

Ombudsman's Determination

Applicant	Mr Y
Scheme	NEST (the Scheme)
Respondent	Protiviti UK Ltd (the Employer)

Outcome

1. I do not uphold Mr Y's complaint, and no further action is required by the Employer.

Complaint summary

2. Mr Y has complained that the Employer miscalculated the pension contributions due to the Scheme under automatic enrolment legislation, resulting in an underpayment. The Employer paid Mr Y multiple weeks' wages on a single payday and applied a single week's qualifying earnings to the total payment when calculating the pension contributions due.
3. To resolve this, Mr Y would like the Employer to calculate his pension contributions based on each individual weeks' wages he submitted by timesheet, instead of the total timesheets submitted in a weekly pay reference period.

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 April 2021, Mr Y began his employment with the Employer as a contractor working for a third-party client (**The Client**).
6. Mr Y's contract of employment, signed on 28 March 2021, stated: -

"You confirm that you will on a weekly basis, record all working time spent on the Assignment (but excluding any Leave taken) by accurately completing a time sheet and providing us with the original time sheet approved by the Client." (**Clause 7.1**).

"Subject to you delivering services and producing work product in accordance with the applicable Assignment we will subject to clauses 7.1 and 7.4 pay you

the Fee and any agreed expenses, weekly in arrears, less tax and National Insurance contributions. (**Clause 7.2**)”

7. On 10 July 2021, Mr Y was enrolled into the Scheme.
8. Between 16 July 2021 and 8 July 2022, Mr Y submitted timesheets to the Employer. On several occasions, he submitted multiple timesheets within one week and the Employer calculated his pension contributions based on the total amount payable in the relevant weekly pay reference period.
9. On 19 July 2022, Mr Y emailed the Employer and requested that it investigated the calculation of his pension contributions.
10. On the same day, the Employer responded to Mr Y and explained that his contributions had been calculated using the weekly threshold for qualifying earnings. It explained that his qualifying earnings were capped at £847 per week.
11. Mr Y responded to the Employer and said that it had applied the weekly threshold to the total amount to be paid in the relevant pay reference period on occasions where he had submitted multiple weeks' wages via timesheets.
12. On 27 July 2022, the Employer sent its response to Mr Y. It stated:-

“Protiviti run a weekly payroll which splits the annual allowance across the 52 weeks we run payroll in a year. Pension allowance is not cumulative like tax in a weekly payroll. We can only give the capped limit of £847.00 per payroll regardless of timesheets processed.”
13. On 29 July 2022, Mr Y raised a complaint with the Employer regarding the calculation of his pension contributions.
14. On 7 September 2022, Mr Y contacted the Employer because he had not received a response to his complaint.
15. On 17 April 2023, Mr Y brought his complaint to The Pensions Ombudsman (**TPO**).

Summary of Mr Y's position:-

- He acknowledged that he submitted late timesheets on seven occasions. However, the Client did not authorise the timesheets in a timely manner on 12 occasions which was outside of his control.
- The Client abused the process put in place by the Employer, which caused him to be financially disadvantaged.

Summary of the Employer's position:-

- Pension contributions are calculated based on the qualifying earnings of the amount payable in the relevant pay reference period, even where more than one timesheet has been submitted.
- A notification was sent to the Client to approve a timesheet once submitted and the Client had until 5pm on the following Monday to approve it. If the first approver did not complete this within a window, an email notification was sent to the second approver.

Adjudicator's Opinion

16. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Employer. The Adjudicator's findings are summarised below:-

- Regulation 4 of The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (**Regulation 4**) states that the pay reference period in the case of a person who is paid their regular wage or salary by reference to a period of a week is one week.
- Mr Y's employment contract provides that earnings were paid weekly in arrears upon receipt of an approved timesheet. The Employer adopted a weekly pay reference period to calculate pension contributions in line with Mr Y's contract of employment. Therefore, the pay reference period when calculating Mr Y's pension contributions based on his qualifying earnings was one week.
- The Scheme Rules state that salary, overtime and bonuses should be included to calculate qualifying earnings in a pay reference period. This is in accordance with Regulation 3 (2) of The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (**Regulation 3**) which states that any qualifying earnings due in the applicable pay reference period should be considered when calculating the contributions due to the Scheme.
- The Employer was therefore, permitted to apply a single week's qualifying earnings threshold to the total amount payable in a pay reference period to calculate Mr Y's pension contributions, irrespective of the number of timesheets submitted in accordance with the Scheme Rules. The applicable Scheme Rules can be found in Appendix Two.
- The employment contract provides that it was the responsibility of Mr Y to provide the original timesheet approved by the Client. The Employer and Mr Y acknowledged that on several occasions, he submitted more than one timesheet to be processed in the relevant pay reference period. The Employer cannot be held responsible for the Client's failure to approve timesheets within a timely

manner because it was Mr Y's responsibility to ensure that they were approved by the Client.

Adjudicator's Opinion

17. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Employer. The Adjudicator's findings are summarised below:-

- Regulation 4 of The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (**Regulation 4**) states that the pay reference period in the case of a person who is paid their regular wage or salary by reference to a period of a week is one week. (Regulation 4 is shown in Appendix One)
- Mr Y's employment contract provides that earnings were paid weekly in arrears upon receipt of an approved timesheet. The Employer adopted a weekly pay reference period to calculate pension contributions in line with Mr Y's contract of employment. Therefore, the pay reference period when calculating Mr Y's pension contributions based on his qualifying earnings was one week.
- The Scheme Rules state that salary, overtime and bonuses should be included to calculate qualifying earnings in a pay reference period. This is in accordance with Regulation 3 (2) of The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010 (**Regulation 3**) which states that any qualifying earnings due in the applicable pay reference period should be considered when calculating the contributions due to the Scheme. (The Scheme Rules are shown in Appendix Two and Regulation 3 is shown in Appendix One)
- The Employer was therefore, permitted to apply a single week's qualifying earnings threshold to the total amount payable in a pay reference period to calculate Mr Y's pension contributions, irrespective of the number of timesheets submitted in accordance with the Scheme Rules.
- The employment contract provides that it was the responsibility of Mr Y to provide the original timesheet approved by the Client. The Employer and Mr Y acknowledged that on several occasions, he submitted more than one timesheet to be processed in the relevant pay reference period. The Employer cannot be held responsible for the Client's failure to approve timesheets within a timely manner because it was Mr Y's responsibility to ensure that they were approved by the Client.

18. Mr Y did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr Y submitted further comments in response to the Opinion. In summary he said:-

- The Client confirmed that it did not receive notification to authorise a timesheet.

- The regulations as referenced have resulted in a contradictory outcome, which incentivises the Employer's poor performance.
 - Subsequent to Mr Y's complaint, the Employer had changed its process which no longer requires the Client to authorise timesheets, which is a possible admission of error on the Employer's behalf.
19. I have considered Mr Y's further comments, but they do not change the outcome, I agree with the Adjudicator's Opinion.

Ombudsman's decision

20. Mr Y has complained that the Employer calculated his pension contributions using the weekly threshold for qualifying earnings at times when he submitted timesheets for more than one week's wages.
21. I find that the Employer correctly deducted the contributions due to the Scheme in accordance with the Regulations and the Scheme Rules. Mr Y's employment contract stipulated that timesheets approved by the Client were to be submitted weekly. The Employer therefore adopted a weekly pay reference period when calculating Mr Y's pensions contributions based on his qualifying earnings, in line with Mr Y's employment contract and Regulation 4.
22. The Scheme Rules state that all amounts payable in the pay reference period must be included to calculate the qualifying earnings, this coincides with Regulation 3. The Employer was obliged to calculate qualifying earnings based on the total amounts payable in the pay reference period when calculating the pension contributions due to the Scheme, regardless of the period the payment related to.
23. Mr Y was responsible for ensuring that the timesheets were approved by the Client, and it would not be appropriate to hold the Employer liable for the timesheets that were not submitted in the corresponding pay reference period.
24. Although I acknowledge that the Employer has since changed its process which no longer requires the Client to approve timesheets, it would be erroneous for the Employer's updated process to be applied retrospectively to Mr Y's complaint. Further the employment contract was clear in Mr Y's obligations to ensure approved timesheets were submitted weekly.
25. Whilst I sympathise with Mr Y's position, I have found no errors in the way the Employer calculated Mr Y's pension contributions, and no maladministration has occurred.
26. I do not uphold Mr Y's complaint, and no further action is required by the Employer.

CAS-77197-F9W8

Camilla Barry

Deputy Pensions Ombudsman

11 August 2025

Appendix One

Regulation 4 of The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010

4.—(1) This regulation applies for the purposes of sections 1(1)(c), 3(1)(c) and 5(1)(c) of the Act (jobholders, automatic enrolment and automatic re-enrolment).

(2) The pay reference period in respect of a person is determined in accordance with paragraph (3) or paragraphs (4) and (5), whichever the employer may decide.

(3) For the purposes of this paragraph, the pay reference period is—

(a) in the case of a person who is paid their regular wage or salary by reference to a period of a week, the period of one week;

(b) in the case of a person who is paid their regular wage or salary by reference to a period longer than a week, that period.

(4) For the purposes of this paragraph, subject to paragraph (6)(b), a pay reference period is—

(a) a period equal in length to the usual interval between payments of the person's regular wage or salary; or

(b) the period of a week,

whichever is the longer.

Regulation 3 (2) of The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010

(2) For the purposes of paragraph (1)(h), "the value" of contributions may be expressed as a fixed amount or a percentage of any qualifying earnings or pensionable pay due to the jobholder in any applicable pay reference period.

Appendix Two

NEST Scheme Rules

Qualifying earnings is a band of earnings you can use to calculate contributions and is used by most employers. The figures are reviewed annually by the government, for the 2024/25 tax year it is £6,240-£50,270 a year. You'll contribute a percentage of your worker's gross annual earnings that fall between these figures. The first £6,240 isn't included, so qualifying earnings can't be more than £44,030 (£50,270 minus £6,240). For example, if a worker earns £20,000 their qualifying earnings would be £13,760.

You have to pay contributions to Nest every time you pay your workers, so you'll need to work out qualifying earnings for each pay reference period based on the workers earnings in that pay reference period. If you're using qualifying earnings to calculate contributions for a worker, the minimum contribution rate is 8% of which the employer must pay at least 3%.

The table below shows the lower and upper levels of qualifying earnings threshold for some commonly used pay reference periods.

Pay reference periods	Lower level of qualifying earnings	Upper level of qualifying earnings
Weekly and tax weekly	£120	£967
Fortnightly	£240	£1,934
Four weekly	£480	£3,867
Monthly and tax monthly	£520	£4,189

When you're calculating a worker's qualifying earnings for a pay reference period, you need to include all of the following within your calculations (this list is not exhaustive):

- their salary or wages
- overtime
- bonuses
- commission
- statutory sick pay
- statutory pay someone receives during paternity, maternity or any other kind of family leave, adoption pay
- holiday pay

Appendix Three

Clause 7 of the employment contract

7. Charges, Payment and Time Sheets

- 7.1 You confirm that you will on a weekly basis, record all working time spent on the Assignment (but excluding any Leave taken) by accurately completing a time sheet and providing us with the original time sheet approved by the Client. You will notify us promptly if the Client refuses to sign a completed time sheet and co-operate with our enquiries regarding the same.
- 7.2 Subject to you delivering services and producing work product in accordance with the applicable Assignment we will subject to clauses 7.1 and 7.4 pay you the Fee and any agreed expenses, weekly in arrears, less tax and National Insurance contributions.
- 7.3 Your Fee shall be ascertained by multiplying the actual number of hours worked by you per week on an Assignment by the applicable rate of pay as set out in the Assignment Schedule. You agree that you have no right to charge and we have no obligation to pay you for any period during which you do not perform any work and/or there is no available work or Assignments.
- 7.4 We will pay all the Fee provided that:
- (a) we may in our discretion withhold payment from you where we reasonably believe that you have not worked your contracted hours during the period to which the payment relates;
 - (b) if a Client refuses to pay the Fee by reason of your failure to submit properly completed time sheets in accordance with Clause 7.1, we may recover any losses which we incur by way of deduction from any monies owed to you by exercising our rights under Clause 12.8.
- 7.5 We agree that we will pay you the Fee for hours you work during an Assignment regardless of whether or not we receive payment from the Client in respect of your work. In the event that for whatever reason we pay you a sum to which you are not entitled we may exercise our rights under clause 12.8 or require you to repay such sum to us within 30 days of a request. We will not charge you in consideration for our Services.