

## Ombudsman's Determination

Applicant	Mr T
Scheme	NEST ( <b>the Scheme</b> )
Respondents	M.A.G Engineering Company Limited ( <b>the Employer</b> )

### Outcome

1. Mr T's complaint is upheld and, to put matters right, the Employer shall pay £1,475.06 into the Scheme. The Employer shall ensure that Mr T 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 T £1,000 for the serious distress and inconvenience it has caused him.

### Complaint summary

3. Mr T has complained that the Employer, despite deducting pension contributions from his pay, has failed to pay them into the Scheme.
4. In August 2023, all outstanding pension contributions that Mr T was owed were paid into the Scheme.
5. The Employer has since then deducted further pensions contributions from Mr T's pay, but not all have been paid into the Scheme.

### Background information, including submissions from the parties

6. The sequence of events is not in dispute, so I have only set out the salient points.
7. In May 2019, the Employer enrolled Mr T into the Scheme.
8. In January 2021, Mr T received notification from the Scheme administrator that the Employer had failed to pay all contributions into his pension.
9. On 20 September 2022, Mr T brought his complaint to The Pensions Ombudsman (**TPO**).

10. In May 2023, Mr T provided copies of the payslips that he held for the period from January 2023 to May 2023, which detailed the pension contributions deducted from his pay. These deductions amounted to £2,016. Mr T said that during this period only £156.80 was paid into the Scheme.
11. In August 2023, we asked the Employer for its formal response to Mr T's complaint.
12. On 4 September 2023, the Employer told TPO that it accepted that the payments were late, but it had now paid all the outstanding employee and employer pension contributions into the Scheme. The Employer said it was waiting for the Scheme administrator to finalise the interest and investment loss and that Mr T would then be compensated. Mr T confirmed that all owed contributions had been paid.
13. On 11 September 2023, Mr T contacted TPO and said that no pension payments had been paid into the Scheme since 8 August 2023.
14. In October 2023, Mr T said that only one employer contribution of £15.60 and employee contribution of £20.80 had been paid into the Scheme since 8 August 2023. He provided a screen shot that verified this. Mr T also confirmed he had not heard from the Employer regarding any potential investment loss due to the late payment of previous pension contributions.
15. On 23 October 2023, TPO asked the Employer if the Scheme administrator had confirmed whether Mr T had suffered any investment loss. TPO also asked about the payments since August 2023 and if there were steps in place to regularly pay the pension contributions going forward. No response was received from the Employer.
16. Mr T has provided copies of the payslips he has received for the period August 2023 to July 2024. These deductions amounted to £827.20. A breakdown of the deductions has been included in the Appendix. The payslips did not show the employer contributions which have also not been paid into the Scheme.
17. On 28 August 2024, the Scheme administrator confirmed that contributions were paid into the Scheme in line with the statutory minimum automatic enrolment contribution rate of 3% and 5% for employer and employee contributions.

## **Adjudicator's Opinion**

Mr T'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 the Employer had initially responded but then no further response was received to TPO's communications, she had to base her Opinion solely on the information provided by Mr T.

- The Adjudicator said that she had no reason to doubt the information provided by Mr T. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Mr T's salary, but had not been paid into the Scheme. In addition, the Employer had not fully paid the employer contributions that were due over the same period. As a result of its maladministration, Mr T was not in the financial position he ought to be in.
  - The Adjudicator said that Mr T's payslips did not show the employer contributions for the period August 2023 to July 2024 even though he was still enrolled in the Scheme. The Scheme administrator confirmed that the contributions should have been calculated by reference to the statutory minimum automatic enrolment contribution rate of 3% and 5% for employer and employee contributions. It was the Adjudicator's view, on the balance of probabilities, that £647.86 in employer contributions had not been paid to the Scheme. In total £1,475.06 had not been remitted to the Scheme.
  - In the Adjudicator's view, Mr T 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.
18. 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**

19. Mr T has complained that the Employer has not paid all the contributions due to his Scheme account.
20. 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 fully engage with TPO or Mr T. It has also failed to respond to the Adjudicator's Opinion.
21. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr T to suffer a financial loss. The Employer shall take remedial action to put this right.
22. Mr T 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 properly respond during TPO's investigation into Mr T's complaint.

### **Directions**

23. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mr T £1,000 for the serious distress and inconvenience he has experienced;

(ii) pay £1,475.06 into Mr T's Scheme account. This figure represents the amount that, according to the figures provided by Mr T, 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 T'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.

24. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Mr T's units, pay the cost of purchasing any additional units required to make up the shortfall.

**Anthony Arter CBE**

Deputy Pensions Ombudsman

10 October 2024

**Appendix**

Date	Gross salary	Employee contributions	Employer contributions
10 August 2023	£2592	£80	Not stated
10 September 2023 – only one week paid	£2160	£64 (£43.20 outstanding)	Not stated
10 October 2023	£1944	£64	Not stated
10 November 2023	£2700	£80	Not stated
10 December 2023	£2160	£64	Not stated
10 January 2024	£2700	£80	Not stated
10 February 2024	£2160	£64	Not stated
10 March 2024	£2160	£64	Not stated
10 April 2024	£2700	£80	Not stated
10 May 2024	£2160	£64	Not stated
10 June 2024	£2330	£64	Not stated
10 July 2024	£2576	£80	Not stated
<b>Total amount: £827.20</b>		<b>£827.20</b>	