

## Ombudsman's Determination

Applicant	Mr E
Scheme	NEST ( <b>the Scheme</b> )
Respondent	Cru Construction (Services) Ltd ( <b>the Employer</b> )

## Outcome

1. Mr E's complaint is upheld and, to put matters right, the Employer shall pay £4,967.24 into the Scheme. The Employer shall ensure that Mr E 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 E £1,000 for the serious distress and inconvenience it has caused him.

## Complaint summary

3. Mr E has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme.
4. The available evidence shows that £4,967.24 in unpaid pension contributions is due to the Scheme.

## 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. In August 2013, Mr E's employment was transferred to the Employer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**), and he began working for the Employer.
7. In December 2020, Mr E was enrolled into the Scheme.
8. Between July 2022 and August 2024, the Employer failed to pay pension contributions into the Scheme.
9. On 11 July 2022, the Scheme administrator sent Mr E a letter which reported the Employer to The Pensions Regulator (**TPR**) for unpaid contributions between 18

March 2022 and 24 March 2022, which were due to be paid into the Scheme on 9 April 2022.

10. On 6 October 2022, the Scheme administrator sent Mr E a further letter as it had reported the Employer to TPR for non-payment of pension contributions between 13 June 2022 and 19 June 2022, which were due to be paid into the Scheme on 5 July 2022. Mr E says he received over 90 further notification letters from the Scheme administrator which confirmed that contributions were unpaid.
11. On 9 January 2023, Mr E complained to the Employer.
12. On 8 February 2023, Mr E complained to The Pensions Ombudsman (**TPO**).
13. Mr E provided copies of the payslips that he held for the period from July 2022 to August 2024, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These deductions amounted to £2,954.70.
14. Mr E was unable to provide copies of payslips for the entire period and some of the payslips provided did not include a figure for the employer pension contributions. A breakdown of the deductions from the information provided on the payslips has been included in Appendix One.
15. On 13 September 2023, TPO asked the Employer for its formal response to Mr E's complaint.
16. On 25 September 2023, the Employer emailed TPO and said it would meet with its accountant to resolve the issue and pay any outstanding contributions owed to the Scheme.
17. On 26 September 2023, TPO emailed the Employer and requested it provide an update once it had discussed the matter with its accountant.
18. On 9 October 2023, the Employer emailed TPO and said it had met with its accountant and asked it to look into the pension situation and reinstate its payments to the Scheme. The Employer said its accountant would contact TPO directly.
19. On 16 October 2023, TPO asked the Employer for an update. On the same day the Employer responded and confirmed there was no update.
20. On 25 October 2023, TPO sent a final chaser to the Employer. On the same day the Employer responded and said its accountant was dealing with the issue, who was copied into the email correspondence.
21. On 21 November 2023, TPO telephoned the Employer for an update. The Employer explained that it was having difficulties contacting the Scheme administrator, but it had started repaying contributions on the system. The Employer also informed TPO that it was dealing with court proceedings for one of its clients which was taking up a lot of its time.
22. On 9 January 2024, TPO requested an update from the Employer.

23. On 18 January 2024, TPO telephoned the Employer. The Employer said it had set up a direct debit with the Scheme administrator, but it was not taking payments. It said it would speak to its accountant.
24. On 26 January 2024, the Employer telephoned TPO. It explained that the accountant had encountered ongoing issues with the Scheme administrator and had arranged for a new direct debit to be set up to take future pensions contributions.
25. On 2 February 2024, the Employer telephoned TPO and said it was not in a position to provide an update as it had been tied up in court proceedings. It agreed to provide an update by 6 February 2024.
26. On 6 February 2024, TPO telephoned the Employer for an update, which it was unable to provide. It was explained to the Employer that as an informal resolution could not be reached the case would be progressed to a formal investigation.
27. On 13 February 2024, TPO received an email from the Scheme administrator which attached a letter dated 9 February 2024. This included a table which showed which contributions it had received along with the tax relief claimed from HMRC. It also included a table which showed contributions received from the Employer. The Scheme administrator also confirmed for the 2023/2024 tax year the legal minimum contributions it expected to receive on the members behalf was eight percent of their pensionable earnings.
28. On 19 August 2024, the Scheme administrator emailed TPO and attached a further letter. This confirmed the date Mr E was enrolled into the Scheme and the date contributions were received. It confirmed contributions between 13 June 2022 and 28 July 2024 had not been received. It also compiled a table which showed the contributions it had received along with HMRC tax relief.
29. On 22 August 2024, the Scheme administrator sent Mr E a further letter as it had reported the Employer to TPR for non-payment of pension contributions between 29 April 2024 and 5 May 2024.
30. On 27 August 2024, the Scheme administrator emailed TPO. It confirmed when an employer is reported to TPR, only the information about the period of late contribution and date contributions were due to be paid is shown. It provided information on the first and last earnings period.
31. On 13 September 2024, the Employer telephoned TPO and said it would be meeting with its accountant to arrange a plan of action to pay the outstanding contributions and confirm what was outstanding.
32. On 16 September 2024, the Employer's accountant emailed TPO and said it had resubmitted payments scheduled to the Scheme administrator and all arrears up until 31 August 2024 had been quantified.

33. On 19 September 2024, the Scheme administrator received the last contribution from the Employer. This consisted of £23.28 in employee contributions and £17.56 in employer contributions.
34. On 26 September 2024, the Scheme Administrator sent Mr E a letter which said it had reported the Employer to TPR for non-payment of contributions.
35. On 4 October 2024, the Scheme administrator emailed TPO and confirmed it had already reported the employer to TPR. It also confirmed it was unable to make deductions from Mr E's wages for pensions contributions as this could only be done by the Employer. It confirmed the last contribution it had received from the Employer was for £17.46 on 19 September 2024.
36. On 9 October 2024, the Scheme administrator emailed TPO and confirmed the Employer had not set up a payment plan with the Scheme.
37. On the same day, following a follow up telephone call from TPO, the Employer's accountant confirmed that the outstanding pension contributions due to Mr E's Scheme account was £4,967.24. This included both employer and employee pension contributions. (A breakdown of the split between employer and employee contributions was not provided, only the total amount).
38. On 11 October 2024, the Employer agreed to an informal resolution (**the October Agreement**). It agreed to remit the outstanding contributions up to 31 August 2024 totalling £4,967.24 to the Scheme by 31 March 2025. Mr E reserved the right to have the complaint formally investigated by TPO if the Employer failed to take these actions by the agreed date.
39. On 11 November 2024, Mr E emailed TPO as the Employer had not made any payments into the Scheme.
40. The Employer failed to make any payments into the Scheme by 31 March 2025, despite agreeing to do so in line with the October Agreement. So, the complaint was reopened and passed to the formal Opinion stage.
41. On 22 April 2024, TPO emailed the Employer's accountant and asked for a breakdown of the £4,967.24 due into employer and employee pension contributions. TPO did not receive a response to this request.

## Adjudicator's Opinion

42. Mr E'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:-
  - Having reviewed the available evidence, it was the Adjudicator's opinion that not all contributions had been paid into the Scheme. The Employer's accountant confirmed that £4,967.24 in contributions were due to Mr E's Scheme account and

the Employer provided no further evidence to dispute this position. So, in the Adjudicator's opinion an error had occurred, and the Employer was responsible.

- The Adjudicator said that he had no reason to doubt the information provided by Mr E or the information provided by the Employer's accountant. He confirmed that this was consistent with the payslips provided by Mr E as well as the letters from the Scheme administrator. The Adjudicator also said that although the Employer initially engaged with TPO and reached the October Agreement with Mr E to pay the outstanding contributions, this was not adhered to.
- So, in the Adjudicator's Opinion, contributions had been deducted from Mr E's salary but had not been paid into the Scheme. 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, Mr E was not in the financial position he ought to be in.
- In the Adjudicator's view, Mr E 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.

43. The Employer disagreed with the Adjudicator's Opinion and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

44. Mr E has complained that the Employer has not paid all the contributions due to his Scheme account.
45. 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 adequately engage with TPO or adhere to the October Agreement.
46. Under the rules of the Scheme (**the Scheme Rules**) the Employer was obliged to pay to the Scheme, at least 3% of Mr E's qualifying earnings in the relevant pay reference period, and the employer and employee contributions must amount to at least 8% of Mr E's qualifying earnings in the relevant pay reference period. The relevant provisions of the Scheme Rules are outlined in Appendix Two.
47. I find that the Employer has acted in breach of the Scheme Rules by not paying the contributions due between July 2022 and August 2024. The Employer's failure to pay all employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr E to suffer a financial loss. This amounts to maladministration. The Employer shall take remedial action to put this right.
48. Mr E 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 fully respond during TPO's investigation into Mr E's complaint and its failure to adhere to the October Agreement.

## **Directions**

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

- (i) pay Mr E £1,000 for the serious distress and inconvenience he has experienced;
- (ii) pay £4,967.24 into Mr E's Scheme account. This figure represents the amount that, according to the figures provided by Mr E, 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 E'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.

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

**Camilla Barry**

Deputy Pensions Ombudsman  
4 June 2025

**Appendix One**

Date	Employee contributions	Employer contributions	Gross Salary	Payment status
02/07/2022	£23.28	£17.46	£702.00	Unpaid
09/07/2022	£23.28	£17.46	£702.00	Unpaid
16/07/2022	£23.28	£17.46	£702.00	Paid
23/07/2022	£23.28	£17.46	£702.00	Unpaid
30/07/2022	£23.28	£17.46	£702.00	Unpaid
06/08/2022	£23.28	£17.46	£702.00	Unpaid
13/08/2022	£23.28	£17.46	£702.00	Unpaid
20/08/2022	£23.28	£17.46	£702.00	Unpaid
27/08/2022	£23.28	£17.46	£702.00	Unpaid
03/09/2022	£23.28	£17.46	£702.00	Unpaid
10/09/2022	£23.22	£17.46	£702.00	Unpaid
17/09/2022	£23.28	£17.46	£702.00	Unpaid
24/09/2022	£23.28	£17.46	£702.00	Unpaid
01/10/2022	£23.28	£17.46	£702.00	Unpaid
08/10/2022	£23.28	£17.46	£702.00	Unpaid
15/10/2022	£23.28	£17.46	£702.00	Unpaid
22/10/2022	£23.28	£17.46	£702.00	Unpaid
29/10/2022	£23.28	£17.46	£702.00	Unpaid
05/11/2022	£23.28	£17.46	£702.00	Unpaid
12/11/2022	No Payslip provided			
19/11/2022	£23.28	£17.46	£702.00	Unpaid
26/11/2022	£23.28	£17.46	£702.00	Unpaid
03/12/2022	£23.28	£17.46	£702.00	Unpaid
10/12/2022	£23.28	£17.46	£702.00	Unpaid

17/12/2022	£23.28	£17.46	£702.00	Unpaid
24/12/2022	£23.28	£17.46	£702.00	Unpaid
31/12/2022	£23.28	£17.46	£702.00	Unpaid
07/01/2023	£23.28	£17.46	£702.00	Unpaid
14/01/2023	£23.28	£17.46	£702.00	Unpaid
21/01/2023	£23.28	£17.46	£702.00	Unpaid
28/01/2023	£23.28	£17.46	£702.00	Unpaid
04/02/2023	£23.28	£17.46	£702.00	Unpaid
11/02/2023	£23.28	£17.46	£702.00	Unpaid
18/02/2023	£23.28	£17.46	£702.00	Unpaid
25/02/2023	£23.28	£17.46	£702.00	Unpaid
04/03/2023	£23.28	£17.46	£702.00	Unpaid
11/03/2023	No payslip provided			
18/03/2023	£23.28	£17.46	£702.00	Unpaid
25/03/2023	£23.28	£17.46	£702.00	Unpaid
01/04/2023	£23.28	£17.46	£702.00	Unpaid
08/04/2023	No payslip provided			
15/04/2023	No payslip provided			
22/04/2023	No payslip provided			
29/04/2023	No payslip provided			
06/05/2023	No payslip provided			
13/05/2023	No payslip provided			
20/05/2023	£23.28		£702.00	Unpaid
27/05/2023	£23.28		£702.00	Unpaid
03/06/2023	£23.28		£702.00	Unpaid
10/06/2023	£23.28		£702.00	Unpaid
17/06/2023	£23.28		£702.00	Unpaid



24/06/2023	£23.28		£702.00	Unpaid
01/07/2023	£23.28		£702.00	Unpaid
08/07/2023	£23.28		£702.00	Unpaid
15/07/2023	£23.28		£702.00	Unpaid
22/07/2023	£23.28		£702.00	Unpaid
29/07/2023	£23.28		£702.00	Unpaid
05/08/2023	£23.28		£702.00	Unpaid
12/08/2023	£23.28		£702.00	Unpaid
19/08/2023	£23.28		£702.00	Unpaid
26/08/2023	£23.28		£702.00	Unpaid
02/09/2023	£23.28		£702.00	Unpaid
09/09/2023	£23.28		£702.00	Unpaid
16/09/2023	£23.28		£702.00	Unpaid
23/09/2023	£23.28		£702.00	Unpaid
30/09/2023	£23.28		£702.00	Unpaid
07/10/2023	£23.28		£702.00	Unpaid
14/10/2023	£23.28		£702.00	Unpaid
21/10/2023	£23.28	£17.46	£702.00	Paid
28/10/2023	£23.28		£702.00	Unpaid
04/11/2023	£23.28		£702.00	Unpaid
11/11/2023	£23.28		£702.00	Unpaid
18/11/2023	£23.28		£702.00	Unpaid
25/11/2023	£23.28		£702.00	Unpaid
02/12/2023	£23.28		£702.00	Unpaid
09/12/2023	£23.28		£702.00	Unpaid
16/12/2023	£23.28		£702.00	Unpaid
23/12/2023	£23.28	£17.46	£702.00	Unpaid

30/12/2023	£23.28	£17.46	£702.00	Unpaid
06/01/2024	£23.28		£702.00	Unpaid
13/01/2024	£23.28	£17.46	£702.00	Unpaid
20/01/2024	£23.28	£17.46	£702.00	Unpaid
27/01/2024	£23.28	£17.46	£702.00	Unpaid
03/02/2024	£23.28	£17.46	£702.00	Unpaid
10/02/2024	£23.28	£17.46	£702.00	Unpaid
17/02/2024	£23.28	£17.46	£702.00	Unpaid
24/02/2024	No payslip provided			
02/03/2024	No payslip provided			
09/03/2024	No payslip provided			
16/03/2024	No payslip provided			
23/03/2024	No payslip provided			
30/03/2024	No payslip provided			
06/04/2024	No payslip provided			
13/04/2024	No payslip provided			
20/04/2024	No payslip provided			
27/04/2024	£23.28		£702.00	Unpaid
04/05/2024	£23.28		£702.00	Unpaid
11/05/2024	£23.28		£702.00	Unpaid
18/05/2024	£27.18		£799.50	Unpaid
25/05/2024	£25.23		£750.75	Unpaid
01/06/2024	£25.23		£750.75	Unpaid
08/06/2024	No Payslip Provided			
15/06/2024	£25.23		£750.75	Unpaid
22/06/2024	£25.23		£750.75	Unpaid
29/06/2024	£25.23		£750.75	Unpaid

06/07/2024	£25.23		£750.75	Unpaid
13/07/2024	£25.23		£750.75	Unpaid
20/07/2024	£25.23		£750.75	Unpaid
27/07/2024	£25.23		£750.75	Unpaid
03/08/2024	£25.23		£750.75	Unpaid
10/08/2024	£25.23		£750.75	Unpaid
17/08/2024	£25.23		£750.75	Unpaid
24/08/2024	No Payslip Provided			
31/08/2024	No Payslip Provided			
Total Unpaid contributions	£2,169.00	£785.70	£2,954.70	

## **Appendix Two**

### **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.