

## Ombudsman's Determination

Applicant	Mrs S
Scheme	NEST ( <b>the Plan</b> )
Respondent	Taylor Robinson Estate Agents ( <b>the Employer</b> )

## Outcome

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

## Complaint summary

2. Mrs S has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Plan on time.

## Background information, including submissions from the parties

3. Between April 2016 and November 2018, the Employer failed to pay pension contributions into the Plan.
4. On 17 November 2018, Mrs S sent an email to the Employer asking for details of her pension.
5. On 27 November 2018, Mrs S emailed the Employer as she was still waiting to receive the details of the Plan.
6. On the same day, the Employer confirmed the Plan administrator was NEST. It said that it had requested a statement to show the current Plan value. It said that, once this was received, it would forward it to Mrs S. However, Mrs S did not receive an update.
7. On 26 September 2019, Mrs S brought her complaint to The Pensions Ombudsman (**TPO**).
8. Mrs S provided copies of the payslips that she held for the period from April 2016 to November 2018, which detailed the pension contributions deducted from her pay and

the corresponding employer contributions. A breakdown of the deductions has been included in the Appendix.

9. On 26 November 2019, the Employer provided a pension history report. This showed the total outstanding unpaid contributions were £886.89.
10. On 28 January 2020, a contribution schedule was provided by NEST. This showed between 29 November 2019 and 28 January 2020 £469.63 in employee contributions and £447.26 in employer contributions were invested into the Plan. This matched the total of £886.89 from the pension history report previously provided by the Employer.
11. On 12 March 2020, the Employer provided a further pension history report. This showed the contributions history and what payments had been paid into the Plan. The payments equalled £886.89.
12. £129.40 of this accounted for the unpaid contributions between 30 April 2016 and 31 August 2016. The remaining £757.49 accounted for the unpaid contributions between 30 June 2017 to 30 November 2018.
13. On 20 April 2020, TPO contacted the Employer as some contributions appeared to still be missing.
14. On 22 April 2020, the Employer responded to TPO. It said it had already paid £129.40 to the Plan, which was part of the breakdown mentioned above. It apologised and said that it was happy to contribute any financial loss associated with the late payments. It said that the unpaid contributions were down to an administrative error.
15. On 15 July 2020, TPO informed the Employer that Mrs S had suffered distress and inconvenience and was seeking compensation. It said the financial loss calculation from the Plan administrator was just over £123 (**the financial loss**).
16. On 21 August 2020, TPO contacted the Employer again. It asked for whether the financial loss calculated by the Plan administrators had been paid and asked whether about payment of distress and inconvenience.
17. On 23 August 2021, because it had not received an update, TPO asked the Employer for its formal response to Mrs S' complaint.
18. On 22 September 2021, the Employer responded to TPO and requested a time extension.
19. On 14 October 2021, TPO responded to the Employer and granted it until 12 November 2021 to provide its formal response.
20. On 12 November 2021, the Employer provided its formal response to TPO. It said it dealt with the issue as soon as it was brought to its attention. It said Mrs S was added to the Plan in 2019 and all outstanding contributions had been paid.

21. The Employer also apologised for the delay in registering Mrs S with the Plan. However, the Employer did not agree Mrs S had suffered a loss as all contributions had now been paid.
22. On 20 December 2021, Mrs S provided her comments to the points raised in the formal response. Mrs S said the Employer had never provided her with an account number for the Plan or confirmed the amounts that had been paid.
23. Mrs S also said the Plan was set up after multiple deductions had been taken from her pay. She said that she did not accept the Employer's incompetence as an oversight.
24. On 22 November 2022, TPO wrote to the Employer to ask for more information in response to Mrs S' complaint.
25. On 5 December 2022, the Employer responded to TPO's request. It agreed to pay the financial loss and make a payment to cover the non-financial loss. It proposed making a payment of £500 that would cover both the financial and non-financial loss. This was offer was put to Mrs S.
26. On 9 December 2022, Mrs S rejected the Employers offer. She proposed that the Employer paid the financial loss plus £1,000 compensation.
27. On 4 January 2023, the Employer rejected Mrs S' counteroffer. It made a final offer to pay the financial loss plus £750 compensation.
28. On 5 January 2023, Mrs S rejected the Employer's final offer.

### **Caseworker's Opinion**

29. Mrs 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 Plan. 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.
  - The Employer accepted that not all contributions were paid on time, so an error had occurred, and the Employer was responsible.
  - Our normal approach for cases like this would be to seek agreement from all parties as to the dates and amounts of contributions involved.
  - The Caseworker said that he had no reason to doubt the information provided by both Mrs S as she had provided evidence to show that contributions were paid late. The Employer also apologised for the delay in registering Mrs S to the Plan, so it was the Caseworker's Opinion, that contributions had been deducted from

Mrs S' salary, but had not been paid into the Plan on time. This amounted to clear maladministration.

- In the Caseworker's view, Mrs S would have suffered distress and inconvenience at the thought of her pension contributions being lost. However, the Employer has accepted that there was maladministration and has offered to pay £750 to cover the non-financial loss, which the Caseworker thought was an appropriate resolution.

30. The Employer agreed with the Caseworker's Opinion, however Mrs S has said it has failed to take the actions at agreed to. The Employer also failed to respond to TPO's correspondence following the Caseworker's Opinion.
31. The complaint was passed to me to consider. I agree with the Caseworker's Opinion, except the level of award for maladministration.

### **Ombudsman's decision**

32. Mrs S has complained that the Employer has not paid all the contributions due to her Plan account.
33. I find that employee contributions were deducted but held back by the Employer and not paid into the Plan on time.
34. Although the Employer agreed to the Caseworker's Opinion, it failed to carry out the agreed actions within the required timeframe. It also failed to respond to the Caseworker's correspondence following his Opinion.
35. As the Employer has not addressed the action points outlined in the Opinion. Mrs S is still not back in the financial position she ought to be in. The Employer shall take remedial action to put this right.
36. Mrs S is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which she has suffered. In my view, Mrs S' distress and inconvenience was exacerbated by the Employer's prevarication and failure to respond promptly even after accepting the Caseworker's Opinion.

### **Directions**

37. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mrs S £1,000 for the serious distress and inconvenience she has experienced;
  - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mrs S' pay in respect of the period of her employment. The Schedule shall also include the corresponding employer contributions that were due to the Plan; and

(iii) forward the Schedule to Mrs S.

38. The Employer shall, within 14 days of receiving a request by Mrs S, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.
39. Within 14 days of receiving confirmation from Mrs S that she agrees with the information on the Schedule, the Employer shall:
- (i) pay the missing contributions to the Plan;
  - (ii) establish with the Plan whether the late payment of contributions has meant that fewer units were purchased in Mrs S' Plan account than she would have otherwise secured, had the contributions been paid on time; and
  - (iii) pay any reasonable administration fee should the Plan administrator charge a fee for carrying out the above calculation.
40. Within 14 days of receiving confirmation from NEST of any shortfall in Mrs S' units, pay the cost of purchasing any additional units required to make up the shortfall.

**Dominic Harris**

Pensions Ombudsman  
4 May 2023

**Appendix**

Date	Employee contributions	Employer contributions
30/04/2016	£11.33	£14.17
31/05/2016	£13.01	£16.27
30/06/2016	£11.89	£14.87
31/07/2016	£11.33	£14.17
31/08/2016	£9.94	£12.42
30/09/2016	None	None
31/10/2016	None	None
30/11/2016	None	None
31/12/2016	None	None
31/01/2017	None	None
28/02/2017	None	None
31/03/2017	None	None
30/04/2017	None	None
31/05/2017	None	None
30/06/2017	£9.10	£11.38
31/07/2017	£10.01	£12.51
31/08/2017	£10.01	£12.51
30/09/2017	£10.13	£12.66
31/10/2017	£11.33	£14.16
30/11/2017	£10.61	£13.26
31/12/2017	£10.45	£13.06
31/01/2018	£10.33	£12.91
28/02/2018	£10.69	£13.36
31/03/2018	£10.33	£12.91
30/04/2018	£31.71	£26.43

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31/05/2018	£33.51	£27.93
30/06/2018	£33.03	£27.53
31/07/2018	£37.23	£31.03
31/08/2018	£36.27	£30.23
30/09/2018	£33.03	£27.53
31/10/2018	£43.11	£35.93
30/11/2018	£38.88	£32.40