

## Ombudsman's Determination

Applicant	Mr Z
Scheme	NEST ( <b>the Scheme</b> )
Respondent	Adams Leisure Ltd ( <b>the Employer</b> )

## Outcome

1. Mr Z's complaint is upheld and, to put matters right, the Employer shall pay the missing contributions in respect of his pension and make good any shortfall in units.
2. Mr Z may choose whether to pay the outstanding employee contributions into the Scheme.
3. In addition, the Employer shall pay Mr Z £500 for the significant distress and inconvenience it has caused him.

## Complaint summary

4. Mr Z's complaint against the Employer concerns pension contributions not being paid into the Scheme. He said that pension contributions were not paid into the Scheme in March 2022, June 2023 and November 2023.
5. The available evidence shows that the missing employer contributions amounted to £247.32. The employee contributions, which were also due to the Scheme but not deducted from Mr Z's salary, amounted to £412.22.

## Background information, including submissions from the parties

6. The sequence of events is not in dispute, so I have only set out the salient points.
7. On 15 July 2021, Mr Z began his employment with the Employer.
8. Mr Z was enrolled into the Scheme in November 2021.
9. Mr Z's contract of employment states in relation to pensions:

**"10. PENSION**

10.1 The Employer operates a pension scheme for all qualifying employees whom are entitled to enrol or opt out if You so wish.”

10. Mr Z has also provided a copy of an employee handbook that he states he was given together with his contract of employment. The employee handbook states, amongst other things:

**“Pay, etc**

.....

**E) PENSION SCHEME**

We operate a contributory pension scheme which you will be auto-enrolled into (subject to the conditions of the scheme). The scheme enables you to save for your retirement using your own money, together with tax relief and contributions from the Company.”

11. Mr Z states that in March 2022, June 2023 and November 2023, the Employer did not deduct employee pension contributions from his salary and it did not pay the employer and employee pension contributions due for these months into the Scheme.
12. On 16 January 2024, Mr Z brought his complaint to The Pensions Ombudsman (TPO).
13. Mr Z provided copies of the payslips issued to him in respect of his service with the Employer for the period from October 2021 to February 2024. The payslips show the pension contributions deducted from Mr Z’s pay during this period and the corresponding employer contributions. The information in the payslips showing the employee contributions deducted from Mr Z’s pay and the corresponding employer contributions is provided in Appendix One.
14. The payslips that Mr Z has provided for March 2022, June 2023 and November 2023 show employer contributions of £0.00. The payslips do not show that any employee pension contributions were deducted from his pay in these months either. Mr Z has also provided a copy of the record of contributions made to his Scheme account, obtained from the Scheme administrator. The record from the Scheme administrator does not show that any pension contributions were paid by the Employer in respect of Mr Z for these months.
15. The payslips provided by Mr Z, except the March 2022, June 2023 and November 2023 payslips, show employee contributions of £146.76 each month and employer contributions of £110.07 each month for the period from October 2021 to February 2024.
16. On 4 June 2024, TPO asked the Employer for its formal response to Mr Z’s complaint. This request was repeated on 18 June 2024. None of these requests received a response.

## Adjudicator's Opinion

17. Mr Z'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 all 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, as the Employer had not responded to any of TPO's communications, he had to base his Opinion solely on the information provided by Mr Z.
  - The Adjudicator said there was no dispute that Mr Z was enrolled into the Scheme and under the rules of the Scheme (**the Scheme Rules**) the Employer was obliged to pay to the Scheme in the relevant pay reference period, at least 3% of Mr Z's qualifying earnings, and the employer and employee contributions must amount to at least 8% of Mr Z's qualifying earnings.
  - Having reviewed Mr Z's payslips for March 2022, June 2023 and November 2023 along with the record of contributions from Scheme administrator, it was the Adjudicator's opinion that Mr Z had met the qualifying threshold for pension contributions, however no contributions had been deducted from Mr Z's salary for these months.
  - The Adjudicator said that he had no reason to doubt the information provided by Mr Z. So, in the Adjudicator's Opinion, on the balance of probabilities, pension contributions should have been paid to the Scheme in line with the Scheme Rules and calculated to the statutory minimum automatic contribution rate of 3% and 5%. It was the Adjudicator's view that, based on the evidence Mr Z had provided, a total of £247.32 in employer contributions and £412.22 in employee contributions had not been paid into the Scheme.
  - As a result of its maladministration, Mr Z was not in the financial position he ought to be in. In the Adjudicator's view, Mr Z had suffered significant distress and inconvenience due to the Employer's maladministration. The Adjudicator was of the opinion that an award of £500 for non-financial injustice was appropriate in the circumstances.
18. 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

19. Mr Z has complained that the Employer did not pay employer or employee pension contributions into the Scheme for March 2022, June 2023 and November 2023.
20. I find that the Employer has failed to pay contributions into the Scheme for March 2022, June 2023 and November 2023, which it was required to do under the Scheme rules. The Employer failed to rectify this and did not engage with either TPO or Mr Z. It also failed to respond to the Adjudicator's Opinion.
21. Under the Scheme Rules the Employer was obliged to pay to the Scheme, at least 3% of Mr Z's qualifying earnings in the relevant pay reference period, and the employer and employee contributions must amount to at least 8% of Mr Z's qualifying earnings in the relevant pay reference period. The Employer is responsible for deducting employee contributions and ensuring that the amount paid to the Scheme is at least 8% of qualifying earnings for each pay reference period and the Employer's contribution is not conditional on the payment of the employee's contribution. The relevant provisions of the Scheme Rules are outlined in Appendix Two.
22. I find that the Employer has acted in breach of the Scheme Rules by not paying the contributions due to the Scheme for March 2022, June 2023 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 Z to suffer a financial loss. This amounts to maladministration.
23. The Employer shall take remedial action to put this right. Mr Z is entitled to a distress and inconvenience award in respect of the significant ongoing non-financial injustice which he has suffered. This was exacerbated by its failure to respond during TPO's investigation into Mr Z's complaint.

## Directions

24. Mr Z may choose to pay £412.22 into NEST (**the Late Employee Contribution**) and confirm whether or not he has made this payment to the Employer within 28 days of the finalisation of this complaint (**the Employee Confirmation**).
25. To put matters right, the Employer should, within 28 days of receiving the Employee Confirmation or, if no Employee Confirmation is given, within 42 days of the Determination:
  - (i) pay £247.32 into the Scheme (**the Late Employer Contribution**);
  - (ii) establish with the Scheme administrator whether the late payment of contributions (the Late Employer Contribution and, if relevant, the Late Employee Contribution) has meant that fewer units were purchased in the Scheme than he would have otherwise secured, had the contributions been paid on time;

- (iii) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation;
  - (iv) within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Mr Z's units under (ii) above, pay the cost of purchasing any additional units required to make up the shortfall into Mr Z's scheme account; and;
  - (v) in the event that (ii) and (iii) are not complied with, and the Scheme administrator is able to confirm fewer units were purchased in the Scheme than he would have otherwise secured, had the contributions been paid on time, then the Employer shall pay in accordance with (iv) above upon confirmation of the shortfall amount together with any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.
26. The Employer should also, within 28 days of the Determination, pay Mr Z £500 for the significant distress and inconvenience he has experienced.

**Camilla Barry**

**Deputy Pensions Ombudsman**

26 August 2025

**Appendix One**

Payment date	Employee contributions	Employer contributions	Monthly Salary (Gross pay)
10/10/2021	£146.76	£110.07	£5,833.33
10/11/2021	£146.76	£110.07	£5,833.33
10/12/2021	£146.76	£110.07	£5,833.33
10/01/2022	£146.76	£110.07	£5,833.33
10/02/2022	£146.76	£110.07	£5,833.34
10/03/2022	£146.76	£110.07	£5,833.33
31/03/2022** (pay period 01/03/2022 – 30/03/2022)			£5,833.33
10/05/2022	£146.76	£110.07	£5,833.33
10/06/2022	£146.76	£110.07	£5,833.33
10/07/2022	£146.76	£110.07	£5,833.33
10/08/2022	£146.76	£110.07	£5,833.33
10/09/2022	£146.76	£110.07	£5,833.33
10/10/2022	£146.76	£110.07	£5,833.33
10/11/2022	£146.76	£110.07	£5,833.33
10/12/2022	£146.76	£110.07	£5,833.33
10/01/2023	£146.76	£110.07	£5,833.33
10/02/2023	£146.76	£110.07	£5,833.33
10/03/2023	£146.76	£110.07	£5,833.33
10/04/2023	£146.76	£110.07	£5,833.33
10/05/2023	£146.76	£110.07	£5,833.33
10/06/2023	£146.76	£110.07	£5,833.33
10/07/2023** (pay period 01/06/2023 – 30/06/2023)			£5,833.33
10/08/2023	£146.76	£110.07	£5,833.33

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10/09/2023	£146.76	£110.07	£5,833.33
10/10/2023	£146.76	£110.07	£5,833.33
10/11/2023	£146.76	£110.07	£5,833.33
11/12/2023** (pay period 01/11/2023 – 30/11/2023)			£1,426.92
10/01/2024	£0*	£0*	£459.58
10/02/2024	£0*	£0*	£109.40
Total unpaid contributions	<b>£654.69</b>	<b>£392.79</b>	
		<b><u>£1,047.48</u></b>	

\*Did not meet the Threshold

\*\*Met the Threshold but no contributions deducted from payslip.

## **Appendix Two**

### **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.