

Ombudsman's Determination

Applicant	Ms H
Scheme	NEST (the Scheme)
Respondent	Upstairs Downstairs Cleaning Limited (the Employer)

Outcome

1. Ms H's complaint is upheld and, to put matters right, the Employer shall pay the missing contributions in respect of her pension and make good any shortfall in units.
2. In addition, the Employer shall pay £500 for the significant distress and inconvenience it has caused her.

Complaint summary

3. Ms H has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
4. Ms H has said that the missing employee contributions amounted to £377.78.

Background information, including submissions from the parties

5. In November 2019, Ms H began her employment with the Employer and she was enrolled into the Scheme.
6. On 12 April 2023, Ms H wrote to the Employer to formally complain that her pension contributions had not been paid.
7. The Employer responded on 13 April 2023. It said that it was experiencing financial difficulties and admitted it was due to pay contributions for the period outlined by Ms H, but that the funds were not available.
8. On 14 April 2023, Ms H brought a complaint to The Pensions Ombudsman's (**TPO**) Office.
9. Ms H provided her payslips for the period from December 2021 to July 2022, which detailed the pension contributions deducted from her pay. The total amount of employee deductions was £377.78. However, this figure does not include deductions

for one week's pay in December 2021. It should also be noted that the payslips do not detail any Employer's contributions. A breakdown of the deductions, as provided by Ms H, has been included in the Appendix.

10. Ms H also provided a copy of her correspondence with the Employer, dated 13 April 2023, where it stated that it was aware that it had not paid all contributions into the Scheme.
11. On 30 May 2023, TPO contacted the Employer and asked for a response to Ms H's complaint.
12. On 31 May 2023, the Employer replied to TPO and said that Ms H's pension account went into arrears after it suffered difficulties during the Covid-19 pandemic. The Employer stated there were simply no funds available to catch up and that it ceased trading in July 2022.
13. The Employer also stated that it had no assets nor means to repay its debts and that it had been proactive in acting upon all correspondence received.
14. Despite TPO's requests, the Employer has failed to provide any evidence that it had ceased trading, or that administrators were involved in the liquidation of the company. The Employer stated that this is because there are outstanding PAYE payments and HMRC keep blocking the company's application to be listed as inactive on Companies House.

Caseworker's Opinion

15. Ms H'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 said 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 the Employer responded to TPO's communications and agreed that contributions were owed to Mrs H. The Employer stated that it had no means to pay but has not been able to provide any evidence that it has ceased trading.
 - The Caseworker said that both parties have agreed that contributions had been deducted from Ms H'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, Ms H is not in the financial position she ought to be in.
 - In the Caseworker's view, Ms H 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.

16. 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

17. Ms H has complained that the Employer has not paid all the contributions due to her Scheme account.
18. 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, although it did engage with the Pensions Ombudsman and Ms H, it has not provided evidence that it has ceased trading. I also note that the Employer has failed to respond to the Caseworker's Opinion.
19. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Ms H to suffer a financial loss. The Employer shall take remedial action to put this right.
20. Ms H is entitled to a distress and inconvenience award in respect of the significant ongoing non-financial injustice which she has suffered.

Directions

21. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Ms H £500 for the significant distress and inconvenience she has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Ms H's pay in respect of the period of her employment. The Schedule shall also include the corresponding employer contributions that were due to the Scheme; and
 - (iii) forward the Schedule to Ms H.
22. The Employer shall, within 14 days of receiving a request by Ms H, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.
23. Within 14 days of receiving confirmation from Ms H that she agrees with the information on the Schedule, the Employer shall:
 - (i) pay the missing contributions to the Scheme;

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

24. Within 14 days of receiving confirmation from NEST of any shortfall in Ms H's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman

12 October 2023

Appendix**Appendix**

Date	Employee contributions	Employer contributions
03/12/2021	2.79	0.00
10/12/2021	2.16	0.00
17/12/2021	1.81	0.00
24/12/2021	0.00	0.00
31/12/2021	1.97	0.00
07/01/2022	0.00	0.00
14/01/2022	2.81	0.00
21/01/2022	2.90	0.00
28/01/2022	10.08	0.00
04/02/2022	15.08	0.00
11/02/2022	16.97	0.00
18/02/2022	16.97	0.00
25/02/2022	15.71	0.00
04/03/2022	16.88	0.00
11/03/2022	15.78	0.00
18/03/2022	14.90	0.00
25/03/2022	18.86	0.00
01/04/2022	17.54	0.00
08/04/2022	16.44	0.00
15/04/2022	19.02	0.00
22/04/2022	12.48	0.00
29/04/2022	8.97	0.00
06/05/2022	14.24	0.00

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13/05/2022	16.88	0.00
20/05/2022	17.54	0.00
27/05/2022	12.10	0.00
03/06/2022	12.98	0.00
10/06/2022	12.98	0.00
17/06/2022	12.10	0.00
24/06/2022	8.80	0.00
01/07/2022	13.86	0.00
08/07/2022	13.42	0.00
15/07/2022	12.76	0.00
Total	377.78	0.00