

Ombudsman's Determination

Applicant	Miss R
Scheme	NEST (the Scheme)
Respondent	JF Weddings Ltd (the Employer)

Outcome

1. Miss R's complaint is upheld and, to put matters right, the Employer shall pay £899.40 into the Scheme. The Employer shall ensure that Miss R is not financially disadvantaged by its maladministration. It shall arrange for any investment loss to be calculated and paid into the Scheme.
2. In addition, the Employer shall pay Miss R £500 for the significant distress and inconvenience it has caused her.

Complaint summary

3. Miss R 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 outstanding contributions amount to £899.40. This figure represents employee contributions of £513.95 and employer contributions of £385.45.

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 September 2020, Miss R began her employment with the Employer.
7. On 21 April 2021, Miss R was enrolled into the Scheme.
8. Between May 2022 and December 2022, the Employer failed to pay pension contributions into the Scheme.
9. On 29 August 2023, Miss R brought her complaint to The Pensions Ombudsman (TPO).

10. Miss R was unable to provide payslips, however she provided copies of the letters that she received from the Scheme administrator between May 2022 and December 2022, which detailed the pension contributions deducted from her pay and the corresponding employer contributions.
11. Miss R was unable to provide letters that she received from the Scheme administrator in light of contributions due for June 2022 and September 2022. However, she provided a copy of her Pay As You Earn (**PAYE**) record, which detailed her monthly gross salary for these months.
12. The below table (**the Table**) provides a breakdown of the information from the Scheme administrator's letters and PAYE information from Miss R for the period May 2022 to December 2022.

Date	Gross Pay from PAYE	Scheme letter ER	Scheme letter EE
May-22	£2,166.66	£49.40	£65.87
Jun-22	£2,166.66		
Jul-22	£2,166.66	£49.40	£65.87
Aug-22	£2,166.66	£49.40	£65.87
Sep-22	£2,166.66		
Oct-22	£2,166.66	£49.40	£65.87
Nov-22	£2,166.66	£49.40	£65.87
Dec-22	£1,841.64	£39.65	£52.86

13. On 31 October 2024, TPO asked the Employer for its formal response to Miss R's complaint.
14. On the same day, the Employer advised TPO that it was currently in insolvency. The Employer did not provide any further evidence of the insolvency proceedings.
15. On 4 November 2024, TPO emailed the Employer and said that its status on Companies House remained active and requested its formal response. But the Employer failed to respond by the deadline.

Adjudicator's Opinion

16. Miss R'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 provided an adequate response to TPO's information requests, she had to base her Opinion solely on the information provided by Miss R.
 - The Adjudicator said that she had no reason to doubt the information provided by Miss R. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Miss R'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, Miss R was not in the financial position she ought to be in.
 - The Adjudicator reviewed the information available in the Table. Miss R was able to provide letters from the Scheme administrator showing the majority of contributions due for the period May 2022 to December 2022. She was unable to provide letters from the Scheme administrator for months June and September 2022 but was able to provide information from her PAYE records that showed that her gross salary in these months was £2,166.66. The Table showed that in other months when Miss R's gross salary was £2,166.66, the employer contribution was £49.40, and the employee contribution was £65.87 according to the Scheme administrator's letters. It was the Adjudicator's view, that on a balance of probabilities, the employer and employee contributions for June and September 2022 would also be £49.40 for the employer contribution and £65.87 for the employee contribution.
 - Based on the information provided by Miss R, it was the Adjudicator's opinion that £513.95 in employee contributions and £385.45 in employer contributions had not been remitted to the Scheme.
 - In the Adjudicator's view, Miss R had suffered significant distress and inconvenience due to the Employer's maladministration. The Adjudicator was of the opinion that an award of £500 for non-financial injustice was appropriate in the circumstances.
17. 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

18. Miss R has complained that the Employer has not paid all the contributions due to her Scheme account.
19. 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 Miss R. It has also failed to respond to the Adjudicator's Opinion.

20. Under the rules of the Scheme (**The Scheme Rules**) the Employer was obliged to pay to the Scheme, at least 3% of Miss R's qualifying earnings in the relevant pay reference period, and the employer and employee contributions must amount to at least 8% of Miss R's qualifying earnings in the relevant pay reference period. The relevant provisions of the Scheme Rules are outlined in the Appendix.
21. I find that the Employer has acted in breach of the Scheme Rules by not paying the contributions due for the period May 2022 to December 2022. The Employer's failure to pay all employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Miss R to suffer a financial loss. This amounts to maladministration. The Employer shall take remedial action to put this right.
22. Miss R is entitled to a distress and inconvenience award in respect of the significant ongoing non-financial injustice which she has suffered. This was exacerbated by its failure to respond during TPO's investigation into Miss R's complaint.

Directions

23. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Miss R £500 for the significant distress and inconvenience she has experienced;
 - (ii) pay £899.40 into Miss R's Scheme account. This figure represents employee contributions of £513.95 and employer contributions of £385.45;
 - (iii) establish with the Scheme administrator whether the late payment of contributions has meant that fewer units were purchased in Miss R'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.

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

Camilla Barry

Deputy Pensions Ombudsman
22 May 2025

Appendix

NEST Scheme Rules

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.