

Ombudsman's Determination

Applicant	Mrs N
Scheme	NEST Pension Scheme (the Scheme)
Respondents	K & P Fresh Foods Ltd (the Employer)

Outcome

1. Mrs N's complaint is upheld and, to put matters right, the Employer shall pay £612.69 into the Scheme. The Employer shall ensure that Mrs 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 Mrs N £1,000 for the serious distress and inconvenience it has caused her.

Complaint summary

3. Mrs N has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
4. Mrs N has said that the missing contributions amounted to £612.69.

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. Mrs N started her employment with the Employer in 2005.
7. In April 2022, the Employer's ownership changed but the business retained its trading name.
8. Mrs N explained that after 12 September 2022, the Employer started to deduct pension contributions from her weekly pay, but it did not pay them into the Scheme. It also failed to pay the corresponding employer contributions.
9. On 31 January 2023, Mrs N ceased her employment with the Employer.

10. On 24 April 2023, the Employer paid £22.77 into the Scheme, being £13.01 as an employee contribution and £9.76 as an employer contribution.
11. Mrs N said that she was informed by the Scheme administrator that on 17 May 2023 the Employer had terminated her contributions.
12. On 3 August 2023, Mrs N complained to the Employer that contributions had not been paid into the Scheme between 12 September 2022 and 31 January 2023, except for the payment made on 24 April 2023.
13. On 15 August 2023, the Employer responded to Mrs N and accepted that it owed pension contributions to her. The Employer said it would contact the Scheme administrator and rectify the situation.
14. On 24 October 2023, Mrs N brought her complaint to The Pensions Ombudsman (TPO).
15. Mrs N provided copies of weekly payslips that she held for the period 9 July 2022 to 27 August 2022. Mrs N was not able to provide copies of her payslips for the period between 27 August 2022 and 12 September 2022.
16. Mrs N also said the Employer had not provided her payslips between 12 September 2022 to when her employment ended on 31 January 2023.
17. Mrs N provided TPO with copy bank statements which showed that her weekly pay from the Employer between 14 September 2022 and 1 February 2023 was £431.
18. On 30 April 2024, TPO wrote to the Employer asking for its response to Mrs N's complaint. The Employer responded on the same day and said that it thought the contributions had been paid but would make good any that had not been made.
19. On 13 May 2024, Mrs N told TPO that since 12 September 2022 there were no further payments made to the Scheme except the one made on 24 April 2023. Mrs N provided TPO with a screen shot from her Scheme account to demonstrate that the Employer had not made any further payments.
20. On the same day, TPO told the Employer the complaint was not resolved as the outstanding contributions had still not been paid into the Scheme. The Employer responded on the same day accepting it needed to make up the unpaid pension contributions and any investment loss due to the late payment of contributions.
21. On 24 July 2024 and 8 August 2024, TPO contacted the Employer to ask when Mrs N's pension contributions would be brought up to date. Neither request received a response.

Adjudicator's Opinion

22. Mrs N's complaint was considered by one of our Adjudicator's 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 engaged with TPO's communications for it to provide a detailed response, he had to base his Opinion solely on the information provided by Mrs N.
- The Adjudicator set out in Appendix One the weekly pension contributions evidenced on Mrs N's payslips between 9 July 2022 to 27 August 2022 along with her net weekly pay figure of £431. The payslips confirmed that when she was paid £431 there was an employee pension contribution of £17.29 and an employer contribution of £12.97.
- The Adjudicator also set out in Appendix Two the weekly salary payments of £431 received into Mrs N's bank account for the period 14 September 2022 to 1 February 2023, from the bank statements she had provided.
- When comparing Mrs N's payslips and bank statements, the Adjudicator said it was evident her net weekly salary between 9 July 2022 and 1 February 2023 was a consistent figure of £431.
- While Mrs N does not have payslips for the period 12 September 2022 to 31 January 2023, the Adjudicator was satisfied that given the consistent net weekly salary of £431, on the balance of probabilities, her pension contribution figures for this period would have been the same as those paid between 9 July 2022 and 12 September 2022, being an employee pension contribution of £17.29 and an employer contribution of £12.97.
- Based on the information provided by Mrs N, the unpaid pension contributions amount to a total of £635.46 for the period 12 September 2022 to 31 January 2023, this being £363.09 for employee contributions and £272.37 for employer contributions. This total is then reduced by the £22.77 that the Employer paid into the Plan on 24 April 2023, as an employee contribution of £13.01 and £9.76 as the employer contribution. So overall the Employer has failed to remit £612.69 into the Plan.
- The Adjudicator said that he had no reason to doubt the information provided by Mrs N. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Mrs N'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, Mrs N was not in the financial position she ought to be in.

- In the Adjudicator's view, Mrs 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.

23. The Employer 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

24. Mrs N has complained that the Employer has not paid all the contributions due to her Scheme account.

25. 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 Mrs N's complaint following the Adjudicator's Opinion.

26. Based on the evidence provided by Mrs N, I find that between 14 September 2022 and 1 February 2023 the Employer did not remit contributions to the Scheme. The Appendices show that previous employee and employer contributions were paid where Mrs N's net pay was £431 per month and that her evidence confirms it continued at this figure during the period the Employer failed to provide her with payslips. I therefore agree with the Adjudicator that on the balance of probabilities, £612.69 in employer and employee contributions have not been remitted to the Scheme.

27. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mrs N to suffer a financial loss. The Employer shall take remedial action to put this right.

28. Mrs N is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which she has suffered. This was exacerbated by its failure to resolve the dispute during TPO's investigation into Mrs N's complaint.

Directions

29. To put matters right, the Employer shall, within 28 days of the date of this Determination:

- (i) pay Mrs N £1,000 for the serious distress and inconvenience she has experienced;
- (ii) pay £612.69 into Mrs N's Scheme account. This figure represents the amount that, according to the figures provided by Mrs N, have been deducted from her pay, but not paid into the Scheme account. It also includes the employer contributions for the relevant period which should also have been paid but have not been paid to date;

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- (iii) establish with the Scheme administrator whether the late payment of contributions has meant that fewer units were purchased in Mrs N's Scheme account than she 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.

30. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Mrs N's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman

4 October 2024

Appendix One

Payslip payment date	Employee pension contribution	Employer pension contribution	Payslip net salary paid
09/07/2022	£17.29	£12.97	£431
16/07/2022	£17.29	£12.97	£431
23/07/2022	£17.29	£12.97	£431
30/07/2022	£17.29	£12.97	£431
06/08/2022	£17.29	£12.97	£431
13/08/2022	£17.29	£12.97	£431
20/08/2022	£17.29	£12.97	£431
27/08/2022	£17.29	£12.97	£431

Appendix Two

Bank statement salary date	Net salary received
14/09/2022	£431
21/09/2022	£431
28/09/2022	£431
05/10/2022	£431
12/10/2022	£431
19/10/2022	£431
26/10/2022	£431
02/11/2022	£431
09/11/2022	£431
16/11/2022	£431
23/11/2022	£431
30/11/2022	£431
07/12/2022	£431
14/12/2022	£431
21/12/2022	£431
28/12/2022	£431
04/01/2023	£431
11/01/2023	£431
18/01/2023	£431
25/01/2023	£431
01/02/2023	£431