

## Ombudsman's Determination

Applicant	Mrs S
Scheme	NEST ( <b>the Scheme</b> )
Respondents	Solutions4Health Limited ( <b>the Employer</b> )

## Outcome

1. Mrs S' complaint is upheld and, to put matters right, the Employer shall make an additional payment into the Scheme, being the investment return that the contributions would have received had they been invested on time. In addition, the Employer shall pay Mrs S £1,000 for the serious distress and inconvenience it has caused her.

## Complaint summary

2. Mrs S has complained that the Employer, despite deducting pension contributions from her pay, failed to pay these into the Scheme in a timely manner.
3. The unpaid contributions have now been paid into the Scheme, but the Employer has not arranged for any investment loss to be calculated and paid into the Scheme or made any payment to reflect the distress and inconvenience caused.

## Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the key points. I acknowledge there were other exchanges of information between all the parties.
5. On 13 July 2015, the Employer wrote to Mrs S to advise that it would be enrolling her into a Scottish Widow's pension scheme. The Employer began deducting pension contributions from Mrs S' pay on 31 July 2015, but none of these contributions were paid over to Scottish Widows between July 2015 and April 2017.
6. On 9 May 2017, the Employer enrolled Mrs S in the Scheme and the first contribution was received by the Scheme on 16 May 2017.
7. The majority of the subsequent contributions deducted between June 2017 and December 2018 were paid into the Scheme late.

8. Mrs S has said that she became aware of the unpaid contributions around December 2018 and raised this with the Employer.
9. Mrs S was made redundant on 31 March 2019 and has said that she was promised by the Employer that the unpaid contributions would be settled before this date. On 28 June 2019, the Employer made a one-off payment of £450.28 to the Scheme in respect of the unpaid contributions.
10. Mrs S remained unhappy as she had suffered investment loss on the contributions that had been unpaid for two years and sought further redress for this and the distress and inconvenience suffered.
11. The Employer stated that it did not feel any additional financial redress was appropriate and it had always supported Mrs S throughout her time with the company.
12. The Appendix provides a summary of the payments due from July 2015 to March 2019 and the shortfall calculated by the Employer. The Appendix also provides a summary provided by NEST of the monthly contributions that were due from March 2017 to March 2019 and the date the payments were received.

### **Adjudicator's Opinion**

13. Mrs S' complaint was considered by one of our Adjudicators who concluded that further action was required by the Employer as it had failed to make up any investment loss that the late payment of contributions caused. The Adjudicator's findings are summarised in paragraphs 14 to 18 below.
14. Our normal approach is to put the applicant in the position they would have been had contributions been paid on time. This can mean making a payment to redress any investment loss due to the delay in paying the contributions to the Scheme.
15. This complaint should be upheld because the Employer has failed to provide Mrs S with sufficient redress to put her back in the position, she would have been in had the errors not occurred. Although the Employer paid the missing contributions it deducted, in June 2019, this payment did not take into account any investment gains that might have occurred between July 2015 and April 2017 when the contributions should have been paid.
16. The majority of the subsequent contributions deducted between June 2017 and December 2018 were paid into the Scheme late which may also have caused Mrs S to have suffered a loss of investment gains.
17. It is disappointing that the Employer failed to agree, voluntarily, that further redress should be paid to Mrs S. As a consequence, this matter has taken far longer to resolve than would otherwise have been the case.

18. On discovering the error, Mrs S thought her contributions had been lost. The error occurred over an extended period and the Employer was slow to put matters right, to the extent that it did. In the Adjudicator's view, Mrs S had suffered serious distress and inconvenience due to the Employer's maladministration. An award of £1,000 for non-financial injustice was, in the Adjudicator's opinion, appropriate in the circumstances.
19. Mrs S confirmed that she agreed with the Adjudicator's Opinion.
20. 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**

21. Mrs S has complained that the Employer has not arranged for any investment loss to be calculated and paid into the Scheme in respect of the late payment of contributions. It has also not made any payment to reflect the distress and inconvenience caused.
22. It is not in dispute that employee contributions were deducted but held back by the Employer and not paid into the Scheme on time and these have now been remitted into the Scheme. However, the Employer failed to fully rectify this and did not engage fully with either my Office or Mrs S. It has also failed to respond to the Adjudicator's Opinion.
23. The Employer's failure to pay employee and employer contributions into to the Scheme on time amounts to unjust enrichment and has caused Mrs S to suffer a financial loss. The Employer shall take remedial action to put this right.
24. Mrs S is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice the Employer has caused her to suffer. The distress and inconvenience suffered by Mrs S was made worse by the Employer's failure to respond fully during my Office's investigation into Mrs S' complaint.

### **Directions**

25. To put matters right, the Employer shall, within 28 days of the date of this Determination:
  - (i) request that Scottish Widows calculate any loss of investment gains from the due date of each contribution to the date of calculation, on the assumption the contributions were invested in Mrs S' chosen investment fund(s) for the period July 2015 to April 2017;
  - (ii) request that NEST calculate any loss of investment gains from the due date of each contribution to the date of calculation, on the assumption the contributions were invested in Mrs S' chosen investment fund(s) for the period June 2017 to December 2018;

- (iii) pay the calculated amounts into the Scheme as lump sums to be invested into Mrs S' NEST account, within 21 days of receiving calculations from NEST and Scottish Widows;
- (iv) pay any reasonable administration fee charged by NEST and Scottish Widows for making the necessary calculations;
- (v) pay £1,000 direct to Mrs S for the serious distress and inconvenience she has suffered.

**Dominic Harris**

Pensions Ombudsman  
15 February 2023

Appendix

NEST Summary

Member Enrolment Date	Pensionable Period		Pensionable Earnings for this period	Contributions Paid		Tax Relief Amount	Gross Contributions Amount	Contribution Charge Amount	Tax Relief Charge Amount	Contribution Loss Charge Amount	Payment Received Date
	Start Date	End Date		Employer Contributions Amount	Employee Contributions Amount						
09/May/2017	31/Mar/2017	30/Apr/2017	£1,283.33	£13.83	£12.83	£3.21	£29.87	£0.48	£0.06	£29.33	16/May/2017
09/May/2017	01/May/2017	30/May/2017	£1,283.33	£13.83	£12.83	£3.21	£29.87	£0.48	£0.06	£29.33	21/Aug/2017
09/May/2017	31/May/2017	30/Jun/2017	£763.33	£-5.90	£-2.96	£-0.64	£-9.10	£-0.16	£-0.01	£-8.93	01/May/2019
09/May/2017	31/May/2017	30/Jun/2017	£1,283.33	£13.83	£12.83	£3.21	£29.87	£0.48	£0.06	£29.33	21/Aug/2017
09/May/2017	01/Jul/2017	30/Jul/2017	£763.33	£-5.90	£-2.96	£-0.64	£-9.10	£-0.16	£-0.01	£-8.93	01/May/2019
09/May/2017	01/Jul/2017	30/Jul/2017	£1,283.33	£13.83	£12.83	£3.21	£29.87	£0.48	£0.06	£29.33	21/Aug/2017
09/May/2017	31/Jul/2017	30/Aug/2017	£763.33	£-5.90	£-2.96	£-0.64	£-9.10	£-0.16	£-0.01	£-8.93	30/Apr/2019
09/May/2017	31/Jul/2017	30/Aug/2017	£1,283.33	£13.83	£12.83	£3.21	£29.87	£0.48	£0.06	£29.33	07/Nov/2017
09/May/2017	31/Aug/2017	30/Sep/2017	£763.33	£-5.90	£-2.96	£-0.64	£-9.10	£-0.16	£-0.01	£-8.93	30/Apr/2019
09/May/2017	31/Aug/2017	30/Sep/2017	£1,283.33	£13.83	£12.83	£3.21	£29.87	£0.48	£0.06	£29.33	17/Nov/2017
09/May/2017	01/Oct/2017	30/Oct/2017	£763.33	£-5.90	£-2.96	£-0.64	£-9.10	£-0.16	£-0.01	£-8.93	27/Apr/2019
09/May/2017	01/Oct/2017	30/Oct/2017	£1,283.33	£13.83	£12.83	£3.21	£29.87	£0.48	£0.06	£29.33	22/Jun/2018
09/May/2017	31/Oct/2017	30/Nov/2017	£763.33	£-5.90	£-2.96	£-0.64	£-9.10	£-0.16	£-0.01	£-8.93	27/Apr/2019
09/May/2017	31/Oct/2017	30/Nov/2017	£1,283.33	£13.83	£12.83	£3.21	£29.87	£0.48	£0.06	£29.33	19/Mar/2018
09/May/2017	01/Dec/2017	30/Dec/2017	£763.33	£-5.90	£-2.96	£-0.64	£-9.10	£-0.16	£-0.01	£-8.93	27/Apr/2019
09/May/2017	01/Dec/2017	30/Dec/2017	£1,283.33	£13.83	£12.83	£3.21	£29.87	£0.48	£0.06	£29.33	15/Feb/2018
09/May/2017	31/Dec/2017	30/Jan/2018	£763.33	£-5.90	£-2.96	£-0.64	£-9.10	£-0.16	£-0.01	£-8.93	28/Apr/2019
09/May/2017	31/Dec/2017	30/Jan/2018	£1,283.33	£13.83	£12.83	£3.21	£29.87	£0.48	£0.06	£29.33	21/Mar/2018
09/May/2017	31/Jan/2018	28/Feb/2018	£763.33	£-5.90	£-2.96	£-0.64	£-9.10	£-0.16	£-0.01	£-8.93	27/Apr/2019
09/May/2017	31/Jan/2018	28/Feb/2018	£1,283.33	£13.83	£12.83	£3.21	£29.87	£0.48	£0.06	£29.33	22/Mar/2018
09/May/2017	01/Mar/2018	30/Mar/2018	£763.33	£-5.90	£-2.96	£-0.64	£-9.10	£-0.16	£-0.01	£-8.93	29/Apr/2019
09/May/2017	01/Mar/2018	30/Mar/2018	£1,283.33	£13.83	£12.83	£3.21	£29.87	£0.48	£0.06	£29.33	11/Apr/2018
09/May/2017	31/Mar/2018	30/Apr/2018	£763.33	£1.78	£17.97	£4.46	£24.24	£0.35	£0.05	£23.81	31/Jul/2019
09/May/2017	31/Mar/2018	30/Apr/2018	£1,283.33	£13.83	£12.83	£3.21	£29.87	£0.48	£0.06	£29.33	22/Mar/2018
09/May/2017	01/May/2018	30/May/2018	£763.33	£-10.08	£0.00	£0.00	£-10.08	£-0.16	£0.00	£-8.89	25/Apr/2019
09/May/2017	01/May/2018	30/May/2018	£1,283.33	£25.67	£30.80	£7.70	£64.17	£1.01	£0.14	£63.02	21/Aug/2018
09/May/2017	31/May/2018	30/Jun/2018	£763.33	£-10.08	£0.00	£0.00	£-10.08	£-0.16	£0.00	£-8.89	24/Apr/2019
09/May/2017	31/May/2018	30/Jun/2018	£1,283.33	£25.67	£30.80	£7.70	£64.17	£1.01	£0.14	£63.02	18/Oct/2018
09/May/2017	01/Jul/2018	30/Jul/2018	£944.84	£-8.77	£0.00	£0.00	£-8.77	£-0.16	£0.00	£-8.61	18/Apr/2019
09/May/2017	01/Jul/2018	30/Jul/2018	£944.84	£0.00	£1.55	£0.39	£1.94	£0.03	£0.01	£1.90	19/Apr/2019
09/May/2017	01/Jul/2018	30/Jul/2018	£1,283.33	£25.67	£30.80	£7.70	£64.17	£1.01	£0.14	£63.02	28/Oct/2018
09/May/2017	31/Jul/2018	30/Aug/2018	£944.84	£-8.77	£0.00	£0.00	£-8.77	£-0.16	£0.00	£-8.61	17/Apr/2019
09/May/2017	31/Jul/2018	30/Aug/2018	£944.84	£0.00	£1.55	£0.39	£1.94	£0.03	£0.01	£1.90	18/Apr/2019
09/May/2017	31/Jul/2018	30/Aug/2018	£1,283.33	£25.67	£30.80	£7.70	£64.17	£1.01	£0.14	£63.02	28/Oct/2018
09/May/2017	31/Aug/2018	30/Sep/2018	£944.84	£-10.08	£0.00	£0.00	£-10.08	£-0.16	£0.00	£-8.89	18/Apr/2019
09/May/2017	31/Aug/2018	30/Sep/2018	£1,347.84	£28.98	£32.35	£8.09	£69.40	£1.06	£0.14	£68.20	21/Dec/2018
09/May/2017	01/Oct/2018	30/Oct/2018	£944.84	£-8.77	£0.00	£0.00	£-8.77	£-0.16	£0.00	£-8.61	17/Apr/2019
09/May/2017	01/Oct/2018	30/Oct/2018	£944.84	£0.00	£1.55	£0.39	£1.94	£0.03	£0.01	£1.90	18/Apr/2019
09/May/2017	01/Oct/2018	30/Oct/2018	£1,283.33	£25.67	£30.80	£7.70	£64.17	£1.01	£0.14	£63.02	17/Jun/2019
09/May/2017	31/Oct/2018	30/Nov/2018	£944.84	£0.00	£32.35	£8.09	£40.44	£0.56	£0.14	£39.72	07/Feb/2019
09/May/2017	31/Oct/2018	30/Nov/2018	£944.84	£-10.08	£0.00	£0.00	£-10.08	£-0.16	£0.00	£-8.89	18/Apr/2019
09/May/2017	31/Oct/2018	30/Nov/2018	£1,347.84	£28.98	£30.00	£0.00	£28.98	£0.48	£0.00	£28.48	07/Feb/2019
09/May/2017	01/Dec/2018	30/Dec/2018	£944.84	£28.98	£32.35	£8.09	£69.40	£1.06	£0.14	£68.20	13/Feb/2019
09/May/2017	01/Dec/2018	30/Dec/2018	£944.84	£-10.08	£0.00	£0.00	£-10.08	£-0.16	£0.00	£-8.89	13/Apr/2019
09/May/2017	31/Dec/2018	30/Jan/2019	£944.84	£18.90	£32.35	£8.09	£59.34	£0.89	£0.14	£58.32	13/Mar/2019
09/May/2017	31/Jan/2019	28/Feb/2019	£944.84	£18.90	£32.35	£8.09	£59.34	£0.89	£0.14	£58.32	01/Apr/2019
09/May/2017	01/Mar/2019	30/Mar/2019	£1,216.03	£24.32	£29.18	£7.30	£60.80	£0.98	£0.13	£59.71	16/May/2019
09/May/2017	01/Jun/2019	01/Jun/2019	£0.00	£141.95	£253.28	£63.32	£458.53	£7.11	£1.14	£450.29	29/Jun/2019
				<b>£455.28</b>	<b>£762.00</b>	<b>£190.96</b>	<b>£1,407.82</b>	<b>£21.78</b>	<b>£3.46</b>	<b>£1,382.80</b>	

Employer Summary

Payment period	Earnings	Threshold	Qualifying earnings	Employer contribution rate	Employee contribution rate	Employer contribution	Employee contribution	Totals
Jul 15 - Mar 16	14072.83	4368	9704.83	1.00%	0.80%	97.05	77.64	174.69
Apr 16 - Mar 17	14991.80	5824	9167.80	1.00%	0.80%	91.68	73.34	165.02
Apr 17 - Mar 18	15399.96	5876	9523.96	1.00%	0.80%	95.24	76.19	171.43
Apr 18 - Mar 19	16351.74	6032	10319.74	2.00%	2.40%	206.39	247.67	454.07
Total due (net)	(A)					490.36	474.85	965.21
Total deducted (net)						455.26	762.00	1217.28
Total paid to NEST (net)						455.26	762.00	1217.28
Excess employee conts (net)(B)								287.15
Total due to NEST (net)	(A) + (B)							1262.38
Shortfall from employer								35.10
Total due (gross)								1083.52
Total amount in NEST (gross)								1407.82
Total due to NEST (gross)								1442.86
								1442.92