

## Ombudsman's Determination

Applicant	Miss H
Scheme	NEST ( <b>the Scheme</b> )
Respondent	ShowX Limited ( <b>the Employer</b> )

## Outcome

1. Miss H's complaint is upheld and, to put matters right, the Employer shall pay £9,055.99 into the Scheme. The Employer shall ensure that Miss 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 Miss H £1,000 for the serious distress and inconvenience it has caused her.

## Complaint summary

3. Miss H has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
4. Miss H has said that the missing contributions amounted to £9,055.99.

## 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 2020, Miss H began her employment with the Employer.
7. Between August 2020 and July 2023, the Employer failed to pay pension contributions into the Scheme.
8. On 22 December 2023, Miss H raised her concerns with the Employer.
9. On 9 August 2023, Miss H brought her complaint to The Pensions Ombudsman (**TPO**).
10. Miss H provided copies of the payslips that she held for the period from August 2020 to July 2023, which detailed the pension contributions deducted from her pay and the

corresponding employer contributions. These deductions amounted to £9,055.99. A breakdown of the deductions has been included in the Appendix.

11. On 17 May 2024, TPO asked the Employer for its formal response to Miss H's complaint. This request was repeated on 29 May 2024. The Employer failed to reply by the deadline.

## **Adjudicator's Opinion**

12. Miss H'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 H.
  - The Adjudicator said that she had no reason to doubt the information provided by Miss H. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Miss H'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 H was not in the financial position she ought to be in.
  - In the Adjudicator's view, Miss 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.
13. The Employer responded to the Adjudicator's Opinion. It said that it was seeking to place the company into liquidation, however there were no funds in place to start the process. The complaint was therefore passed to me to consider. I agree with the Adjudicator's Opinion.

## **Ombudsman's decision**

14. Miss H has complained that the Employer has not paid all the contributions due to her Scheme account.
15. 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 Miss H's complaint following the Adjudicator's Opinion.

16. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Miss H to suffer a financial loss. The Employer shall take remedial action to put this right.
17. Miss 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 Miss H's complaint.

### **Directions**

18. To put matters right, the Employer shall, within 28 days of the date of this Determination:
  - (i) pay Miss H £1,000 for the serious distress and inconvenience she has experienced;
  - (ii) pay £9,055.99 into Miss H's Scheme account. This figure represents the amount that, according to the figures provided by Miss H, 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 have also been paid but have not been to date;
  - (iii) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Miss H'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.
19. Within 14 days of receiving confirmation from NEST of any shortfall in Miss H's units, pay the cost of purchasing any additional units required to make up the shortfall.

**Anthony Arter CBE**

Deputy Pensions Ombudsman

23 July 2024

**Appendix**

<b>Date</b>	<b>Employee contributions</b>	<b>Employer contributions</b>
August 2020	112.53	84.40
September 2020	112.53	84.40
October 2020	145.88	109.41
November 2020	145.88	109.41
December 2020	145.88	109.41
January 2021	112.53	84.40
February 2021	145.88	109.41
March 2021	145.87	109.40
April 2021	145.87	109.40
May 2021	146.76	110.07
June 2021	146.76	110.07
July 2021	146.76	110.07
August 2021	146.76	110.07
September 2021	146.76	110.07
October 2021	146.76	110.07
November 2021	146.76	110.07
December 2021	146.76	110.07
January 2022	146.76	110.07
February 2022	146.76	110.07
March 2022	146.76	110.07
April 2022	146.76	110.07
May 2022	146.76	110.07
June 2022	146.76	110.07
July 2022	146.76	110.07
August 2022	146.76	110.07

## CAS-114863-C3K7

September 2022	146.76	110.07
October 2022	146.76	110.07
November 2022	146.76	110.07
December 2022	146.76	110.07
January 2023	146.76	110.07
February 2023	146.76	110.07
March 2023	146.24	109.68
April 2023	146.76	110.07
May 2023	146.76	110.07
June 2023	146.76	110.07
July 2023	146.76	110.07