

## Ombudsman's Determination

Applicant	Mrs E
Scheme	NEST ( <b>the Scheme</b> )
Respondent	Gunns Bakery ( <b>the Employer</b> )

## Outcome

1. Mrs E'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 E £1,000 for the serious distress and inconvenience it has caused her.

## Complaint summary

2. Mrs E has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
3. Mrs E has said that the missing contributions amounted to £408.91.

## Background information, including submissions from the parties

4. On 6 June 2007, Mrs E began her employment with the Employer.
5. Between June 2022 and April 2023, the Employer failed to pay pension contributions into the Scheme.
6. On 31 January 2023, Mrs E raised her concerns with the Employer.
7. On 23 March 2023, Mrs E brought her complaint to The Pensions Ombudsman (**TPO**).
8. Mrs E provided copies of the payslips that she held for the period from June 2022 to April 2023, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. These deductions amounted to £408.91. A breakdown of the deductions has been included in the Appendix.
9. On 25 May 2023, TPO wrote to the Employer to ask for more information in response to Mrs E's complaint. No response was received.

10. On 14 July 2023, TPO repeated its request to the Employer. In response, the Employer confirmed that it would reply within 48 hours. No further response was received.

### **Caseworker's Opinion**

11. Mrs E'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 Scheme. The Caseworker's findings are summarised below:-
  - The Caseworker 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 Mrs E.
  - The Caseworker said that she had no reason to doubt the information provided by Mrs E. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mrs 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, Mrs E was not in the financial position she ought to be in.
  - In the Caseworker's view, Mrs E had suffered serious distress and inconvenience due to the Employer's maladministration. The Caseworker was of the opinion that an award of £1,000 for non-financial injustice was appropriate in the circumstances.
12. The Employer responded to the Caseworker's Opinion and, although it agreed that contributions deducted had not been paid into the Scheme, it did not agree with the award of £1,000 for distress and inconvenience. Consequently, the complaint was passed to me to consider. I agree with the Caseworker's Opinion.

### **Ombudsman's decision**

13. Mrs E has complained that the Employer has not paid all the contributions due to her Scheme account.
14. 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 properly engage with either my Office or Mrs E.
15. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mrs E to suffer a financial loss. The Employer shall take remedial action to put this right.

16. Mrs E 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 Mrs E's complaint.

### **Directions**

17. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mrs E £1,000 for the serious distress and inconvenience she has experienced;
  - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mrs E's pay in respect of the period of her employment. The Schedule shall also include the corresponding employer contributions that were due to the Scheme; and
  - (iii) forward the Schedule to Mrs E.
18. The Employer shall, within 14 days of receiving a request by Mrs E, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.
19. Within 14 days of receiving confirmation from Mrs E that she agrees with the information on the Schedule, the Employer shall:
- (i) pay the missing contributions to the Scheme;
  - (ii) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Mrs E's Scheme account than she would have otherwise secured, had the contributions been paid on time; and
  - (iii) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.
20. Within 14 days of receiving confirmation from NEST of any shortfall in Mrs E's units, pay the cost of purchasing any additional units required to make up the shortfall.

**Anthony Arter CBE**

Deputy Pensions Ombudsman  
16 November 2023

**Appendix**

Date	Employee contributions	Employer contributions
01/06/2022	£8.57	£6.43
08/06/2022	£1.31	£0.98
15/06/2022	£0	£0
22/06/2022	£5.13	£3.85
29/06/2022	£4.18	£3.13
06/07/2022	£6.28	£4.71
13/07/2022	£8.19	£6.14
20/07/2022	£8.19	£6.14
27/07/2022	£8.19	£6.14
03/08/2022	£9.94	£7.46
10/08/2022	£8.00	£6.00
17/08/2022	£2.84	£2.13
24/08/2022	£8.19	£6.14
31/08/2022	£3.03	£2.27
07/09/2022	£8.19	£6.14
14/09/2022	£8.19	£6.14
21/09/2023	£8.19	£6.14
28/09/2023	£8.19	£6.14
28/12/2022	£5.16	£3.87
04/01/2023	£8.19	£6.14
11/01/2023	£8.38	£6.28
18/01/2023	£8.19	£6.14
25/01/2023	£9.75	£7.31
01/02/2023	£8.19	£6.14

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08/02/2023	£8.19	£6.14
15/02/2023	£8.19	£6.14
22/02/2023	£7.81	£5.85
01/03/2023	£8.19	£6.14
08/03/2023	£8.19	£6.14
15/03/2023	£5.90	£4.42
22/03/2023	£8.19	£6.14
29/03/2023	£8.19	£6.14
05/04/2023	£8.19	£6.14