

## Ombudsman's Determination

Applicant	Mr N
Scheme	NEST ( <b>the Scheme</b> )
Respondent	Johnson Gillies Limited ( <b>the Employer</b> )

## Outcome

1. Mr N'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. In addition, the Employer shall pay Mr N £1,000 for the serious distress and inconvenience it has caused him.

## Complaint summary

2. Mr N has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme.
3. Mr N has said that the missing contributions amounted to £1,734.75.

## Background information, including submissions from the parties

4. In July 2018, Mr N began his employment with the Employer.
5. Mr N provided copies of the payslips that he held covering the period from June 2019 to August 2020, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. Mr N has said that these contributions were never remitted to the Scheme and amounted to £1,734.75. A breakdown of the contributions has been included in the Appendix.
6. Mr N contacted the Employer on 4 November 2020 and requested that the unpaid pension contributions be paid into the Scheme. This request was repeated on 12 March 2021. But the Employer failed to respond to Mr N's requests.
7. On 6 May 2022, The Pensions Ombudsman (**TPO**) asked the Employer for its response to Mr N's complaint. This request was repeated on 20 May 2022., but again, the Employer failed to respond.

## **Caseworker's Opinion**

8. Mr N'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. The Caseworker's findings are summarised below:-
- The Caseworker 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 responded to any of TPO's communications, she had based her Opinion solely on the information provided by Mr N.
  - The Caseworker said that she had no reason to doubt the information provided by Mr N. So, in the Caseworker's opinion, on the balance of probabilities, contributions had been deducted from Mr N's salary, that had not been paid into the Scheme. In addition, the Employer had not paid any of the employer contributions that were due over the same period. As a result of its maladministration, Mr N was not in the financial position he ought to be in.
  - In the Caseworker's view, Mr N had suffered significant distress and inconvenience due to the Employer's maladministration. The Caseworker was of the view that an award of £500 for non-financial injustice was appropriate in the circumstances.
9. The Employer did not respond to the Caseworker's Opinion and the complaint was passed to me to consider. I agree with the Caseworker's Opinion, except the level of award for maladministration.

## **Ombudsman's decision**

10. Mr N has complained that the Employer has not paid all the contributions due to his Scheme account.
11. The available evidence indicates that employee contributions were deducted but held back by the Employer and not paid into the Scheme. The Employer failed to rectify this and did not engage with either my Office or Mr N. It has also failed to respond to the Caseworker's Opinion.
12. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr N to suffer a financial loss. The Employer shall take remedial action to put this right.
13. Mr N is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which he has suffered. This was exacerbated by the Employer's failure to respond during my Office's investigation into Mr N's complaint.

## **Directions**

14. To put matters right, the Employer shall, within 28 days of the date of this Determination:
  - (i) pay Mr N £1,000 for the serious distress and inconvenience he has experienced;
  - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr N's pay in respect of the period of his employment. The Schedule shall also include the corresponding employer contributions that were due to the Scheme; and
  - (iii) forward the Schedule to Mr N.
15. The Employer shall, within 14 days of receiving a request by Mr N, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.
16. Within 14 days of receiving confirmation from Mr N that he agrees with the information on the Schedule, the Employer shall:
  - (i) pay the missing contributions into the Scheme;
  - (ii) establish with the Scheme administrator, NEST, whether the late payment of contributions has meant that fewer units were purchased in Mr N's Scheme account than he would have otherwise secured, had the contributions been paid on time; and
  - (iii) pay any reasonable administration fee should NEST charge a fee for carrying out the above calculation
17. Within 14 days of receiving confirmation from NEST of any shortfall in Mr N's units, pay the cost of purchasing any additional units required to make up that shortfall.

**Anthony Arter**

Pensions Ombudsman  
29 September 2022

**Appendix**

Date	Employee contributions	Employer contributions
1 June 2019 to 30 June 2019	£66.19	£49.65
1 July 2019 to 31 July 2019	£66.19	£49.65
1 August 2019 to 31 August 2019	£66.19	£49.65
1 September 2019 to 30 September 2019	£66.19	£49.65
1 October 2019 to 31 October 2019	£66.19	£49.65
1 November 2019 to 30 November 2019	£66.19	£49.65
1 December 2019 to 31 December 2019	£66.19	£49.65
1 January 2020 to 31 January 2020	£66.19	£49.65
1 February 2020 to 29 February 2020	£66.19	£49.65
1 March 2020 to 31 March 2020	£66.19	£49.65
1 April 2020 to 30 April 2020	£65.87	£49.40
1 May 2020 to 31 May 2020	£65.87	£49.40
1 June 2020 to 30 June 2020	£65.87	£49.40
1 July 2020 to 31 July 2020	£65.87	£49.40
1 August 2020 to 31 August 2020	£65.87	£49.40
Total unpaid employee contributions	<b><u>£991.25</u></b>	
Total unpaid employer contributions		<b><u>£743.50</u></b>