

## Ombudsman's Determination

Applicant	Mrs L
Scheme	NEST Pension Plan ( <b>the Scheme</b> )
Respondents	Colline's Kitchen ( <b>the Employer</b> )

## Outcome

1. Mrs L's complaint is upheld and, to put matters right, the Employer shall pay £1,401.53 into the Scheme. The Employer shall ensure that Mrs L is not financially disadvantaged by its maladministration. So, it will arrange for any investment loss to be calculated and paid into the Scheme.
2. In addition, the Employer shall pay Mrs L £1,000 for the serious distress and inconvenience it has caused her.

## Complaint summary

3. Mrs L has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
4. Mrs L has said that the missing contributions amounted to £1,401.53.

## 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 2022, Mrs L began her employment with the Employer.
7. Between March 2022 and April 2023, the Employer failed to pay pension contributions into the Scheme.
8. Mrs L says she became aware of the unpaid pension contributions in November 2022.
9. On 3 February 2023, the Employer paid £231.93 into the Scheme.
10. In April 2023, Mrs L ceased employment with the Employer.

11. On 26 September 2023, the Employer emailed Mrs L a statement listing all employer and employee pension contributions between April 2022 and April 2023.
12. On 27 November 2023, Mrs L complained to the Employer that pension contributions were missing from the Scheme.
13. On 3 January 2024, the Employer told Mrs L that all contributions had been paid into the Scheme.
14. On 31 January 2024, Mrs L brought her complaint to The Pensions Ombudsman (TPO).
15. Mrs L provided copies of the payslips that she held for the period March 2022 to April 2023. These showed pension contributions deducted from Mrs L's wages from April 2022, but no corresponding employer contributions were shown.
16. Mrs L also provided TPO with a copy of the pension contribution statement the Employer sent to her on 26 September 2023. The statement provided a monthly breakdown of the employer and employee pension contributions.
17. The employer and employee pension contributions seen from the payslips and the Employer's statement, for the period between April 2022 and April 2023, amounted to a total of £1,700.44. A breakdown of the deductions is set out in the Appendix.
18. On 7 February 2024, Mrs L provided TPO with a copy statement of pension contributions received by the Scheme dated 6 February 2024. This showed the Scheme had received £170.80 as employee pension contributions and £128.11 for employer pension contributions. A total of £298.91 was paid into the Scheme.
19. The loss to Mrs L in unpaid pension contributions therefore totalled to £1,401.53.
20. On 13 February 2024, TPO asked the Employer for its response to Mrs L's complaint. A response was received from the Employer on 26 February 2024 seeking confirmation that its previous correspondence had been received by TPO.
21. On 27 February 2024, TPO told the Employer that no previous correspondence had been received, and a request was made for a copy to be provided. A further request was made to the Employer on 6 March 2024 for its response to Mrs L's complaint. No response was received.

## **Caseworker's Opinion**

22. Mrs L's complaint was considered by one of our Caseworkers 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 Caseworker's findings are summarised below:-
  - The Caseworker 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, he had to base his Opinion solely on the information provided by Mrs L.

- The Caseworker said that he had no reason to doubt the information provided by Mrs L. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mrs L'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 L was not in the financial position she ought to be in.
- In the Caseworker's view, Mrs L had suffered serious distress and inconvenience due to the Employer's maladministration. The Caseworker was of the opinion that an award of £1,000 for non-financial injustice was appropriate in the circumstances.

23. The Employer did not respond to the Caseworker's Opinion and the complaint was passed to me to consider. I agree with the Caseworker's Opinion.

### **Ombudsman's decision**

24. Mrs L has complained that the Employer has not paid all the contributions due to her Scheme account.
25. 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 L's complaint following the Caseworker's Opinion.
26. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mrs L to suffer a financial loss. The Employer shall take remedial action to put this right.
27. Mrs L 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 L's complaint.

### **Directions**

28. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mrs L £1,000 for the serious distress and inconvenience she has experienced;
  - (ii) pay £1,401.53 into Mrs L's Scheme account. This figure represents the amount that, according to the figures provided by Mrs L, 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 also have been paid but have not been paid to date;

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(iii) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Mrs L'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 L 's units, pay the cost of purchasing any additional units required to make up the shortfall.

**Anthony Arter CBE**

Deputy Pensions Ombudsman  
17 May 2024

**Appendix**

<b>Month</b>	<b>Employee Contributions</b>	<b>Employer Contributions</b>
March 22	xx	xx
April 22	£47.66	£35.75
<i>May 22 *paid to Nest</i>	<i>£81.50</i>	<i>£61.13</i>
<i>June 22 *paid to Nest</i>	<i>£89.30</i>	<i>£66.98</i>
July 22	£81.50	£61.13
August 22	£89.60	£67.20
September 22	£79.40	£59.55
October 22	£62	£46.50
November 22	£84.50	£63.38
December 22	£55.10	£41.33
January 23	£80	£60.00
February 23	£72.20	£54.15
March 23	£85.85	£64.39
April 23	£63.05	£47.29
<b>Total contributions</b>	<b>£971.66</b>	<b>£728.78</b>
Less contributions paid into Nest	£170.80	£128.11
<b>Total unpaid pension contributions</b>	<b>£800.86</b>	<b>£600.67</b>