

## Ombudsman's Determination

Applicant	Miss N
Scheme	NEST ( <b>the Scheme</b> )
Respondent	Gaudium Ltd ( <b>the Employer</b> )

## Outcome

Miss N's complaint is upheld and, to put matters right, the Employer shall pay £895.38 into the Scheme. The Employer shall ensure that Miss N is not financially disadvantaged by its maladministration. It shall arrange for any investment loss to be calculated and paid into the Scheme.

1. In addition, the Employer shall pay Miss N £1,000 for the serious distress and inconvenience it has caused her.

## Complaint summary

2. Miss N has complained that the Employer, has failed to pay employer pension contributions into the Scheme.
3. Miss N has said that the missing employer contributions amounted to £895.38.

## Background information, including submissions from the parties

The sequence of events is not in dispute, so I have only set out the salient points.

4. In 2012, Miss N began her employment with the Employer.
5. Between January 2022 and September 2023, the Employer failed to pay pension contributions into the Scheme.
6. On 21 October 2023, Miss N brought her complaint to The Pensions Ombudsman (TPO).
7. Miss N provided copies of the payslips that she held for the period from January 2022 to September 2023, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. These deductions amounted to £1137.77 in employee contributions and £895.38 in employer contributions. A breakdown of the deductions has been included in the Appendix.

8. On 27 March 2024, Miss N received an Employment Tribunal decision in her favour against the Employer. The Employment Tribunal concluded that the Employer had failed to pay employee contributions in the amount of £1,397.17. It ordered the employer to pay this to Miss N. The Employment Tribunal did not cover the employer contributions which had also not been paid to the Scheme.
9. On 13 May 2024, TPO asked the Employer for its formal response to Miss N's complaint.

On 29 May 2024, TPO chased the Employer again, but the Employer failed to respond by the deadline.

### **Adjudicator's Opinion**

10. Miss 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 Miss N.
  - The Adjudicator said that she had no reason to doubt the information provided by Miss N. So, in the Adjudicator's Opinion, on the balance of probabilities, the Employer had not paid any of the employer contributions that were due to the Scheme. As a result of its maladministration, Miss N was not in the financial position she ought to be in.
  - In the Adjudicator's view, Miss 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.
11. 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**

12. Miss N has complained that the Employer has not paid the employer contributions due to her Scheme account.
13. I find that employer contributions were not paid into the Scheme. The Employer failed to rectify this and did not engage with TPO or Miss N. It has also failed to respond to the Adjudicator's Opinion.

14. The Employer's failure to pay employer contributions into the Scheme amounts to unjust enrichment and has caused Miss N to suffer a financial loss. The Employer shall take remedial action to put this right.
15. Miss 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 respond during TPO's investigation into Miss N's complaint.

### **Directions**

16. To put matters right, the Employer shall, within 28 days of the date of this Determination:
  - (i) pay Miss N £1,000 for the serious distress and inconvenience she has experienced;
  - (ii) pay £895.38 into Miss N's Scheme account. This figure represents the employer contributions that, according to the figures provided by Miss N, have not been paid into her Scheme account.
  - (iii) establish with the Scheme administrator whether the late payment of the employer contributions has meant that fewer units were purchased in Miss 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.

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

**Anthony Arter CBE**

Deputy Pensions Ombudsman

11 September 2024

**Appendix**

Date	Employee contributions	Employer contributions
January 2022	62.58	46.94
February 2022	70.83	53.13
March 2022	60.73	45.55
April 2022	69.20	51.90
May 2022	68.02	51.02
June 2022	59.22	44.42
July 2022	59.66	44.75
August 2022	61.77	46.33
October 2022	68.24	51.18
December 2022	£64.82	48.61
January 2023	74.58	55.94
February 2023	77.17	57.88
March 2023	66.98	50.23
April 2023	69.23	51.93
May 2023	70.86	53.15
June 2023	43.54	32.66
July 2023	75.77	56.83
August 2023	70.57	52.93