

Ombudsman's Determination

Applicant	Mrs E
Scheme	NEST (the Scheme)
Respondent	Tudor Inns Ventures 1 (the Employer)

Outcome

1. Mrs E's complaint is upheld and, to put matters right, the Employer should ensure that all unpaid contributions are paid into the Scheme. The Employer should also make sure that Mrs E is not financially disadvantaged by its maladministration. So, it should arrange for any investment loss to be calculated and paid into the Scheme.

Complaint summary

2. Mrs E has complained that the Employer, despite deducting contributions from her pay, failed to pay them into the Scheme consistently or on time throughout the duration of her employment.

Background information, including submissions from the parties

3. In November 2018, while employed by Tudor Inn Ventures 2 (**TIV 2**), Mrs E was enrolled into the Scheme. Between April 2018 and August 2018, pension contributions were deducted from her pay.
4. In September 2018, Mrs E's employment transferred from TIV 2 to the Employer. Mrs E said that this was essentially the same employment as TIV 2, which was just trading under a different name. Between September 2018 and July 2019, pension contributions were deducted from her pay.
5. Between September 2018 and November 2018 Mrs E said she carried out various unsuccessful queries in relation to her pension.
6. The Employer first made contributions to the Scheme on behalf of Mrs E on 26 February 2019. Mrs E says that contributions were made in relation to both TIV 2 and the Employer, but contributions were still missing.
7. On 14 June 2019, Mrs E's employment with the Employer ended.

8. On 15 October 2020, Mrs E brought her complaint to the Pensions Ombudsman (TPO).
9. Mrs E provided copies of payslips, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. A schedule of the payments relating to the Employer has been replicated in Appendix One. Mrs E also provided screenshots from her NEST account which showed when payments were made into the Scheme. A schedule of these payments has been included in Appendix Two. In her submissions to TPO, Mrs E said that not all contributions had been paid either at all or on time and that she could have suffered financial loss due to the late payment of these contributions.
10. On 20 April 2021, TIV 2 was dissolved. Due to this TPO could no longer investigate any missing contributions in relation to TIV 2.
11. On 2 August 2021, TPO asked for the Employer's Formal Response to Mrs E's complaint.
12. On 4 September 2021, the Employer provided its Formal Response. It said that the contributions due equalled £262.89 and the payments made amounted to £287.25. So, there was nothing outstanding. It provided a payment schedule that suggested that the contributions were paid on a weekly basis between October 2018 and July 2019. A Schedule of these payments has been included in Appendix Three. This schedule did not coincide with the payments seen on the NEST statement.
13. On 28 July 2022, TPO asked the Employer for an updated response to Mrs E's complaint.
14. On 11 August 2022, the Employer responded and accepted that the contributions were paid late. It said that this was because it thought NEST would automatically withdraw the pension payments due. The Employer also stated that it had paid a total of £262.89 into Mrs E's pension fund. It said that it did not think there were any missing pension contributions.
15. On 12 August 2022, TPO asked the Employer if the £262.89 covered any possible investment loss from the late pension payments.
16. On 16 August 2022, the Employer stated that the £262.89 paid covered pension contributions and any possible investment loss so puts Mrs E back in the position she would have been in had no errors occurred. The Employer stated that there was an overpayment of £50.71 which it had worked out to be 10% interest on what was due to the Scheme on behalf of Mrs E.
17. When presented with this information, Mrs E did not agree with the Employer's position. Mrs E stated that there were still pension contributions outstanding. She said that the missing contributions amounted to £21.95. Mrs E also said that she should be paid compensation for the distress and inconvenience caused by the maladministration.

18. On 22 August 2022, TPO informed the Employer of Mrs E's position.
19. On 13 September 2022, the Employer offered to pay £103.47 to settle the matter. The Employer noted that this amount was consistent with the outstanding contributions relating to Mrs E's employment with TIV 2.
20. TPO passed this offer onto Mrs E. Mrs E rejected the offer as she did not feel it was possible to reach an informal conclusion.
21. Caseworker's Opinion
22. Mrs E's complaint was considered by one of our Caseworkers who concluded that further action was required by the Employer as it had failed to remit the contributions that were due to the Scheme on time. The Caseworker's findings are summarised below:-
 - The Employer had offered to make a payment of £103.47 to settle the matter. However, this appears to relate to the contributions taken from Mrs E's pay during her employment with TIV 2. As TPO can no longer investigate this part of the complaint, it is up to Mrs E whether she accepts this payment.
 - The Caseworker agreed that not all contributions had been paid into the Scheme on time and the Employer is responsible for any financial loss that has resulted from the late payments.
 - The Caseworker accepted that Mrs E would have suffered serious distress and inconvenience at the thought of her pension contributions being lost.
 - The Employer should pay Mrs E £1,000 for the serious distress and inconvenience she has experienced.
23. The Employer accepted the Opinion and has agreed to follow the directions to settle the matter.
24. Mrs E did not accept the Opinion and said:
 - The £1,000 award was too low and her complaint should be within the exceptional category, awarding the highest amount:
 - The actions of the Employer and the incorrect information they provided made it impossible for an appropriate resolution to be reached.
25. The complaint was passed to me to consider. I agree with the Caseworker's Opinion except the award for distress and inconvenience.

Ombudsman's decision

26. Mrs E has complained that the Employer did not pay all the contributions due to her into the Scheme.

27. I acknowledge that on 11 August 2022, the Employer accepted that Mrs E's contributions were paid late as it thought NEST would automatically withdraw the payments due.
28. I find that employee contributions were deducted but not paid to the Scheme on time.
29. The Employer's failure to pay employee and employer contributions into the Scheme on time does amount to unjust enrichment and would have caused Mrs E to suffer a financial loss. The Employer needs to take remedial action to put this right.
30. I note that the Employer made an offer of £103.47 to settle the matter. Mrs E did not accept this offer. As it is unclear what financial loss has resulted from the late and unpaid contributions but, in my view it was generous of the Employer to offer monies to settle pension contributions amounting to £103.47 in respect of Mrs E's employment with the former TIV 2, However, I do not consider this an appropriate remedy for the entirety of the complaint.
31. I accept that Mrs E would have been inconvenienced by making a complaint to TPO and Mrs E is entitled to a distress and inconvenience award in respect of the significant ongoing non-financial injustice she has suffered. However, given the willingness of the Employer to meet any possible loss, plus the payment of £103.47, in respect of Mrs E's former employment with TIV2, I consider that £500 is sufficient in the circumstances.
32. I uphold the complaint.

Directions

33. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - Pay Mrs E £500 for the significant distress and inconvenience she has experienced;
 - Produce a schedule (**the Schedule**) showing the employee contributions deducted from Mrs E's pay in respect of the period of her employment. The Schedule shall also include the corresponding employer contributions that were due to the Scheme and a breakdown of when payments were made into the Scheme; and
 - Forward the Schedule to Mrs E.
34. The Employer shall, within 14 days of receiving a request from Mrs E, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.
35. Within 14 days of receiving confirmation from Mrs E that she agrees with the information in the Schedule, the Employer shall:
 - Pay any missing contributions into the Scheme;

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- Establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased on behalf of Mrs E than she would have otherwise secured, had the contributions been paid on time; and
- 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 Mrs E's units, the Employer shall pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman
13 November 2023

Appendix One – Contribution schedule according to Mrs E’s payslips for her employment with TIV 1

Payslip Date	Employee contribution	Employer contribution
19/09/2018	£3.58	£2.98
26/09/2018	£0.00	£0.00
03/10/2018	£0.00	£0.00
09/10/2018	£0.00	£0.00
18/10/2018	£0.00	£0.00
24/10/2018	£0.00	£0.00
31/10/2018	£0.00	£0.00
07/11/2018	£0.00	£0.00
14/11/2018	£3.04	£2.53
21/11/2018	£4.42	£3.68
28/11/2018	£2.92	£2.43
05/12/2018	£0.70	£0.58
12/12/2018	£2.56	£2.13
19/12/2018	£2.62	£2.18
26/12/2018	£2.80	£2.33
02/01/2019	£1.06	£0.88
09/01/2019	£2.98	£2.48
16/01/2019	£2.74	£2.28
23/01/2019	£2.68	£2.23
30/01/2019	£1.84	£1.53
06/02/2019	£1.18	£0.98

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13/02/2019	£2.32	£1.93
20/02/2019	£1.18	£0.98
27/02/2019	£2.26	£1.88
06/03/2019	£2.56	£2.13
13/03/2019	£2.50	£2.08
20/03/2019	£2.02	£1.68
27/03/2019	£3.94	£3.28
03/04/2019	£2.20	£1.83
10/04/2019	£0.00	£0.00
17/04/2019	£1.78	£1.34
24/04/2019	£1.38	£1.04
01/05/2019	£1.78	£1.34
08/05/2019	£2.08	£1.56
15/05/2019	£3.48	£2.61
22/05/2019	£2.28	£1.71
29/05/2019	£6.48	£4.86
05/06/2019	£5.28	£3.96
12/06/2019	£5.28	£3.96
19/06/2019	£16.68	£12.51
17/07/2019	£1.58	£1.19

Appendix Two – Contributions paid to the Scheme

Date received by NEST	Employee contribution	Employer contribution
26/02/2019	£2.80	£2.33
26/02/2019	£6.10	£5.08
26/02/2019	£1.06	£0.88
26/02/2019	£6.10	£5.08
26/02/2019	£2.98	£2.48
26/02/2019	£6.10	£5.08
26/02/2019	£6.10	£5.08
26/02/2019	£0.70	£0.58
26/02/2019	£2.62	£2.18
26/02/2019	£2.92	£2.43
26/02/2019	£3.04	£2.53
26/02/2019	£6.10	£5.08
26/02/2019	£6.10	£5.08
26/02/2019	£2.56	£2.13
26/02/2019	£6.10	£5.08
26/02/2019	£3.58	£8.06
26/02/2019	£4.42	£3.68
27/02/2019	£4.00	£3.33
27/02/2019	£2.68	£2.23
27/02/2019	£1.18	£0.98
27/02/2019	£2.74	£2.28
27/02/2019	£2.32	£1.93
27/02/2019	£1.18	£0.98
18/06/2019	£2.56	£2.13

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18/06/2019	£3.48	£2.61
18/06/2019	£2.28	£1.71
18/06/2019	£1.78	£1.34
18/06/2019	£6.48	£4.86
18/06/2019	£2.50	£2.08
18/06/2019	£3.94	£3.28
18/06/2019	£2.20	£1.83
18/06/2019	£1.56	£2.08
18/06/2019	£2.02	£1.68
18/06/2019	£2.56	£2.13
18/06/2019	£2.20	£1.83
18/06/2019	£1.38	£1.04
18/06/2019	£1.78	£1.34
18/06/2019	£5.28	£3.96
15/07/2019	£5.28	£3.96
16/07/2019	£16.68	£12.51
08/08/2019	£1.58	£1.19

Appendix Three – Contribution Schedule according to the Employer

Date received by NEST	Employee Contribution	Employer Contribution
17/10/2018	£0.00	£0.00
24/10/2018	£6.10	£5.08
31/10/2018	£6.10	£5.08
07/11/2018	£6.10	£5.08
14/11/2018	£6.10	£5.08
21/11/2018	£6.10	£5.08
28/11/2018	£6.10	£5.08
05/12/2018	£6.10	£5.08
12/12/2018	£3.04	£2.53
19/12/2018	£4.42	£3.68
26/12/2018	£2.92	£2.43
02/01/2019	£0.70	£0.58
09/01/2019	£2.56	£2.13
16/01/2019	£2.62	£2.18
23/01/2019	£2.80	£2.33
30/01/2019	£1.06	£0.88
06/02/2019	£2.98	£2.48
13/02/2019	£2.74	£2.28
20/02/2019	£2.68	£2.23
27/02/2019	£4.00	£3.33
06/03/2019	£1.18	£0.98
13/03/2019	£2.74	£2.28
20/03/2019	£1.18	£0.98
27/03/2019	£4.00	£3.33

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03/04/2019	£2.56	£2.13
10/04/2019	£2.50	£2.08
17/04/2019	£2.02	£1.68
24/04/2019	£3.94	£3.28
02/05/2019	£2.20	£1.83
09/05/2019	£1.78	£1.34
16/05/2019	£1.38	£1.04
23/05/2019	£1.78	£1.34
30/05/2019	£1.56	£2.08
06/06/2019	£3.48	£2.61
13/06/2019	£2.28	£1.71
20/06/2019	£6.48	£4.86
27/06/2019	£5.28	£3.96
04/07/2019	£5.28	£3.96
11/07/2019	£16.68	£12.51
18/07/2019	£1.58	£1.19