

## Ombudsman's Determination

Applicant	Miss S
Scheme	NEST ( <b>the Scheme</b> )
Respondent	Flower Plants Gifts Ltd ( <b>the Employer</b> )

## Outcome

1. Miss S' complaint is upheld in part and, to put matters right, the Employer shall ensure that Miss S 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 S £500 for the significant distress and inconvenience it has caused her.

## Complaint summary

3. Miss S has complained that the Employer, has failed to pay all contributions due to the Scheme.
4. The available evidence shows that the missing contributions amounted to £1,036.11. This figure consists of £444.71 in employer contributions and £591.30 in employee contributions. However, the missing contributions relate to her employment with a predecessor employer.

## 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 23 May 2022, Miss S began her employment with Flower Station Ltd (**the Former Employer**).
7. On 1 September 2022, the Former Employer began deducting pension contributions from Miss S' wages.
8. Between September 2022 and September 2023, the Former Employer failed to pay all pensions contributions which were due into the Scheme.
9. In January 2023, the Former Employer enrolled Miss S into the Scheme.

10. On 17 March 2023, the Former Employer paid £70.70 in employee contributions and £52.03 in employer contributions into the Scheme.
11. Miss S has said that she first became aware of the issue of the unpaid contributions on 31 March 2023.
12. On 18 April 2023, the Former Employer paid a further £62.00 in employee contributions and £46.50 in employer contributions into the Scheme.
13. On 21 August 2023, Miss S contacted the Former Employer and asked for an update on the unpaid pension contributions.
14. On 29 August 2023, Miss S chased the Former Employer regarding the unpaid contributions.
15. On the same day, the Former Employer apologised for the delay and said all pension payments would be paid.
16. On 1 October 2023, Miss S' employment was transferred to the Employer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**).
17. The Employer failed to pay pensions contributions into the Scheme between October 2023 and December 2023.
18. On 4 December 2023, Miss S emailed the Employer and raised a formal complaint.
19. On the same day, the Employer acknowledged the complaint and explained that the reason for the unpaid contributions was due to a cashflow problem. It said it was confident it would be able to rectify the situation.
20. Later that day, Miss S responded to the Employer and insisted on repayment in full of the unpaid contributions and requested a monthly breakdown of both employee and employer contributions. The Employer later said it was not in a position to provide payment in full.
21. On 6 December 2023, the Employer paid £66.20 in employee contributions and £49.50 in employer contributions into the Scheme.
22. On 21 December 2023, Miss S ceased employment for the Employer.
23. On 3 January 2024, Miss S complained to The Pensions Ombudsman (**TPO**).
24. Miss S provided copies of the payslips that she held for the period from September 2022 to December 2023 for the Employer and Former Employer. These detailed the pension contributions deducted from her pay and the corresponding employer contributions. These deductions amounted to £1,671.79. A breakdown of the deductions has been included in Appendix One.
25. On 29 May 2024, TPO asked the Employer for its formal response to Miss S' complaint. This request was repeated on 17 June 2024 and 8 July 2024.

26. Between the 9 July 2024 and 16 August 2024, the Employer acknowledged TPO's requests. Its position was that it was not liable to pay the unpaid pension contributions for the Former Employer following the TUPE transfer as these remained with the Former Employer under the terms of a Company Voluntary Arrangement (CVA).
27. In response, TPO explained to the Employer that under TUPE all pension liabilities are transferred from the Former Employer to the Employer. The Employer's position remained that the liabilities for unpaid contributions of the Former Employer remained with the Former Employer under the CVA. However, the Employer acknowledged liability for the outstanding contributions between October 2023 and December 2023.
28. On 24 July 2024, the Employer made a payment into the Scheme of £224.35. This was for outstanding employee and employer contributions due for October 2023 and November 2023, however this did not account for investment loss.
29. On 9 August 2024, the Employer made a payment into the Scheme for £64.40. This was for outstanding contributions due for December 2023 but did not account for investment loss. Following this final payment, the total outstanding contributions due to the Scheme were £1,036.11, which consisted of £444.71 in employer contributions and £591.30 in employee contributions.

## **Adjudicator's Opinion**

30. Miss 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. He said that, although the Employer had acknowledged TPO's information requests and confirmed payments had been made to settle some of the unpaid contributions between October 2023 and December 2023, it had not accepted liability for the unpaid contributions which arose under the Former Employer.
  - The Adjudicator said that although the majority of contributions were due when Miss S was employed by the Former Employer, her employment was transferred to the Employer under TUPE in October 2023. In the Adjudicator's view the Employer was liable to pay all unpaid contributions into the Scheme.
  - The Adjudicator said that he had no reason to doubt the information provided by Miss S and this was consistent with the payslips provided by Miss S and evidence from the Employer. So, in the Adjudicator's Opinion not all contributions had been paid into the Scheme. As a result of its maladministration, Miss S was not in the financial position she ought to be in.

- In the Adjudicator's view, Miss S 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.

31. The Employer disagreed with the Adjudicator's Opinion. Its response has been summarised below:-

- The Former Employer experienced cash flow problems and assured all employees that unpaid pension contributions would be paid and treated with preference. The Former Employer was in a CVA and the insolvency practitioner confirmed that Miss S' payments were to be treated as preferential.
- The Employer has paid all its unpaid contributions. It said it had no liability to pay the unpaid contributions of the Former Employer as these were protected under the CVA and treated as preferential.
- The Employer said investment loss was a matter to be raised with the insolvency practitioner of the Former Employer. It also disagreed with the Adjudicator's award of £1,000 for the distress and inconvenience payment for non-financial injustice.

The complaint was passed to me to consider.

### **Ombudsman's decision**

32. Miss S has complained that the Employer has not paid all the contributions due to her Scheme account. The Employer asserts that it has paid all employer contributions in respect of Miss S and employee contributions deducted from her pay in respect of her employment with the Employer between October and December 2023. It asserts that it is not required to pay the outstanding contributions of the Former Employer. I agree with the Employer.
33. The Former Employer entered into a CVA. The Employer has stated that the outstanding pension contributions owed by the Former Employer under the terms of the CVA would be treated as preferential and dealt with by the insolvency practitioner appointed in respect of the Former Employer. Miss S' employment was transferred to the Employer under TUPE in October 2023.
34. TUPE provides generally that all liabilities, including outstanding pension contributions transfer to the new employer; however, this is to the exclusion of any rights, duties or liabilities relating to an occupational pension scheme (see Regulation 10 of TUPE). The Scheme is an occupational pension scheme. As such, the Former Employer remains responsible for the outstanding contributions and the Employer is not liable to settle the outstanding contributions payable in respect of Miss S' employment with the Former Employer.
35. I find that the Employer has paid all contributions which it is required to pay, albeit late. To address the distress and inconvenience Miss S suffered from having to

pursue payment of such contributions, Miss S is entitled to a distress and inconvenience award.

## **Directions**

36. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Miss S £500 for the significant distress and inconvenience she has experienced;
  - (iii) establish with the Scheme whether the late payment of contributions in respect of October, November and December 2023 has meant that fewer units were purchased in Miss 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.
37. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Miss S' units, pay the cost of purchasing any additional units required to make up the shortfall.

**Camilla Barry**

Deputy Pensions Ombudsman  
7 August 2025

**Appendix One****Table showing Unpaid Contributions between September 2022 and December 2023**

Date	Employee contributions	Employer contributions	Gross Salary
01/10/2022	£54.08	£40.56	£1,872.00
01/11/2022	£57.20	£42.90	£1,950.00
01/12/2022	£58.50	£43.88	£1,982.50
01/01/2023	£62.00	£46.50	£2,070.00
01/02/2023	£66.20	£49.65	£2,175.00
01/03/2023	£43.77	£32.83	£1,614.35
31/03/2023	£69.50	£52.13	£2,257.50
30/04/2023	£56.00	£42.00	£1,920.00
31/05/2023	£71.60	£53.70	£2,310.00
30/06/2023	£60.80	£45.60	£2,040.00
31/07/2023	£60.80	£45.60	£2,040.00
31/08/2023	£70.40	£52.80	£2,280.00
30/09/2023	£60.65	£45.49	£2,036.25
31/10/2023 (paid)	£60.80	£45.60	£2,040.00
30/11/2023 (paid)	£66.20	£49.65	£2,175.00
31/12/2023 (paid)	£36.80	£27.60	£1,440.00
	£955.30	£716.49	
		<b><u>£1,671.79</u></b>	

**Appendix Two****Payments made into the Scheme by the Former Employer and the Employer and total outstanding contributions**

Payment Date	Employee Contributions	Employer Contributions	Period of contributions
17/03/2023	£70.70	£52.03	Unknown
18/04/2023	£62.00	£46.50	Unknown
06/12/2023	£66.20	£49.50	Unknown
24/07/2024	£66.20	£49.65	October 2023
24/07/2024	£62.00	£46.50	November 2023
09/08/2024	£36.80	£27.60	December 2023
	£363.90	£271.78	
		<b><u>£635.68</u></b>	
Total Outstanding Contributions	<b><u>£1,036.11</u></b>		

## **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.

### **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.