

Ombudsman's Determination

Applicant	Mr N
Scheme	NEST (the Scheme)
Respondents	RQ CAFE Limited (the Employer)

Outcome

1. Mr N's complaint is upheld and, to put matters right, the Employer shall pay £1,872.78 into the Scheme. The Employer shall ensure that Mr N 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 N £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

3. Mr N 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 £1,872.78.

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 September 2021, Mr N began his employment with the Employer.
7. Between February to August 2022 and November 2022 to March 2023, the Employer failed to pay pension contributions into the Scheme.
8. On 8 August 2023, Mr N brought his complaint to The Pensions Ombudsman (**TPO**).
9. Mr N has provided some of the payslips for the period from February to August 2022 and November 2022 to March 2023, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These contributions amounted to £1,248.06. A breakdown of these deductions has been

included in the Appendix. Mr N has been unable to provide a payslip for December 2022.

10. Mr N's payslips do not show the employer contributions in respect of Mr N's pay for February to August 2022. Mr N has provided notification letters from the Scheme administrator for the same period, these show that a total of £442.44 in employer contributions had not been paid into the Scheme.
11. The notification letters from the Scheme administrator also show that for December 2022, £104.16 in employee contributions and £78.12 in employer contributions a total of £182.28, had not been paid into the Scheme.
12. On 8 May 2024, TPO asked the Employer for its formal response to Mr N's complaint. This request was repeated on 23 May 2024, 10 June 2024 and 25 June 2024. None of these requests received a response.
13. On 5 August 2024, Mr N confirmed that the last contributions paid into the Scheme were on 25 November 2022, for £315. These contributions were for September and October 2022.

Adjudicator's Opinion

14. Mr N'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. She said that, as the Employer had not responded to any of TPO's communications, she had to base her Opinion solely on the information provided by Mr N.
 - According to the payslips provided the total amount outstanding was £1,248.06. The Scheme administrator's letters provided by Mr N detailed the missing employer contribution amounts for February to August 2022, which are not shown on the payslips. They also showed the employer and employee contributions due for December 2022, where there was no available payslip. It was the Adjudicator's view, on the balance of probabilities, that £624.72 had not been paid to the Scheme for these months. In total £1,872.78 had not been remitted to the Scheme.
 - The Adjudicator said that she had no reason to doubt the information provided by Mr N. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Mr N'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 N was not in the financial position he ought to be in.

- In the Adjudicator's view, Mr N 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.
15. On 9 July 2024, the Employer responded to the Adjudicator's Opinion. The Employer informed TPO the company stopped trading in January 2023, therefore it was unable to pay its outstanding debts.
 16. In response, TPO informed the Employer that the company was showing as active on Companies House so the complaint would be passed to an Ombudsman for a Determination.
 17. The complaint was passed to me to consider. I agree with the Adjudicator's Opinion.

Ombudsman's decision

18. Mr N has complained that the Employer has not paid all the contributions due to his Scheme account.
19. Mr N has claimed unpaid contributions for the period February to August 2022 and November 2022 to March 2023. He has provided payslips for both of these periods except for the month of December 2022. These contributions amounted to £1,248.06.
20. Mr N's payslips do not show the employer contributions for the period February to November 2022. The Scheme administrator's letters for this period show that £442.44 in employer contributions had not been remitted to the Scheme.
21. The Scheme administrator's letters also confirm that contributions for December 2022 were also not paid and amounted to £182.28. I am satisfied that, on the balance of probabilities, these contributions were also not paid into the Scheme, so a total of £1,872.78 of unpaid contributions are therefore due Mr S' Scheme account.
22. 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 N.
23. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr N to suffer a financial loss. The Employer shall take remedial action to put this right.
24. Mr N 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 respond during TPO's investigation into Mr N's complaint.

Directions

25. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mr N £1,000 for the serious distress and inconvenience he has experienced;
 - (ii) pay £1,872.78 into Mr N's Scheme account. This figure represents the amount that, according to the figures provided by Mr N, 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 N'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 N's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman

2 September 2024

Appendix

Date	Employee contributions	Employer contributions
February 2022	£88	Not stated
March 2022	£93.60	Not stated
April 2022	£72	Not stated
May 2022	£79.20	Not stated
June 2022	£79.20	Not stated
July 2022	£90.72	Not stated
August 2022	£87.20	Not stated
November 2022	£90.72	£68.04
December 2022 (Missing)		
January 2023	£99.36	£74.52
February 2023	£86.64	£64.98
March 2023	£99.36	£74.52
Total amount: £1,248.06	£966	£282.06