

## Ombudsman's Determination

Applicant	Mr N
Scheme	NEST ( <b>the Scheme</b> )
Respondents	Wrought Iron & Brass Bed Co. Limited ( <b>the Employer</b> )

### Complaint Summary

1. Mr N has complained that the Employer, despite deducting contributions from his pay between July 2021 and November 2023, has failed to pay them into the Scheme in full.

### Summary of the Ombudsman's Determination and reasons

2. The complaint should be partly upheld against the Employer because:-
  - 2.1. The Employer acted in breach of the Scheme Rules by not paying all the contributions due between April 2022 and November 2023.
  - 2.2. 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.
  - 2.3. The available evidence suggests that the unpaid contributions amounted to £2,399.52, of which £1,777.39 are employee contributions and £622.13 are employer contributions.

### Detailed Determination

#### Material facts

3. Mr N started his employment with the Employer on 7 December 2017.
4. During Mr N's employment he was employed and enrolled into the Scheme by the Employer but was also paid by one other company with a different director, Iron Industries Limited, successively. Both companies operated businesses in the manufacturing of retail wrought iron metal beds and bedroom furniture.

5. On 10 March 2021, Mr N received an email from the Employer which informed him of his pension arrangements. It stated:-

“By law 2021 is the year when the company is required to offer every permanent employee entry into a Company Pension Scheme.

...

- 3) Individual cost will be 5% (4% after tax relief i.e.: £4) of every £100 of gross pay.
- 4) The company will add £3 of every £100 gross pay.
- 5) Total investment into your pension will be £8 for every £100 gross pay.
- 6) So for a £4 contribution from yourself double that amount (£8) will be invested into your pension.
- 7) The money will be invested so that on retirement there will be a pension.”
6. In July 2021, Mr N received a payslip with a payment date of 9 July 2021, which showed that deductions were made from his wages towards his pension. The payslip stated that it was issued by Iron Industries Limited, which is listed as a separate company on Companies House. Mr N was still employed with the Employer although he received a salary from Iron Industries Limited.
7. On 11 February 2022, Mr N was enrolled into the Scheme by the Employer.
8. The Employer paid employee and employer pension contributions sporadically to the Scheme between March 2022 and May 2023.
9. In November 2023, Mr N completed his last month of employment with the Employer.
10. On 9 December 2023, Mr N brought his complaint to The Pensions Ombudsman (TPO). He complained that the Employer had failed to fully pay his pension contributions into the Scheme between July 2021 and November 2023.
11. Mr N provided copies of the payslips that he held for the March 2023 pay period and November 2023 pay period, which detailed the pension contributions deducted from his pay for the tax years 2022/2023 and 2023/2024. The employer pension contributions were not detailed on the payslips. The employee pension contributions amounted to £2,242.79 between April 2022 and November 2023. A breakdown of the deductions has been included in Appendix One. The payslips for March 2023 and November 2023 were issued by the Employer.
12. Mr N provided additional payslips for the pay periods between December 2022 and November 2023 which were issued by the Employer. These showed that deductions were made from Mr N's wages towards his pension. Mr N also said that he was

unable to provide payslips for every pay period between July 2021 and November 2023 because the Employer did not always provide payslips.

13. Mr N also provided screenshots from his HM Revenue and Customs (**HMRC**) account which detailed his taxable income for the tax years 2021/2022, 2022/2023 and 2023/2024. These show that Mr N received taxable income from Iron Industries Limited between July 2021 and May 2022. Mr N was still employed by the Employer between July 2021 and November 2023 according to his contract.
14. Mr N also provided bank statements which showed salary being paid into his account by the Employer.
15. The Scheme administrator confirmed that the Employer had paid employee contributions of £923.62 and employer contributions of £692.88 to the Scheme between March 2022 and May 2023. The contribution schedule provided by the Scheme administrator is included in Appendix Two.
16. On 2 June 2024, TPO wrote to the Employer and the director of Iron Industries Limited to ask for more information in response to Mr N's complaint.
17. On 22 June 2024, the Employer responded to TPO and asked for more details regarding the complaint. TPO provided additional details on 24 June 2024.
18. On 8 July 2024, the Employer asked TPO if it could provide the payslips which Mr N had provided.
19. On the same day, TPO responded to the Employer. It provided some of the payslips from Mr N. It also said that it was missing payslips for a significant period of the timeframe that Mr N was claiming contributions were unpaid, and that it would expect the Employer to have copies of the remaining payslips. It asked the Employer to provide any additional information it had regarding Mr N's pension contributions.
20. On 17 July 2024, the Employer responded to TPO. It stated that the deductions shown on the payslips were not pension deductions. TPO queried this further on the same day.
21. On 31 July 2024, the Employer wrote to TPO. It stated that it had obtained legal advice on Mr N's complaint and that it was in the process of producing a statement of the financial history of its relationship with Mr N, which it aimed to complete by 31 August 2024.
22. On 1 August 2024, TPO said to the Employer that it could take the time to produce the financial history. However, it asked for the Employer to provide the outstanding payslips as soon as possible.
23. On 16 August 2024, TPO contacted the Employer again regarding Mr N's outstanding payslips. On the same day, TPO received an automated response from the Employer, which said a reply would be provided in due course.

24. On 2 September 2024, TPO wrote to the Employer again asking for its full response to Mr N's complaint and payslips.
25. On 11 October 2024, TPO contacted the Employer again for its response to Mr N's complaint. The Employer failed to respond by the deadline.

## **Conclusions**

26. Mr N has complained that the Employer has not paid all the contributions due to his Scheme account between July 2021 and November 2023.
27. Mr N was enrolled into the Scheme by the Employer in February 2022. Under 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 March 2023 and November 2023 payslips provided by Mr N and the details from his Scheme account, I find that the amount of £2,399.52 have not been remitted to the Scheme between April 2022 to November 2023 by the Employer, of which £1,777.39 are employee contributions and £622.13 are employer contributions.
29. For the period between July 2021 and March 2022, Mr N provided one payslip for the month of July 2021 and screenshots from his HMRC account which showed that he received wages from Iron Industries Limited, even though he was formally employed by the Employer. It is clear from the available evidence that Iron Industries Limited and the Employer are linked as they operate in same industry, are located close to each other and have appointed the same secretary in the past according to Companies House. However, as they are separate legal entities, I cannot investigate them together.
30. Mr N was not enrolled into an occupational pension scheme by Iron Industries Limited. This means that, even if Iron Industries Limited has not met its duties to him, there is no pension scheme which TPO can investigate or make a decision about. In addition, an employers' compliance with automatic enrolment obligations are matters for The Pensions Regulator (**TPR**).
31. I recognise that the Employer did make pension contributions to the Scheme in March 2022, which would indicate that Mr N also received a wage from the Employer during this month. However, I have not been presented with any evidence which suggest that the incorrect amounts of contributions were paid for this month.
32. I find that the Employer has acted in breach of the Scheme Rules by not paying all the contributions due between April 2022 and November 2023. 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.

33. 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 the Employer's failure to respond to TPO's requests during its investigation into Mr N's complaint.

34. Therefore, I partially uphold Mr N's complaint.

**Directions**

35. To put matters right, the Employer shall, within 28 days of this decision:-

- (i) pay Mr N £1,000 for the serious distress and inconvenience he has experienced;
- (ii) pay £2,399.52 into Mr N's Scheme account. This figure represents the amount that according to the figures provided by Mr N, have been deducted from his pay and 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 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.

36. 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**

7 January 2026

**Appendix One**

Tax Year	Gross salary (£)	Source – Gross Salary	Employee contributions (£) (from payslip)	Employer contributions (£) (from payslip)	Employee contributions (£) – Paid to Scheme	Employer contributions (£) – Paid to Scheme
2021/2022	16,686.92	HMRC	*	*	458.38	343.79
2022/2023	26,514.82	Payslip	1325.74	*	465.40	349.09
2023/2024	18,340.00	Payslip	917.05	*	0.03	0.03

\* Payslips unavailable/Employer contributions not stated on the payslip

**Appendix Two****NEST – Contribution Schedule****Employee Contributions**

Contribution Due Date	Contribution Paid Date	Amount paid (£)	HMRC Tax Relief (£)	Tax Relief Status
10/03/2023	09/05/2023	0.01	0.00	Claimed and received
10/02/2023	09/05/2023	0.01	0.00	Claimed and received
10/01/2023	09/05/2023	0.01	0.00	Claimed and received
10/12/2022	19/01/2023	0.01	0.00	Claimed and received
10/10/2022	19/01/2023	0.04	0.01	Claimed and received
10/09/2022	10/10/2022	80.53	20.13	Claimed and received
10/08/2022	10/10/2022	384.67	96.17	Claimed and received
10/07/2022	09/09/2022	0.04	0.01	Claimed and received
10/06/2022	09/09/2022	0.04	0.01	Claimed and received
10/05/2022	09/09/2022	0.04	0.01	Claimed and received
10/04/2022	28/04/2022	0.04	0.01	Claimed and received
10/02/2022	28/04/2022	0.04	0.01	Claimed and received
10/03/2022	01/03/2022	458.34	114.59	Claimed and received

**Employer contributions**

Contribution Due Date	Contribution Paid Date	Amount paid (£)
10/03/2023	09/05/2023	0.01
10/02/2023	09/05/2023	0.01
10/01/2023	09/05/2023	0.01
10/12/2022	19/01/2023	0.01
10/11/2022	19/01/2023	0.01
10/10/2022	19/01/2023	0.03
10/09/2022	10/10/2022	60.39
10/08/2022	10/10/2022	288.50
10/07/2022	09/09/2022	0.03
10/06/2022	09/09/2022	0.03
10/05/2022	09/09/2022	0.03
10/04/2022	28/04/2022	0.03
10/02/2022	28/04/2022	0.03
10/03/2022	01/03/2022	343.76



## **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.

## **Appendix Four**

### **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.