

## Ombudsman's Determination

Applicant	Mr N
Scheme	NEST Pension Scheme ( <b>the Scheme</b> )
Respondents	Pod Design & Build Ltd ( <b>the Employer</b> )

## Outcome

1. Mr N's complaint is upheld and, to put matters right, the Employer shall pay £1,064.58 into the Scheme. The Employer shall ensure that Mr 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 Mr N £1,000 for the serious distress and inconvenience it has caused him.

## Complaint summary

3. Mr N has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme.
4. Mr N has said that the missing contributions amounted to £1,064.58.

## 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. On 12 July 2021, Mr N began his employment with the Employer.
7. On 23 October 2021, Mr N received confirmation from the Scheme administrator that he had been enrolled into the Scheme by the Employer.
8. Mr N says he was made aware in April 2022, by the Scheme administrator, that pension contributions were not being paid into the Scheme by the Employer.
9. On 10 October 2022, Mr N's employment with the Employer ceased.
10. In May 2023, Mr N complained to his former Employer about the unpaid pension contributions.

11. On 19 September 2023, Mr N brought his complaint to The Pensions Ombudsman (TPO).
12. Mr N told TPO that during his employment the Employer deducted employee pension contributions from his pay but failed to pay them into the Scheme. The Employer had also failed to pay its contributions into the Scheme in that period.
13. Mr N provided TPO with a copy record from the Scheme administrator which showed that no pension contributions were paid into the Scheme by the Employer for the period July 2021 to September 2022.
14. Mr N was unable to provide TPO with copy payslips for the period 31 July 2021 to 30 September 2021, but he did provide copy payslips for the five months of his pay between 31 October 2021 and 28 February 2022, as shown in Appendix One.
15. Mr N was unable to provide payslips for the period 31 March 2022 to 30 September 2022. Instead, Mr N provided TPO with a copy of his bank statements showing the net pay he received in this period.
16. Mr N provided TPO with a copy of the monthly gross taxable income figures the Employer had submitted to HMRC for the period July 2021 to September 2022, as shown in Appendix Two.
17. Mr N provided TPO with a copy of his 'Job Offer'.
18. Mr N provided TPO with a copy of his P45, dated 14 November 2022.
19. Mr N's copy bank statements showed that the Employer used different payee names when paying him. The payees seen on Mr N's bank statements were:-
  - Pod Design & Build Ltd
  - PD & B Ltd
  - Moore ED
  - Pod Group Ltd
20. On 30 November 2023, TPO asked the Employer for a response to Mr N's complaint. TPO's request was repeated on 14 December 2023. Neither request received a response.
21. On 21 March 2025, TPO contacted the Employer at its registered address with Companies House.
22. On 23 April 2025, the Employer responded saying it had not been monitoring its previous email address. It added that the company had stopped trading shortly after Mr N left its employment but would contact its accountant about Mr N's pension contributions.

23. On 28 April 2025, TPO contacted the Employer again requesting proposals for resolving Mr N's complaint.
24. On 21 May 2025, the Employer told TPO it was working to provide a copy of Mr N's payslips and the amount of pension contributions due to him. TPO did not receive a further submission from the Employer and the status of the company remained active on Companies House.

## **Adjudicator's Opinion**

25. Mr 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, would be to seek agreement from all parties on the facts of the complaint, including the dates and amounts of contributions involved. However, he said that, as the Employer had not engaged with TPO's requests for it to provide a meaningful response, he had to base his Opinion solely on the information provided by Mr N.
  - The Adjudicator said that Mr N's bank statements showed that the Employer used various business entities when paying him. Not all those entities were still active with Companies House, but no evidence was provided to TPO to say Mr N's employment was with any other employer than Pod Design & Build Ltd, which was still active on Companies House.
  - Based on the information provided by Mr N, £1,064.58 of pension contributions had not been remitted to the Scheme in total, this being £608.33 of employee contributions held back by the Employer and not paid into the Scheme, and its employer contributions of £456.25 which were also not paid.
  - The Adjudicator said that he had no reason to doubt the information provided by Mr N. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Mr N's salary but had not been paid into the Scheme.
  - There was no dispute that pension contributions were deducted from Mr N's pay before he was enrolled in the Scheme. The Adjudicator said that the Employer's action to deduct contributions during this period indicated its intention to comply with the Scheme Rules and pay pension contributions into the Scheme. Given that Mr N was subsequently enrolled into the Scheme on 23 October 2021, the Adjudicator concluded that the contributions deducted during the period when he was not enrolled should be included in the complaint and remitted to the Scheme accordingly even though they were deducted at a time when the evidence indicated Mr N was not enrolled into the Scheme.

- The Adjudicator set out Appendices One and Two with his Opinion summarising the total of the monthly pension contributions which, based on the information provided by Mr N and on a balance of probabilities, had not been remitted to the Scheme. It was his Opinion that this amounted to maladministration and that as a result Mr N had suffered a financial loss.
  - In the Adjudicator's view, Mr 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.
26. 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**

27. Mr N has complained that the Employer has not paid all the contributions due to his Scheme account.
27. Under the rules of the Scheme (**the Scheme Rules**) the Employer was obliged to pay to the Scheme, at least 3% of Mr N's qualifying earnings in the relevant pay reference period, and the employer and employee contributions must amount to at least 8% of Mr N's qualifying earnings in the relevant pay reference period. The relevant provisions of the Scheme Rules are outlined in Appendix Three.
28. Based on the information provided to TPO by Mr N, and details from the Scheme administrator, I find that £1,064.58 has not been remitted to the Scheme, being £608.33 in employee contributions and £456.25 in employer contributions. The Employer failed to rectify this and did not fully engage with TPO or Mr N.
29. There is no dispute that pension contributions were deducted from Mr N's wages in the period July 2021 to September 2021, despite him not being enrolled into the Scheme. I find that the Employer's action to deduct contributions during this period indicates its intention to comply with the Scheme Rules and pay pension contributions into the Scheme. Given that Mr N was subsequently enrolled into the Scheme on 23 October 2021, I find that the contributions deducted between July 2021 and September 2021 should be remitted to the Scheme accordingly, even though they were deducted at a time when he was not enrolled into the Scheme.
30. My view is that the Employer has acted in breach of the Scheme Rules by not paying all the contributions due between July 2021 and October 2022. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr N to suffer a financial loss. The Employer shall take remedial action to put this right.
31. The Employer's failure to pay all employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr N to suffer a financial loss. The Employer shall take remedial action to put this right.

32. Mr N is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which he has suffered. This was exacerbated by its failure to properly respond during TPO's investigation into Mr N's complaint.

### **Directions**

33. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mr N £1,000 for the serious distress and inconvenience he has experienced;
  - (ii) pay £1,064.58 into Mr N's Scheme account. This figure represents £608.33 in employee contributions and £456.25 in employer contributions.
  - (iii) establish with the Scheme administrator whether the late payment of contributions has meant that fewer units were purchased in Mr N's' Scheme account than he 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.
34. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Mr N's units, pay the cost of purchasing any additional units required to make up the shortfall.

Camilla Barry

**Deputy Pensions Ombudsman**

26 September 2025

**Appendix One**

<b>Payslip period</b>	<b>Gross pay</b>	<b>Monthly employee (EE) contribution</b>	<b>EE - Year to date total</b>	<b>Monthly employer (ER) contribution</b>	<b>ER - Year to date total</b>	<b>Total owed</b>
31/07/21	£965.91	No copy payslip				Not seen
31/08/21	£1416.66	No copy payslip				Not seen
30/09/21	£1416.17	No copy payslip				Not seen
31/10/21*	£1121.53	£24.07	£113.65	£18.05	£85.24	£198.89
30/11/21	£1416.67	£35.87	£149.52	£26.91	£112.15	£261.67
31/12/21	£1416.66	£35.87	£185.39	£26.90	£139.05	£324.44
31/01/22	£1333.33	£32.54	£217.93	£24.40	£163.45	£381.38
28/02/22**	£1750	£49.20	£267.13	£36.90	£200.35	£467.48
<b>Total owed Appendix One</b>			<b>£267.13</b>		<b>£200.35</b>	<b>£467.48</b>

\*Employee and employer contributions year-to-date accrued figure confirmed on the October 2021 payslip.

\*\*Year-to-date figure seen on the last copy payslip provided.

## Appendix Two

Pay period	HMRC - Gross taxable pay	Assumed - EE monthly	Assumed - ER monthly	Total owed
28/02/22 <i>payslip provided</i>	£1750*	N/A	N/A	N/A
31/03/22	£1750*	£49.20	£36.90	£86.10
30/04/22	£1749.99*	£49.20	£36.90	£86.10
31/05/22	£1670.46†	£46.00	£34.50	£80.50
30/06/22	£1750.01*	£49.20	£36.90	£86.10
31/07/22	£1750*	£49.20	£36.90	£86.10
31/08/22*	£1750*	£49.20	£36.90	£86.10
30/09/22	£1750*	£49.20	£36.90	£86.10
<b>Total Appendix Two</b>		<b>£341.20</b>	<b>£255.90</b>	<b>£597.10</b>
<b>Appendices total</b>		<b>£608.33</b>	<b>£456.25</b>	<b>£1,064.58</b>

\*HMRC gross taxable income figures of £1,750 match with the gross salary on payslip dated 28 February 2022.

† May 2022 contributions based on HMRC gross taxable income figure.

## **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:

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.