

## Ombudsman's Determination

Applicant	Ms S
Scheme	NEST ( <b>the Scheme</b> )
Respondent	Huma Kitchens Ltd ( <b>the Employer</b> )

## Outcome

1. Ms S' complaint is upheld and, to put matters right, the Employer should pay £678.30 into the Scheme. The Employer should ensure that Ms S is not financially disadvantaged by its maladministration. So, it should arrange for any investment loss to be calculated and paid into the Scheme.
2. In addition, the Employer shall pay Ms S £1,000 for the serious distress and inconvenience it has caused her.

## Complaint summary

3. Ms S has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
4. Ms S has said that the missing contributions amounted to £678.30.

## 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 August 2022, Ms S began her employment with the Employer.
7. Between November 2022 and June 2023, the Employer deducted pension contributions from Ms S' salary, but it failed to pay the pension contributions into a pension scheme.
8. On 6 July 2023, the Employer enrolled Ms S into the Scheme.
9. On 11 July 2023, the Employer made a lump sum payment of £1,251.12 into the Scheme.
10. On 25 January 2024, Ms S brought her complaint to The Pensions Ombudsman (**TPO**).

11. Ms S provided copies of the payslips that she held for the period from November 2022 to June 2023, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. These deductions amounted to £1,169.55. A breakdown of the deductions has been included in the Appendix. The corresponding employer contributions amounted to £759.87.
12. Ms S also provided details from her Scheme account which showed that £1,251.12 had been remitted to the Scheme as employer contributions by the Employer.
13. The total outstanding contributions according to the payslips and the details from Ms S' Scheme account amounted to £678.30.
14. On 10 June 2024, TPO wrote to the Employer to ask for more information in response to Ms S' complaint.
15. On 25 June 2024, TPO chased the Employer for a response.
16. On 9 July 2024, the Employer responded and said that it would need to investigate the matter further before it could provide a final response to TPO.
17. On 18 July 2024, the Employer requested further information regarding the amount of outstanding pension contributions.
18. On 19 July 2024, TPO provided the Employer with a breakdown of the pension contributions that were due from November 2022 to June 2023 and confirmed that £678.30 was still outstanding.
19. On 30 July 2024, the Employer asked for bank details to pay the outstanding amount.
20. On 31 July 2024, TPO informed the Employer that the outstanding pension contributions needed to be paid to Ms S' Scheme account directly, ensuring that the employee and employer share is allocated correctly. TPO also asked the Employer to contact the Scheme administrator to ask it to calculate the potential investment loss due to the late payment of the pension contributions.
21. On 15 August 2024, TPO asked the Employer to confirm if it agreed to remit the outstanding pension contributions to Ms S' Scheme account and pay any potential investment loss due for the late payment of the pension contributions.
22. On 28 August 2024, the Employer said that it wanted to settle the outstanding balance. However, it was not able to make the payment to Ms S' Scheme account as it did not have access to it.
23. On 2 September 2024, TPO confirmed to the Employer that Ms S' Scheme account was still open. It provided Ms S' Scheme member ID number and explained that it required the outstanding pension contributions to be paid to the Scheme account. It asked the Employer to contact the Scheme administrator to get the payment details.

24. On 17 September 2024, TPO contacted the Employer again as no confirmation had been received that the payment had been completed. The Employer failed to respond by the deadline.

### **Adjudicator's Opinion**

25. Ms 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 fully engaged with TPO's requests, she had to base her Opinion solely on the information provided by Ms S.
  - Based on the information provided by Ms S, £678.30 of pension contributions have not been remitted to the Scheme in total. As the Employer enrolled Ms S into the Scheme late and made one lump sum payment of £1,251.12 to the Scheme as an employer contribution, the employee and employer contribution shares have not been allocated correctly.
  - The Adjudicator said that she had no reason to doubt the information provided by Ms S. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Ms S' salary, but had not been paid into the Scheme. In addition, the Employer had also failed to allocate the employer and employee contributions that was paid for the same period correctly. As a result of its maladministration, Ms S was not in the financial position she ought to be in.
  - In the Adjudicator's view, Ms 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.
26. 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**

27. Ms S has complained that the Employer has not paid all the contributions due to her Scheme account.
28. Under the rules of the Scheme (**the Scheme Rules**) the Employer was obliged to pay to the Scheme, at least 3% of Ms S' qualifying earnings in the relevant pay reference period, and the employer and employee contributions must amount to at least 8% of Ms S' qualifying earnings in the relevant pay reference period. The relevant provisions of the Scheme Rules are outlined in Appendix Two.

29. Based on the payslips provided by Ms S and details from her Scheme account, I find that the amount of £678.30 has not been remitted to the Scheme. The Employer enrolled Ms S into the Scheme belatedly and made one lump sum payment of £1,251.12 as an employer contribution. As a result, employee and employer contributions have also not been properly allocated within the Scheme.
30. There is no dispute that pension contributions were deducted from Ms S' wages between November 2022 and June 2023, despite her not being enrolled into the Scheme. I find that the Employer's action to deduct contributions during this period indicates its intention to comply with the Scheme Rules and pay pension contributions into the Scheme. Given that Ms S was subsequently enrolled into the Scheme in July 2023, I find that the contributions deducted between November 2022 and June 2023 should be remitted to the Scheme accordingly, even though they were deducted at a time when she was not enrolled into the Scheme.
31. My view is that the Employer has acted in breach of the Scheme Rules by not paying all the contributions due between November 2022 and June 2023. Whilst the Employer did make an offer to pay the outstanding pension contributions, it failed to make this payment by the deadline.
32. The Employer's failure to pay all employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Ms S to suffer a financial loss. The Employer shall take remedial action to put this right.
33. Ms S 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 Ms S' complaint.

## **Directions**

34. To put matters right, the Employer shall, within 28 days of the date of this Determination:
  - (i) pay Ms S £1,000 for the serious distress and inconvenience she has experienced;
  - (ii) pay £678.30 into Ms S' Scheme account. This figure represents the amount that, according to the figures provided by Ms S, have been deducted from her pay, but not paid into the Scheme account.
  - (iii) ensure that the employer and employee shares of the pension contributions that are due from November 2022 to June 2023 are allocated correctly;
  - (iv) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Ms S' Scheme account than she would have otherwise secured, had the contributions been paid on time; and
  - (v) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.

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- (vi) Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Ms S' units, pay the cost of purchasing any additional units required to make up the shortfall.

Camilla Barry

**Deputy Pensions Ombudsman**

29 July 2025

**Appendix One**

<b>Payslip Month</b>	<b>Employee contributions</b>	<b>Employer contributions</b>
November 2022	£183.45	£110.07
December 2022	£114.00	£68.40
January 202	£161.50	£96.90
February 2023	£161.50	£96.90
March 2023	£161.50	£96.90
April 2023	£129.20	£96.90
May 2023	£129.20	£96.90
June 2023	£129.20	£96.90

## **Appendix Two**

### **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 Three**

### **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.