

## Ombudsman's Determination

Applicant	Mrs H
Scheme	NEST Pension Scheme ( <b>the Scheme</b> )
Respondents	Quality Villas Ltd ( <b>the Employer</b> )

## Outcome

1. Mrs H's complaint is upheld and, to put matters right, the Employer shall pay £1,910.75 into the Scheme. The Employer shall ensure that Mrs H 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 H £1,000 for the serious distress and inconvenience it has caused her.

## Complaint summary

3. Mrs H 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 £1,910.75. This consists of £686.96 in employee contributions and £1,223.79 in employer contributions.

## 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 March 2014, Mrs H began her employment with the Employer.
7. Mrs H was enrolled in the Scheme in November 2016.
8. On 15 May 2023, Mrs H complained to the Employer that it had not paid contributions into the Scheme.
9. On 1 June 2023, Mrs H ceased employment with the Employer.
10. On 6 June 2023, Mrs H complained again to the Employer that contributions had not been paid into the Scheme.

11. On 29 August 2023, Mrs H brought her complaint to The Pensions Ombudsman (TPO).
12. Mrs H said that between November 2021 and May 2023 the Employer failed to pay employee and employer contributions into the Scheme.
13. Mrs H was able to provide TPO with copies of the payslips she held for the period November 2021 to December 2022. This is shown in Appendix One. The information from Mrs H's payslips showed the following:-
  - The employee pension contributions deducted from her monthly pay between November 2021 and June 2022.
  - No employee pension contributions were deducted between July 2022 and December 2022.
  - The employer pension contribution year-to-date figure stopped increasing from July 2022.
14. Mrs H was unable to provide payslips to TPO for the period January 2023 to May 2023 as they had not been provided to her by the Employer. Instead, Mrs H provided TPO with copies of her bank statements to show her net pay from January 2023 to April 2023. For May 2023, Mrs H provided evidence from an Employment Tribunal judgment which showed that she was awarded a gross figure of £2,666.67 for pay she had claimed. This is shown in Appendix Two.
15. Mrs H provided TPO with a copy record from the Scheme administrator which showed that no pension contributions were received from the Employer between November 2021 and May 2023. The record also showed that between August 2022 and May 2023, Mrs H made her own monthly employee contribution payments of £85 directly into the Scheme.
16. On 17 May 2024, TPO sent an email to the Employer requesting its formal response to Mrs H's complaint.
17. On 4 June 2024, TPO contacted the Employer's email address again, but it failed to respond to the deadline given.
18. On 5 July 2024, TPO used an alternative email address to contact the Employer, but it failed to respond again.
19. On 7 August 2024, TPO issued a letter to the Employer's correspondence address recorded with Companies House. No response was received.

## **Adjudicator's Opinion**

20. Mrs H's complaint was considered by one of our Adjudicator's who concluded that further action was required by the Employer as it had failed to remit the contributions that were due to the Scheme.

21. 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 H.
22. The Adjudicator set out his Opinion and noted that: -
- Between November 2021 and June 2022 Mrs H's payslips showed a monthly salary of £2,666.67 and the employer's pension contribution year-to-date figure had increased each month by £64.41. This has been set out in Appendix One.
  - Between July 2022 and December 2022, Mrs H's monthly pay remained at £2,666.67. Her pay met the pension qualifying earnings threshold however the payslips showed no employer contributions. The Adjudicator was of the view that on a balance of probabilities employer contributions for this period would have been £64.41 per month in line with the employer's contribution paid between November 2021 and June 2022.
24. The Adjudicator also set out under Appendix One the employee monthly contributions on Mrs H's payslips between November 2021 and December 2022. This showed: -
- Employee contributions deducted from her pay between November 2021 and June 2022 which were not paid into the Scheme.
  - No employee deductions were made from Mrs H's pay between July 2022 and December 2022.
  - Between August 2022 and December 2022 Mrs H made her own monthly employee contributions of £85 directly into the Scheme.
23. The Adjudicator then set out the net payments made to Mrs H's bank account in Appendix Two between January 2023 and May 2023. This showed:-
- Mrs H made her own monthly employee contributions of £85 directly into the Scheme between January 2023 and May 2023.
  - There were no employer pension contributions made into the Scheme between January 2023 and April 2023.
  - The net pay to Mrs H's bank account in this period generally mirrored those received in the previous six months between July 2022 to December 2022. So, on the balance of probabilities, it was the Adjudicator's view that for each month from January 2023 to April 2023 the employee contributions were £85, and the employer contributions were £64.41.
  - No salary was paid to Mrs H by the Employer for May 2023 therefore no employee pension deduction or employer pension contribution was carried out for this month. Mrs H made a payment of £85 for May 2023 into the Scheme, for her employee

pension contribution, but was unable to provide a payslip for this month. Mrs H did provide TPO with evidence that she was awarded a payment of £2,666.67 for her pay in May 2023 as a result of an Employment Tribunal judgment. This matched the gross pay seen on her payslips between November 2021 and December 2022. It was therefore the Adjudicator's view, that on the balance of probabilities, the employee contribution was £85.87, and the employer contribution was £64.41 for May 2023.

24. The Adjudicator was of the view that based on the information provided by Mrs H, £686.96 in employee contributions and £1,159.38 in employer contributions had not been remitted to the Scheme between November 2021 and May 2023. As no employee deduction was made from Mrs H's pay in July 2022 that month was excluded from the overall total of £1,846.34 of outstanding pension contributions shown on Appendix One. He said that should Mrs H make a payment into the Scheme for July 2022 then the Employer should make its corresponding pension contribution.
25. The Adjudicator said that he had no reason to doubt the information provided by Mrs H. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Mrs H'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 H was not in the financial position she ought to be in.
26. In the Adjudicator's view, Mrs H 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.
27. The Adjudicator's Opinion was issued by Royal Mail to the address the Employer registered with Companies House, however his correspondence was returned with only "RTS" marked on it. As such, it is considered that the Employer did not wish to 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**

28. Mrs H has complained that the Employer has not paid all the contributions due to her Scheme account.
29. 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 resolve Mrs H's complaint following the Adjudicator's Opinion.
30. Under the rules of the Scheme (**the Scheme Rules**) the Employer was obliged to pay to the Scheme, at least 3% of Mrs H's qualifying earnings in the relevant pay reference period, and the employer and employee contributions must amount to at least 8% of Mrs H's qualifying earnings in the relevant pay reference period. The

Employer is responsible for deducting employee contributions and ensuring that the amount paid to the Scheme is at least 8% of qualifying earnings for each pay reference period and the Employer's contribution is not conditional on the payment of the Employee's contribution. The relevant provisions of the Scheme Rules are outlined in Appendix Three.

31. I find that the Employer has acted in breach of the Scheme Rules by not paying the contributions due between November 2021 and May 2023. The Employer's failure to pay all employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mrs H to suffer a financial loss. This amounts to maladministration. The Employer shall take remedial action to put this right.
32. Mrs H 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 resolve the dispute during TPO's investigation into Mrs H's complaint.

## Directions

33. To put matters right, the Employer shall, within 28 days of the date of this Determination:
  - (i) pay Mrs H £1,000 for the serious distress and inconvenience she has experienced;
  - (ii) pay £1910.75 into Mrs H's Scheme account (**the unpaid Employee and Employer Contributions**). This figure consists of £686.96 in employee contributions already deducted and £1,223.79, being £1,159.38 in employer contributions the Adjudicator referred to and a further £64.41 that the Employer did not pay for July 2022;
  - (iii) establish with the Scheme administrator whether the late payment of contributions the unpaid Employer and Employee Contributions, and the July 2022 Unpaid Employer Contribution has meant that fewer units were purchased in Mrs H's Scheme account than she would have otherwise secured, had the contributions been paid on time;
  - (iv) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation;
  - (v) within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Mrs H's units, pay the cost of purchasing any additional units required to make up the shortfall; and
  - (vi) in the event that (iii) and (iv) are not complied with, and the Scheme administrator is able to confirm fewer units were purchased in the Scheme than Mrs H would have otherwise secured, had the contributions been paid on time, then the Employer shall pay the outstanding sum in accordance with (v) above upon confirmation of the shortfall amount together with any reasonable administration

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fee should the Scheme administrator charge a fee for carrying out the above calculation.

**Camilla Barry**

Deputy Pensions Ombudsman

19 June 2025

## Appendix One

Date of payslip	Gross pay	Net pay paid	Employee pension deduction	Employer contribution required	Employer payment into Scheme	Mrs H's direct payment to Scheme
26/11/2021	£2666.67	£2032.64	£85.87	£64.41	£0	xx
31/12/2021	£2666.67	£2032.84	£85.87	£64.41	£0	xx
28/01/2022	£2666.67	£2032.64	£85.87	£64.41	£0	xx
25/02/2022	£2666.67	£2032.84	£85.87	£64.41	£0	xx
25/03/2022	£2666.67	£2032.84	£85.87	£64.41	£0	xx
30/04/2022	£2666.67	£2012.91	£85.87	£64.41	£0	xx
28/05/2022	£2666.67	£2012.91	£85.87	£64.41	£0	xx
25/06/2022	£2666.67	£2012.71	£85.87	£64.41	£0	xx
30/07/2022	£2666.67	£2128.60	£00.00	£64.41	£0	xx
27/08/2022	£2666.67	£2128.40	£00.00	£64.41	£0	£85
30/09/2022	£2666.67	£2128.40	£00.00	£64.41	£0	£85
28/10/2022	£2666.67	£2128.60	£00.00	£64.41	£0	£85
25/11/2022	£2666.67	£2128.60	£00.00	£64.41	£0	£85
30/12/2022	£2666.67	£2148.63	£00.00	£64.41	£0	£85
<b>Total not paid Nov 21 – Dec 22</b>			<b>£686.96</b>	<b>£901.74</b>		

**Appendix Two**

<b>Month</b>	<b>Payslip</b>	<b>Gross pay</b>	<b>Net pay paid to bank</b>	<b>Mrs H's direct payment to Scheme</b>	<b>Employer contribution required</b>	<b>Employer contribution into Scheme</b>
January 2023	Not seen	Not seen	*£2128.60	£85	£64.41	£0
February 2023	Not seen	Not seen	*£2148.83	£85	£64.41	£0
March 2023	Not seen	Not seen	*£2148.83	£85	£64.41	£0
April 2023	Not seen	Not seen	*£2148.83	£85	£64.41	£0
May 2023 **	Not seen	£2666.67	Not seen	£85	£64.41	£0
<b>Total not paid Jan 23 - May 23</b>					<b>£322.05</b>	
<b>Overall Employer total not paid</b>					<b>£1,159.38</b>	

*	<i>Net pay evidenced by bank statements</i>
**	<i>May 2023 gross pay of £2,666.67 awarded by Employment Tribunal</i>



## **Appendix Three**

### **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.