.76	£607.99	£364.80	£46.16	£34.62
05/04/23	£1,415.38	None	None	None	None	None	None
Totals			£2,894.68	£1,809.19	£1,085.52	£896.94	£685.24