

## Ombudsman's Determination

Applicant	Ms N
Scheme	NEST ( <b>the Scheme</b> )
Respondent	George Tidbury ( <b>the Employer</b> )

## Outcome

1. Ms N's complaint is upheld and, to put matters right, the Employer shall pay £86.82 into the Scheme. The Employer shall ensure that Ms N is not financially disadvantaged by its maladministration. So, it shall arrange for any investment loss to be calculated and paid into the Scheme.

## Complaint summary

2. Ms N has complained that the Employer, despite deducting contributions from her pay, has failed to pay them all into the Scheme, or on time.
3. The available evidence shows that £86.82 has not been paid into the Scheme. This figure represents £50.40 in employee contributions and £36.42 in employer contributions.

## Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points.
5. In December 2016, Ms N began her employment with the Employer.
6. On 3 October 2017, Ms N was enrolled into the Scheme.
7. Between November 2019 and November 2022, the Employer failed to pay pension contributions into the Scheme.
8. On 12 March 2020, 12 February 2021 and 27 August 2021, the Employer made multiple payments into the Scheme to bring the outstanding contributions up to date. These are shown in Appendix Two.
9. On 22 June 2022, Ms N contacted the Scheme administrator about unpaid pension contributions and was told that there had been no contributions paid into the Scheme since September 2021. She was told to contact the Employer.

10. On 24 June 2022, Ms N spoke to the Employer about the unpaid contributions.
11. On 2 July 2022, Ms N raised a formal complaint with the Employer.
12. On 24 July 2022, the Employer responded to Ms N's complaint. It said that its accountant had confirmed that the Scheme administrator would pay all outstanding payments by 31 August 2022.
13. On 14 September 2022, Ms N brought her complaint to The Pensions Ombudsman (**TPO**).
14. On 12 December 2022, Ms N received a letter from the Scheme administrator. This stated that it had reported the Employer to The Pensions Regulator (**TPR**) for non-payment of contributions between 6 August 2022 and 5 September 2022.
15. On 2 March 2023, Ms N said multiple payments were made to the Scheme in the following months:-
  - March 2020
  - February 2021
  - August 2021
  - December 2022

She said that following this no further payments were made into the Scheme.

16. Ms N provided copies of the payslips that she held for the period from September 2019 to September 2023, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. A breakdown of the available payslips has been included in Appendix One. She also provided a schedule from the Scheme administrator which showed the employer and employee contributions which had been paid into the Scheme. The Scheme administrator's schedule has been included in Appendix Two.
17. On 3 March 2023, TPO wrote to the Employer to ask for further information in response to Ms N's complaint.
18. On 7 March 2023, the Employer responded to TPO and said it was putting the requested evidence together.
19. On 17 March 2023, TPO repeated its information request to the Employer and set a deadline of 31 March 2023.
20. On the same day, TPO received a response from the Employer's accountant. It said that it administered the payroll and pensions on behalf of the Employer and would have the requested information sent over before 24 March 2023.
21. On 8 May 2023, the Employer responded to TPO. It acknowledged there had been issues with the pension contributions being paid to the Scheme. However, it had been

given information from his accountant to show contributions were up to date. The Employer confirmed that while it was technically Ms N's employer, it was not a profit-making company as her salary was paid from an annual personal health budget, received for his daughter which was funded by National Health.

22. On 26 May 2023, the Employer sent information which was provided to him by his accountant. This was a printout from the Scheme administrator which showed what contributions had been paid. The Employer also reiterated that it was not a profit-making business.
23. On 27 September 2023, Ms N left her employment with the Employer.
24. On 27 October 2023, Ms N received a letter from the Scheme administrator which stated that no more contributions would be paid from the Employer from 27 September 2023.
25. On 7 November 2023, Ms N emailed TPO and confirmed she no longer worked for the Employer and provided a copy of the letter dated 27 October 2023.
26. On 31 January 2024, Ms N sent an email to TPO which attached copies of her outstanding wage slips and latest contributions paid into the Scheme. She confirmed the contributions had been paid with the exception of contributions due for 27 September 2023. She also said the Employer had not mentioned anything to her regarding the payment of investment loss as a result of the late payment of contributions.
27. On 5 August 2024, TPO emailed the Employer and requested evidence which showed whether the outstanding contributions for September 2023 had been paid to the Scheme along with any investment loss for late payments. This request was repeated on 3 September 2024 and 17 September 2024.
28. On 9 October 2024, the Employer emailed TPO and said it had received confirmation from the Scheme administrator that all contributions were up to date, and it would send evidence of this. Despite a further extension being granted until 5 November 2024, the Employer did not provide the requested evidence.
29. On 25 November 2024, the Scheme administrator confirmed that the contributions rates for the Scheme were 5% for employee contributions and 3% for employer contributions.

## **Adjudicator's Opinion**

30. Ms 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. He said that, as the Employer had not provided an adequate response to TPO's information requests, he had to base his Opinion solely on the information provided by Ms N.

- The Adjudicator said that he had no reason to doubt the information provided by Ms N. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Ms N's salary but had not all been paid into the Scheme or on time. 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, Ms N was not in the financial position she ought to be in.
- Based on the information provided by Ms N, It was his view that not all employee and employer contributions had been paid into the Scheme on time. It was also his opinion that contributions for September 2023 remained outstanding.
- The September 2023 payslip only showed employee contributions of £50.40 along with a gross salary of £1,734.06. No figure was provided for the employer contributions. The Scheme administrator has confirmed that the employee contribution rate was 5% and the employer contribution rate was 3% in line with the Scheme Rules. Therefore, in the Adjudicator's view, based on a balance of probabilities, £50.40 in employee contributions and £36.42 in employer contributions, a total of £86.82 had not been remitted to the Scheme for September 2023.
- It was also the Adjudicator's opinion that Ms N may have suffered some distress and inconvenience as a result of this maladministration from the Employer. However, he was of the opinion that in these specific circumstances, Ms N did not qualify for an award for non-financial injustice considering the Employer was not a for profit company.

31. The Employer agreed to the Adjudicator's Opinion and provided a calculation for the outstanding contributions. It also provided a calculation for the investment loss due to the late payment of contributions which amounted to £109.87 after contacting the Scheme administrator. The Employer failed to pay the outstanding amounts into Ms N's Scheme account. The complaint was passed to me to consider. I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

32. Ms N has complained that the Employer has not paid all the contributions due to her Scheme account and that not all have been paid on time.
33. I find that employee contributions were deducted but held back by the Employer and not paid into the Scheme. There were also occasions where contributions were paid significantly late. The Employer failed to rectify this and did not adequately engage with TPO or Ms N.

34. Under the rules of the Scheme (**The Scheme Rules**) the Employer was obliged to pay to the Scheme, at least 3% of Ms N's qualifying earnings in the relevant pay reference period, and the employer and employee contributions must amount to at least 8% of Ms N qualifying earnings in the relevant pay reference period. The relevant provisions of the Scheme Rules are outlined in Appendix Three.
35. I find that the Employer has acted in breach of the Scheme Rules by not paying the contributions due for September 2023. The Employer's failure to pay all employee and employer contributions into the Scheme or on time amounts to unjust enrichment and has caused Ms N to suffer a financial loss. This amounts to maladministration. The Employer shall take remedial action to put this right.

### **Directions**

36. To put matters right, the Employer shall, within 28 days of the date of this Determination:
  - (i) pay £86.82 into Ms N's Scheme account. This figure represents the employee contributions of £50.40 and employer contributions of £36.42.
  - (ii) pay £109.87 into Ms N's Scheme account for the investment loss due to the late payment of contributions between September 2019 and September 2023.

### **Camilla Barry**

Deputy Pensions Ombudsman  
7 February 2025

**Appendix One**

Date	Employee contributions	Employer contributions	Gross pay
28/09/2019	£55.12	Unknown	£1,890.00
28/10/2019	£95.60	Unknown	£2,390.00
28/11/2019	£75.60	Unknown	£1,890.00
28/12/2019	£85.60	Unknown	£2,140.00
28/01/2020	£82.80	Unknown	£2,070.00
28/02/2020	£78.40	Unknown	£1,960.00
28/03/2020	£85.60	Unknown	£2,140.00
28/04/2020	£85.60	Unknown	£2,140.00
28/05/2020	£87.60	Unknown	£2,190.00
28/06/2020	£84.80	Unknown	£2,120.00
28/07/2020	£88.40	Unknown	£2,210.00
28/08/2020	£75.60	Unknown	£1,890.00
28/09/2020	£68.40	Unknown	£1,710.00
28/10/2020	£64.80	Unknown	£1,620.00
28/11/2020	£61.20	Unknown	£1,530.00
21/12/2020	£64.80	Unknown	£1,620.00
28/01/2021	£61.20	Unknown	£1,530.00
28/02/2021	£57.60	Unknown	£1,440.00
March 2021	No Payslip received		
28/04/2021	£32.40	Unknown	£810.00
28/05/2021	£39.00	Unknown	£975.00
28/06/2021	£39.00	Unknown	£975.00
28/07/2021	£39.00	Unknown	£975.00
28/08/2021	£39.00	Unknown	£975.00
28/09/2021	£39.00	Unknown	£975.00

28/10/2021	£39.00	Unknown	£975.00
28/11/2021	£39.00	Unknown	£975.00
28/12/2021	£46.80	Unknown	£1,170.00
27/01/2022	£36.00	Unknown	£900.00
27/02/2022	£36.00	Unknown	£900.00
27/03/2022	£36.00	Unknown	£900.00
27/04/2022	£36.00	Unknown	£900.00
27/05/2022	£39.00	Unknown	£975.00
27/06/2022	£43.80	Unknown	£1,095.00
27/07/2022	£39.00	Unknown	£975.00
27/08/2022	£39.00	Unknown	£975.00
September 2022	No payslip received		
27/10/2022	£37.20	Unknown	£930.00
27/11/2022	£39.00	Unknown	£975.00
December 2022	No payslip received		
27/01/2023	£39.00	Unknown	£975.00
27/02/2023	£36.00	Unknown	£900.00
27/03/2023	£48.00	Unknown	£1,200.00
27/04/2023	No Payslip received		
27/05/2023	£39.00	Unknown	£975.00
27/06/2023	£0.00	Unknown	£401.14
27/07/2023	£0.00	Unknown	£437.60
27/08/2023	£0.00	Unknown	£510.53
27/09/2023	£50.40		£1,734.06

**Appendix Two**

Date	Employee Contributions	Employer Contributions
28/09/2019	£55.12 (09/10/19)	£41.34 (09/10/19)
28/10/2019	Unknown	Unknown
28/11/2019	Unknown	Unknown
28/12/2019	Unknown	Unknown
28/01/2020	Unknown	Unknown
28/02/2020	Unknown	Unknown
16/03/2020	£78.40 £82.80 £75.60 £95.60 £85.60	£58.80 £62.10 £56.70 £71.70 £64.20
28/03/2020	Unknown	Unknown
28/04/2020	Unknown	Unknown
28/05/2020	Unknown	Unknown
28/06/2020	Unknown	Unknown
28/07/2020	Unknown	Unknown
28/08/2020	Unknown	Unknown
28/09/2020	Unknown	Unknown
28/10/2020	Unknown	Unknown
28/11/2020	Unknown	Unknown
21/12/2020	Unknown	Unknown
28/01/2021	Unknown	Unknown
12/02/2021	£61.20 £64.80 £68.40 £88.40 £64.80 £85.60 £85.60 £84.80	£45.90 £48.60 £51.30 £66.30 £48.60 £64.20 £64.20 £63.60



	£61.20 £87.60 £75.60	£45.90 £65.70 £56.70
28/02/2021	£57.60 (12/03/2021)	£43.20 (12/02/2021)
28/04/2021	Unknown	Unknown
28/05/2021	Unknown	Unknown
28/06/2021	Unknown	Unknown
28/07/2021	Unknown	Unknown
27/08/2021	£39 £68.40 £39 £32.40 £39 £39 £39	£29.25 £51.30 £29.25 £24.30 £29.25 £29.25 £29.25
28/08/2021	Unknown	Unknown
28/09/2021	£39.00 (27/09/2021)	£29.25 (27/09/2021)
28/10/2021	Unknown	Unknown
28/11/2021	Unknown	Unknown
13/12/2021	£39 £39 £36 £46.80 £36 £43.80 £36 £36	£29.25 £29.25 £27 £35.10 £27 £32.85 £27 £27
28/12/2021	Unknown	Unknown
27/01/2022	Unknown	Unknown
27/02/2022	Unknown	Unknown
27/03/2022	Unknown	Unknown
27/04/2022	Unknown	Unknown
27/05/2022	Unknown	Unknown
27/06/2022	Unknown	Unknown

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27/07/2022	Unknown	Unknown
27/08/2022	Unknown	Unknown
27/10/2022	Unknown	Unknown
27/11/2022	Unknown	Unknown
22/12/2022	£39 £47.40 £39 £39 £37.20 £42	£29.25 £25.55 £29.25 £29.25 £27.90 £31.50
27/01/2023	Unknown	Unknown
27/02/2023	Unknown	Unknown
17/05/2023	£42.00 £39.00 £48.00 £36.00	£31.50 £29.25 £36.00 £27.00
01/06/2023	£39.00	£29.25

## **Appendix Three**

### **Scheme Rules**

#### Rule 7.1.1

Where in respect of a member a participating employer has elected to use the Scheme to:

(a) fulfil its duties under:(i) in relation to Great Britain, section 2(1) (by virtue of section), 3(2), 5(2) or 7(3) of the 2008 Act; or(ii) in relation to Northern Ireland, section 2(1) (by virtue of section), 3(2), 5(2) or 7(3) of the 2008 NI Act), or

(b) arrange for a worker to become a member of the Scheme within article 19(2A) of the Order,

from the date that admission to membership or the making of contribution arrangements in relation to that member takes effect, the participating employer shall pay and the Trustee shall accept such contributions as may be required in order for the Scheme to meet the quality requirement referred to in Part 1 of the 2008 Act (Part 1 of the 2008 NI Act), or the alternative requirement referred to in Part 1 of the 2008 Act (or Part 1 of the 2008 NI Act), in relation to the member, having regard to the contributions being paid by the member under rule 9.1.

#### Section 20 Pensions Act 2008

##### 20 Quality requirement: UK money purchase schemes

(1) A money purchase scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if under the scheme—

(a) the jobholder's employer must pay contributions in respect of the jobholder;

(b) the employer's contribution, however calculated, must be equal to or more than 3% of the amount of the jobholder's qualifying earnings in the relevant pay reference period;

(c) the total amount of contributions paid by the jobholder and the employer, however calculated, must be equal to or more than 8% of the amount of the jobholder's qualifying earnings in the relevant pay reference period.