

Ombudsman's Determination

Applicant	Mrs Y
Scheme	NEST (the Scheme)
Respondents	Peter Marson Optometrist (the Employer)

Outcome

1. Mrs Y's complaint is upheld and, to put matters right, the Employer shall pay £2,074.45 into the Scheme. The Employer shall ensure that Mrs Y 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 Mrs Y £1,000 for the serious distress and inconvenience it has caused her.

Complaint summary

1. Mrs Y has complained that the Employer, despite deducting contributions from her pay, has failed to pay them all into the Scheme.
2. Mrs Y said that the Employer has not paid pension contributions, totalling £2,074.45, into the Scheme for May 2022 and the period between October 2022 and September 2023. The total figure consists of £1,199.10 for employee pension contributions and £875.35 for employer pension contributions.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points.
4. In January 1999, Ms Y began her employment with the Employer. The Employer operates as a sole trader.
5. On 28 September 2015, Mrs Y was provided with an employment contract which stated:

"The Company operates a Stakeholder pension scheme applicable to your employment, which you may be eligible to join. Full details of the scheme can

be obtained from management. A contracting-out certificate is not in force in respect of this employment.”

6. On 13 January 2017, Mrs Y was enrolled into the Scheme and the first payment due from the Employer was 10 February 2017, and the same date monthly thereafter.
7. On 27 March 2023, Mrs Y complained to the Employer that contributions deducted from her pay for May 2022, and the period October 2022 to September 2023, had not been paid into the Scheme.
8. On 31 May 2023, Mrs Y brought her complaint to The Pensions Ombudsman (**TPO**) and said that despite employee pension contributions being deducted from her pay, the Employer had failed to pay all of them into the Scheme. Additionally, Mrs Y explained that the Employer had not paid its employer contributions.
9. On 15 September 2023, Mrs Y ceased employment with the Employer.
10. On 30 January 2024, TPO asked the Employer for a formal response to Mrs Y’s complaint. This request was repeated on 29 February 2024 and 21 March 2024. Neither of these requests received a response. Mrs Y stated that the Employer had been in hospital, so this was taken into consideration by TPO.
11. On 13 May 2024, a further email was sent to the Employer which explained that if no response was received by 27 May 2024, TPO would continue its formal investigation into Mrs Y’s complaint based on the information available.
12. On 28 May 2024, the Employer responded to TPO and apologised for the delay. It said it was now able to move things forward in terms of resolving Mrs Y’s complaint.
13. On 21 June 2024, the Employer said that it was unsure how to calculate what was due for Mrs Y’s unpaid pension contributions. On the same day, TPO informed the Employer of the period of unpaid pension contributions.
14. On 23 July 2024, the Employer said it agreed with Mrs Y’s complaint but was unsure how to make the payments, TPO referred the Employer to the Scheme administrator to arrange for the payments to be made.
15. On 22 August 2024, the Employer confirmed that contributions were missing for Mrs Y’s contributions from October 2022 to September 2023 and one missed payment for May 2022. The employer said:

“It would move forward with payment of 13 months missing payments and lost interest”.

16. Despite the Employer's promise, the Scheme administrator did not receive any further payments from the Employer. In addition, TPO did not receive any further updates from it, despite four requests during September 2024 via email.
17. Mrs Y provided TPO with copy payslips available to her for the period February 2022 to February 2023. The copy payslip dated 5 May 2022, for Mrs Y's April pay, and then her payslips dated 30 June 2022 up to 3 March 2023, are shown in Appendix One. A payslip for Mrs Y's pay for May 2022 was not available.
18. In the absence of copy payslips for Mrs Y's pay from March 2023, up to when her employment ended on 15 September 2023, TPO was provided with the following evidence to demonstrate the pay she received: -
 - Copy bank statements showing the total net pay she received, as shown in Appendix Two. Mrs Y also provided TPO with her own document confirming the amounts she received from the Employer.
 - A copy of the outcome of Mrs Y's County Court action against the Employer for pay owed for part of July 2023, then for August 2023, and the period 1 to 15 September 2023, as shown in Appendix Three.
19. The Scheme administrator provided TPO with a breakdown of the employee and employer contributions paid into the Scheme since Mrs Y's enrolment. This showed the last pension contribution payment into the Scheme was dated 5 October 2022, which was paid for Mrs Y pay for September 2022.
20. Under the Rules of the Scheme (**the Scheme Rules**) the Employer was obliged to pay to the Scheme, at least 8% of Mrs Y's qualifying earnings in the relevant pay reference period. This is equivalent to 5% employee contributions and 3% employer contributions. This is shown in Appendix four.

Adjudicator's Opinion

21. Mrs Y'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 all of 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. He said that, as the Employer had not engaged with TPO's communications for it to provide a detailed response, he had to base his Opinion solely on the information provided by Mrs Y.

- The Adjudicator set out across three Appendices details from the information provided to TPO by Mrs Y and the Scheme administrator, which consisted of the following documentation:
 - copy payslips
 - copy bank statements
 - copy County Court judgement (action in respect of her July 2023, August 2023 and September 2023 pay)
 - evidence of the contributions so far paid into the Scheme
- The Adjudicator set out in Appendix One details from Mrs Y's payslips covering the period February 2022 to February 2023. While there was not a copy payslip available for Mrs Y's May 2022 pay, it was evident that an employee pension contribution of £124.82 would have been seen on the missing payslip. The Adjudicator found this because between April 2022 and June 2022 the figures shown for the employee pension contribution total had increased by this amount. Similarly, the figures shown for employer pension contributions had increased by £93.62.
- The Adjudicator then set out in Appendix Two details of the erratic payments Mrs Y received from the Employer for her pay between March 2023 to June 2023. As payslips were not available for these months, the Adjudicator noted the pay seen on Mrs Y's copy bank statements. The Adjudicator then matched the totals received with similar amounts paid to Mrs Y between February 2022 to February 2023 where payslips were available to identify the employee contributions on a balance of probabilities. The Adjudicator then used the same method to identify, on a balance of probabilities, the employer pension contributions for the four months between March 2023 and June 2023.
- For July 2023, Mrs Y only received 50% of her pay from the Employer and then no payment at all for August 2023, and September 2023. Mrs Y was able to provide the Adjudicator with evidence of a successful County Court claim against the Employer for outstanding pay for these months. So, in Appendix Three, using the monthly pay figures agreed in Mrs Y's County Court claim, and by referencing these against her copy payslips for February 2022 to February 2023 the Adjudicator identified, on a balance of probabilities, the varying employee and employer pension contributions applicable for July 2023, August 2023 and September 2023.
- Confirmation was also sought from the Scheme Administrator whether the Employer had made a payment into Mrs Y's pension pot following its initial assurance to TPO that it would make up the missing 13 months of employee pension contributions, and investment loss on this sum. The Adjudicator found that no payment had been made following the Employer's comments to TPO in August 2024, as the last payment into the Scheme remained as before, being 5 October 2022.

- Based on the information provided by Mrs Y and the Scheme administrator, the Adjudicator concluded, on a balance of probabilities, that the unpaid pension contributions relating to her pay for May 2022 and for the period between October 2022 and September 2023 amounted to £2,074.45. This figure consisted of £1,199.10 in employee pension contributions and £875.35 in employer pension contributions.
 - The Adjudicator said that he had no reason to doubt the information provided by Mrs Y and the Scheme administrator. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Mrs Y's salary but had not all been paid into the Scheme. In addition, the Employer had not paid all the employer contributions that were due over the same period. As a result of its maladministration, Mrs Y was not in the financial position she ought to be in.
 - In the Adjudicator's view, Mrs Y had suffered serious distress and inconvenience due to the Employer's maladministration. The Adjudicator was of the opinion an award of £1,000 for non-financial injustice was appropriate in the circumstances.
22. The Adjudicator's Opinion letter was issued to the Employer's business address and a response was not provided. So, the complaint was passed to me to consider; I agree with the Adjudicator's Opinion.

Ombudsman's decision

23. Mrs Y has complained that the Employer has not paid all the contributions due to her Scheme account.
24. I find that employee contributions were deducted but withheld by the Employer and not paid into the Scheme. The Employer failed to rectify this and resolve Mrs Y's complaint following the Adjudicator's Opinion.
25. Under the Rules of the Scheme the Employer was obliged to pay to the Scheme, at least 3% of Mrs Y's qualifying earnings in the relevant pay reference period, and the employer and employee contributions must amount to at least 8% of Mr T's qualifying earnings in the relevant pay reference period. The relevant Terms and Conditions of the Scheme are outlined in Appendix Four.
26. I find that the Employer has acted in breach of the Scheme Rules by not paying all contributions due to the Scheme. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mrs Y to suffer a financial loss. The Employer shall take remedial action to put this right.
27. Mrs Y 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 the

Employer's continuing failure to resolve the dispute during TPO's investigation into Mrs Y's complaint.

Directions

28. To put matters right, the Employer shall within 28 days of the date of this Determination:
 - (i) pay Mrs Y £1,000 for the serious distress and inconvenience she has experienced;
 - (ii) pay £2,074.45 into Mrs Y's Scheme account. This figure consists of employee contributions of £1,199.10 and employer contributions of £875.35;
 - (iii) establish with the Scheme administrator whether the late payment of contributions has meant that fewer units were purchased in Mrs Y'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.
29. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Mrs Y's units, pay the cost of purchasing any additional units required to make up the shortfall into Mrs Y's Scheme account.

Dominic Harris

Pensions Ombudsman

15 April 2025

Appendix One

Payslip date	Pay period	Gross pay from payslip	Employee (EE)	EE – Year to date	Employer (ER)	ER – Year to date	Date paid to Scheme
04/03/22	Feb 22	£2825.56	£117.78	n/a	£88.34	n/a	16/03/22
05/04/22	Mar 22	£2825.56	£111.78	n/a	£83.84	n/a	08/04/22
05/05/22	April 22	£2825.56	£111.78	£111.78	£83.84	£83.84	08/06/22
<i>*June 22</i>	<i>May 22</i>	<i>Not seen</i>	<i>£124.82</i>	<i>£236.60</i>	<i>£93.62</i>	<i>£177.46</i>	<i>Not paid</i>
30/06/22	June 22	£2825.66	£118.30	£354.90	£88.73	£266.19	05/07/22
05/08/22	July 22	£2825.66	£124.82	£479.72	£93.62	£359.81	05/09/22
31/08/22	Aug 22	£2825.66	£111.78	£591.50	£83.84	£443.65	08/09/22
30/09/22	Sept 22	£2825.56	£111.78	£703.28	£83.84	£527.49	05/10/22
31/10/22	Oct 22	£2825.56	£98.74	£802.02	£74.06	£601.55	Not paid
05/12/22	Nov 22	£2825.56	£92.22	£894.24	£69.17	£670.72	Not paid
30/12/22	Dec 22	£2825.66	£92.22	£986.46	£69.17	£739.89	Not paid
31/01/23	Jan 23	£2825.66	£92.22	£1078.68	£69.17	£809.06	Not paid
03/03/23	Feb 23	£2825.66	£98.22	£1176.90	£73.67	£882.73	Not paid
Period total not paid into Scheme			£598.44		£448.86		

**payslip not available for May 2022 pay, so figures produced using accrued year to date totals.*

Appendix Two

Bank deposit date	Amount received	Payroll period	Payroll month total	*Employee contribution	*Employer contribution
18/04/23	£1600	March 23	xxx	xxx	xxx
02/05/23	£561.83	March 23	£2161.83	£92.22	£69.17
16/05/23	£500	April 23	xxx	xxx	xxx
25/05/23	£1700	April 23	£2200	£92.63	£69.15
07/06/23	£750	May 23	xxx	xxx	xxx
30/06/23	£400	May 23	xxx	xxx	xxx
04/07/23	£400	May 23	xxx	xxx	xxx
11/07/23	£140	May 23	xxx	xxx	xxx
11/07/23	£160	May 23	xxx	xxx	xxx
11/07/23	£300	May 23	£2150	£92.22	£69.17
21/07/23	£450	June 23	xxx	xxx	xxx
08/08/23	£450	June 23	xxx	xxx	xxx
08/08/23	£200	June 23	xxx	xxx	xxx
17/08/23	£1100	June 23	£2200	£92.63	£69.15
18/09/23	£800	July 23	xxx	xxx	xxx
20/09/23	£500	July 23	**£1300	xxx	xxx
Period total not paid into Scheme				£369.70	£276.64

* Employee and employer monthly figures calculated by TPO.

** part payment received for July 2023 salary – see Appendix Three for contribution totals

Appendix Three

Bank deposit date	Amount received	Payroll period	Payroll month total	<i>*Employee contribution figure</i>	<i>*Employer contribution figure</i>
08/11/23	£805	*July 23	£2105	£92.22	£69.17
08/11/23	£2150	*Aug 23	£2150	£92.63	£69.15
08/11/23	£1075	*Sept 23	£1075	£46.11	£34.59
Period total not paid into Scheme				£230.96	£149.85
Overall total not paid into Scheme				£1199.10	£875.35

** Employer and employer monthly figures calculated by TPO.*

Appendix Four

NEST Scheme Rules

Rule 7.1.1

Where in respect of a member a participating employer has elected to use the Scheme to:

1. (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

1. (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.