

Ombudsman's Determination

Applicant	Ms Thompson
Scheme	NEST (the Scheme)
Respondents	Simon Marshall Holdings Ltd (the Employer)

Outcome

1. Ms N's complaint is upheld and, to put matters right, the Employer shall pay £3,902.28 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.
2. In addition, the Employer shall pay Ms N £1,000 for the serious distress and inconvenience it has caused her.

Complaint summary

3. Ms N has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
4. The available evidence shows that the missing contributions amounted to £3,902.28

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 February 2019, Ms N began her employment with the Employer.
7. Between June 2021 and February 2023, the Employer failed to pay pension contributions into the Scheme.
8. On 26 April 2023, Ms N brought her complaint to The Pensions Ombudsman (**TPO**).
9. Ms N provided copies of some of the payslips that she held for the period June 2021 to February 2023. These deductions amounted to £675.24. A breakdown of the deductions has been included in Appendix One. She was only able to provide payslips for the following months:-

- October 2021

- April 2022
 - June 2022
 - July 2022
 - September 2022
 - October 2022
10. Ms N provided bank statements which showed her net pay for December 2022, January 2023 and February 2023. These have also been included in Appendix One.
 11. Ms N received notification letters from the Scheme administrator which confirmed that contributions were either unpaid or the Employer failed to notify it that they were due. The Scheme administrator's letters showed that the employee and employer contributions for June 2021 to November 2022, amounted to £3,311.56. A breakdown of the contributions for this period has been included in Appendix Two.
 12. On 5 April 2024, TPO asked the Employer for its response Ms N's complaint. This request was repeated via email on 19 April 2024 and no response was received.
 13. On 15 July 2024, TPO chased the Employer again via letter and email. The Employer failed to respond by the deadline.
 14. The last contributions paid into the Scheme was on 17 June 2021 for £138.60. These contributions were for May 2021.

Adjudicator's Opinion

15. 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. 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 Ms N.
 - The Adjudicator said that she 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 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, Ms N was not in the financial position she ought to be in.
 - According to the payslips that Ms N was able to provide the total amount outstanding was £675.24. The payslips did not show the employer contributions,

however the Scheme administrator's letters provided by Ms N detailed the missing employer and employee contributions due for June 2021 to November 2022. It was the Adjudicator's view, on the balance of probabilities, that £3,311.56 had not been remitted to the Scheme for this period.

- The Scheme notification letters show that from October 2021 to November 2022 the monthly contributions consistently remained at £112.54 in employee contributions and £84.40 in employer contributions. Ms N's net pay for December 2022 to February 2023 was broadly similar to her net pay for October 2021 to November 2022. In the Adjudicator's view, on the balance of probabilities, £590.82 would have also been due to Ms N's Scheme account for December 2022 to February 2023. In total £3,902.38 had not been remitted to the Scheme.
 - In the Adjudicator's opinion, Ms N 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.
16. 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

17. Ms N has complained that the Employer has not paid all the contributions due to her Scheme account.
18. 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 engage with TPO or Ms N. It has also failed to respond to the Adjudicator's Opinion.
19. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Ms N to suffer a financial loss. The Employer shall take remedial action to put this right.
20. Ms N 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 Ms N's complaint.

Directions

21. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Ms N £1,000 for the serious distress and inconvenience she has experienced;
 - (ii) pay £3,902.38 into Ms N's Scheme account. This figure represents the amount that, according to the figures provided by Ms N, have been deducted from her 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 Ms N's Scheme account than she 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.

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

Anthony Arter CBE

Deputy Pensions Ombudsman

25 October 2024

Appendix One

Date	Net pay	Employee contributions	Employer contributions	
June 2021 - missing				
July 2021 - missing				
August 2021 - missing				
September 2021 - missing				
October 2021	£2,452.43	£112.54	Not stated	
November 2021 - missing				
December 2021 - missing				
January 2022 - missing				
February 2022 - missing				
March 2022 - missing				
April 2022	£2,431.17	£112.54	Not stated	
May 2022 – missing				
June 2022	£2,431.17	£112.54	Not stated	
July 2022	£2,460.98	£112.54	Not stated	
August 2022 - missing				
September 2022	£2,460.98	£112.54	Not stated	
October 2022	£2,460.98	£112.54	Not stated	

CAS-104816-N6T2

November 2022 - missing				
December 2022 - missing	£2489.55			
January 2023 - missing	£2489.55			
February 2023 - missing	£2489.55			
Total amount: £675.24		£675.24		

Appendix Two

Date	Employee contributions	Employer contributions
June 2021	£79.20	£59.40
July 2021	£79.20	£59.40
August 2021	£79.20	£59.40
September 2021	£79.20	£59.40
October 2021	£112.54	£84.40
November 2021	£112.54	£84.40
December 2021	£112.54	£84.40
January 2022	£112.54	£84.40
February 2022	£112.54	£84.40
March 2022	£112.54	£84.40
April 2022	£112.54	£84.40
May 2022	£112.54	£84.40
June 2022	£112.54	£84.40
July 2022	£112.54	£84.40
August 2022	£112.54	£84.40
September 2022	£112.54	£84.40
October 2022	£112.54	£84.40
November 2022	£112.54	£84.40
Total amount: £3,311.56	£1,892.36	£1,419.20