

Ombudsman's Determination

Applicant	Miss K
Scheme	NEST (the Scheme)
Respondent	Erudite Acquisitions Limited (the Employer)

Outcome

1. Miss K's complaint is upheld and, to put matters right, the Employer shall pay £1,835.92 into the Scheme. The Employer shall ensure that Miss K 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 Miss K £1,000 for the serious distress and inconvenience it has caused her.

Complaint summary

3. Miss K 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 £1,835.92 has not been paid into the Scheme. This figure represents £1,166.35 in employee contributions and £669.57 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 November 2020, Miss K began her employment with the Employer.
7. On 11 February 2021, Miss K was enrolled into the Scheme.
8. Between July 2022 and October 2023, the Employer failed to pay pension contributions into the Scheme.
9. On 17 November 2023, Miss K brought her complaint to The Pensions Ombudsman (TPO).

10. Miss K provided copies of the payslips that she held for the period of April 2023 to September 2023, which detailed the pension contributions deducted from her pay and the corresponding employer contributions.
11. Miss K was unable to provide payslips for July 2022 to March 2023 and October 2023. However, she provided a copy of her Pay As You Earn (**PAYE**) records which showed her gross salary for the 2022/23 and 2023/24 tax years.
12. On 18 December 2024, the Scheme Administrator provided a schedule showing the contributions the Employer paid into the Scheme (**the Schedule**).
13. Appendix One shows the following:-
 - Miss K's gross income for tax years 2022/23 and 2023/24
 - The statutory minimum employee and employer pension contribution amounts based of the Rules of the Scheme (**the Scheme Rules**)
 - The employer and employee pension contributions paid into the Scheme based of the Schedule.
14. On 14 May 2024, TPO asked the Employer for its formal response to Miss K's complaint.
15. On 29 May 2024, TPO chased the Employer again. But the Employer failed to respond by the deadline.

Adjudicator's Opinion

16. Miss K'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 responded to any of TPO's communications, she had to base her Opinion solely on the information provided by Miss K.
 - The Adjudicator said that she had no reason to doubt the information provided by Miss K. Having reviewed Miss K's PAYE information, the payslips she provided for April 2023 to September 2023 and the Schedule from the Scheme administrator, she was of the opinion that the Employer did not meet its obligations to pay the statutory minimum automatic enrolment contribution rate of 3% and 5% employer and employee contributions.
 - As a result of its maladministration, Miss K was not in the financial position she ought to be in. In the Adjudicator's Opinion, based on a balance of probabilities

£1,166.35 in employee contributions and £669.57 in employer contributions had not been remitted to the Scheme.

- In the Adjudicator's view, Miss K 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.

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 K 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 engage with TPO or Miss K. It has also failed to respond to the Adjudicator's Opinion.
20. Under the Scheme Rules the Employer was obliged to pay to the Scheme, at least 3% of Miss K's qualifying earnings in the relevant pay reference period, and the employer and employee contributions must amount to at least 8% of Miss K's qualifying earnings in the relevant pay reference period. The relevant provisions of the Scheme Rules are outlined in Appendix Two.
21. 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 Miss K to suffer a financial loss. The Employer shall take remedial action to put this right.
22. Miss K 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 respond during TPO's investigation into Miss K's complaint.

Directions

23. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Miss K £1,000 for the serious distress and inconvenience she has experienced;
 - (ii) pay £1,835.92 into Miss K's Scheme account. This figure represents the employee contributions of £1,166.35 and employer contributions of £669.57.

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

Camilla Barry

Deputy Pensions Ombudsman

25 February 2025

Appendix One

Tax year	Gross income	Minimum 3% employer contribution	Employer contribution paid to Scheme	Employer contribution owed	Minimum 5% Employee contribution	Employee contribution paid to scheme	Employee contribution owed
2022/23	£26,850.00	£618.30	£151.20	£467.10	£1,030.50	£201.60	£828.90
2023/24	£12,989.32	£202.47	£0.00	£202.47	£337.45	£0.00	£337.45
Total	£39,839.32	£820.77	£151.20	£669.57	£1,367.95	£201.60	£1,166.35

Appendix Two

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.