

## Ombudsman's Determination

Applicant	Mr S
Scheme	NEST ( <b>the Scheme</b> )
Respondents	The Machining Centre Ltd ( <b>the Employer</b> )

## Outcome

1. Mr S' complaint is upheld and, to put matters right, the Employer shall pay £5,133.76 into the Scheme. The Employer shall ensure that Mr S is not financially disadvantaged by its maladministration. So, it will 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 complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme.
4. Mr S has said that the missing contributions amounted to £5,133.76.

## 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. Mr S has said the Employer was having problems paying pension contributions into the Scheme since 2019.
7. Mr S says that, between April 2020 and March 2023, the Employer failed to pay pension contributions into the Scheme. The last pension contribution paid into the Scheme for Mr S was on 24 March 2020.
8. Mr S was made redundant by the Employer on 26 April 2023.
9. On 22 August 2023, Mr S brought his complaint to The Pensions Ombudsman (**TPO**).
10. Mr S provided copies of the payslips that he held for the period from August 2020 to March 2023, which detailed the pension contributions deducted from his pay. These

deductions amounted to £5,133.76. A breakdown of the deductions has been included in the Appendix.

11. On 8 November 2023, TPO asked the Employer for its formal response to Mr S' complaint. This was repeated on 15 November 2023 via an alternative email address. None of these requests received a response.
12. A third email address for the Employer was contacted on 20 November 2023.
13. On 4 December 2023, the Employer responded and said it would provide a response to Mr S' complaint.
14. On 15 December 2023, TPO received the Employer's response setting out that it had not paid the pension contributions because of financial problems caused by the Pandemic. The Employer also explained that its assets were later seized following action by one of its creditors.
15. On 30 April 2024, Mr S provided a screenshot of the Scheme account which showed pension contributions had still not been paid to it since 24 March 2020.

## **Caseworker's Opinion**

16. 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. He said that, as the Employer had not sufficiently engaged with TPO, he had to base his Opinion solely on the information provided by Mr S.
  - The Caseworker said that he 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 all been paid into the Scheme. In addition, the Employer had not paid all 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.
17. The Employer responded to the Caseworker on 22 May 2024 saying it was not able to meet the terms set out in the Opinion for resolving the complaint. On 29 May 2024, TPO requested evidence from the Employer of its financial position. The Employer's response of 30 May 2024 said it would provide evidence to

demonstrate its inability to pay the outstanding pension contributions by 15 June 2024. No further contact has been received from the Employer.

18. The complaint was passed to me to consider. I agree with the Caseworker's Opinion.

### **Ombudsman's decision**

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

20. 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 resolve Mr S' complaint following the Caseworker's Opinion.

21. 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.

22. 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 resolve the dispute during TPO's investigation into Mr S' complaint.

### **Directions**

23. 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 £5,133.76 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 paid to date;
- (iii) establish with the Scheme 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.

24. 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.

**Anthony Arter CBE**

Deputy Pensions Ombudsman  
1 July 2024

**Appendix**

<b>Period start</b>	<b>Period end</b>	<b>Total contributions:</b>
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		<b>Employer and Employee</b>
22 August 2020	March 2021	£1,283.44
April 2021	March 2022	£1,925.16
April 2022	March 2023	£1,925.16
		<b>£5,133.76 – Total claim</b>