

## Ombudsman's Determination

Applicant	Miss H
Scheme	NEST ( <b>the Scheme</b> )
Respondents	Meghan & Becky Ltd ( <b>the Employer</b> )

## Outcome

1. Miss H's complaint is upheld and, to put matters right, the Employer shall ensure that all unpaid contributions are paid into the Scheme. The Employer shall make sure that Miss H is not financially disadvantaged by its maladministration. So, it shall arrange for any investment loss to be calculated and paid into the Scheme.
2. The Employer shall also pay Miss H £1,000 for the serious distress and inconvenience caused to her.

## Complaint summary

3. Miss H has complained that the Employer, despite deducting contributions from her pay, has failed to pay these into the Scheme.
4. Miss H has said that the missing contributions amounted to £1,689.02.

## Background information, including submissions from the parties

5. In September 2020, Miss H began her employment with the Employer.
6. Between September 2020 and July 2021, despite taking pension contributions from Miss H's pay, the Employer failed to pay the pension contributions into the Scheme.
7. On 30 July 2021, Miss H brought her complaint to The Pensions Ombudsman (**TPO**).
8. Miss H provided copies of the payslips that she held for the period from September 2020 to July 2021, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. These deductions amounted to £1,689.02. A breakdown of the deductions has been included in the Appendix.
9. On 27 May 2022, TPO asked the Employer for its response to Miss H's complaint.

10. On 6 June 2022, the Employer responded stating that it will start to pay what was owed in order to resolve the issue. The Employer asked for Miss H's bank details.
11. On 7 June 2022, TPO informed the Employer that it would need to pay the unpaid contributions into the Scheme. TPO also asked for a timescale for when the amount owed, including investment loss, would be paid in full.
12. On 8 June 2022, TPO sent the Employer a breakdown of what was owed and asked it to confirm if the breakdown was correct or not.
13. On 21 June 2022, TPO sent a chaser to the Employer regarding the breakdown and repayment.
14. On 21 June 2022, the Employer responded and stated that it would not be able to pay the unpaid contributions as a one-off lump sum but would be able to pay in instalments. The Employer stated that it was still looking into the matter and would be setting up repayments.
15. On 21 June 2022, TPO responded to the Employer and stated that a repayment plan must be provided by 5 July 2022.
16. On 5 July 2022, TPO chased the Employer.
17. On 18 July 2022, the Employer responded and stated that the company could set up a monthly payment of £50 per month.
18. On 20 July 2022, after corresponding with Miss H, TPO responded to the Employer and stated that £50 was not a reasonable repayment considering the amount owed. TPO suggested that the Employer should offer to pay between £250 and £500 each month in order to pay off the total amount owed within 4 to 8 months.
19. On 25 July 2022, the Employer responded and stated that the company was struggling but was hopeful that the situation would improve in the coming months. The Employer stated that after its situation had improved it would look at increasing the payments but at that time all that could be paid was £50 per month.
20. On 27 July 2022, TPO responded to the Employer and stated that although the company was experiencing financial difficulties, the pension contributions owed are rightfully Miss H's and need to be paid to the Scheme as a matter of urgency. TPO stated that if an informal resolution could not be reached that all parties were happy with then a formal investigation would take place. TPO again stated that between £250 to £500 was a more reasonable offer to make considering the overall amount owed.
21. On 10 August 2022, the Employer responded to TPO and stated that it could offer to set up a repayment of £50 for a period of 4 months at which point the monthly repayment could be increased to £200.
22. On 10 August 2022, TPO responded and highlighted that with the suggested repayment plan it would take around 10 months to pay the whole amount owed. TPO

suggested that if the business could only pay £50 for a period of 4 months, then increasing the amount to between £350 to £500 per month thereafter would be more reasonable.

23. On 26 August 2022, TPO chased the Employer.
24. On 26 August 2022, the Employer responded and proposed paying £50 for a period of 4 months which would then increase to £250 thereafter. TPO considered this to be a reasonable re-payment plan. On the same date TPO responded and stated that the first payment should be paid in September 2022 and that the repayments should increase to £250 from January 2023. TPO also asked what date in September 2022 the first repayment would be made.
25. On 5 September 2022, the Employer responded and stated that it would make the first repayment on the 30 September 2022. TPO responded on the same day and suggested that the repayment be made by the 16 September 2022 in order to ensure that it had been processed by the end of the month. TPO asked for proof of payment to be provided once it had been processed.
26. On 7 September 2022, TPO asked Miss H to monitor the repayments and provide screenshots when payments were received so that the process could be monitored.
27. The Employer followed the repayment plan and made a £50 repayment in September 2022 and a £50 repayment in October 2022.
28. On 16 January 2023, TPO emailed the Employer and reminded it that the repayments were due to increase to £250 per month from that month onwards.
29. On 1 February 2023, TPO emailed Miss H and requested that she check her pension fund to ensure that the payment plan was being followed.
30. On 2 February 2023, Miss H responded to TPO and stated that the only payments received in her fund were made in September and October 2022. Miss H stated that no other repayments had been made. Miss H requested that the remaining amount owed was paid in one lump sum as the Employer seemed to have no intention of paying as agreed.
31. On 3 February 2023, TPO emailed the Employer and stated that as the payment plan had not been followed the entire amount would need to be paid in one instalment. TPO stated that if the entire amount owed was not paid by 17 February 2023 the matter would be escalated to the formal investigation route.
32. On 17 February 2023, the Employer responded and stated that the business had been closed and that the matter would be dealt with by the Insolvency Practitioners.
33. On 17 February 2023, TPO responded to the Employer and stated that the business was still showing as active on Companies House. TPO asked for proof of the company's insolvency. The Employer failed to respond or provide the requested proof.

34. On 17 April 2023, the Companies House register still indicated that the Employer held an active company status.

## **Caseworker's Opinion**

35. Miss H's complaint was considered by one of our Caseworkers who concluded that further action was required by the Employer. The Caseworker's findings are summarised below:-

- The Appendix provides a summary of the monthly contributions that were due from September 2020 to July 2021. Miss H has said that despite these amounts being deducted from her salary each month, none of these contributions were actually paid. The Caseworker was satisfied that the relevant employee and employer contributions had not been remitted to the Scheme as they should have been.
- It was disappointing that, despite reaching a repayment agreement, the Employer had failed to adhere to the agreement.
- As a result of the Employers maladministration, Miss H was not in the financial position she ought to be in, therefore, the complaint was upheld.
- Miss H had suffered serious distress and inconvenience due to the Employer's maladministration. An award of £1,000 for non-financial injustice was appropriate in the circumstances.

36. Miss H accepted the Formal Opinion. The Employer responded to the Formal Opinion and stated again that the company was insolvent, and the liquidators would need to look into the matter.

37. TPO asked the Employer for proof of the company's position and highlighted that it still holds an active company status on the Companies House register. The Employer responded and stated that the Companies House status would show as liquidated after the liquidation procedure has been completed. The Employer stated that it would send some proof of its registered status.

38. On 31 May 2023, the Employer provided a screenshot of a business bank account showing a negative balance. TPO informed the Employer that bank statements / screenshots were not sufficient evidence of the company's position and requested further proof.

39. On 6 June 2023, the Employer provided a partial screenshot of the Creditors Voluntary Liquidation Engagement Terms.

40. On 23 July 2023, TPO informed the Employer that the evidence was insufficient and that as Companies House still showed an active status the matter would be escalated to the Pensions Ombudsman for a legally binding Determination.

41. The complaint was passed to me to consider. I agree with the Caseworker's Opinion.

### **Ombudsman's decision**

42. Miss H complained that the Employer, despite deducting contributions from her pay, has failed to pay these into the Scheme.

43. I find that the Employee and Employer contributions, as seen in the Appendix, were deducted but held back by the Employer and not paid into the Scheme. The Employers' failure to pay the Employee and Employer contributions into the Scheme amounts to unjust enrichment and has caused Miss H to suffer a financial loss. The Employer shall take remedial action to put this right.

44. Miss H is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which she has suffered. In my view, Miss H's distress and inconvenience was exacerbated by the Employer's failure to adhere to the agreed repayment plan.

### **Directions**

45. To put matters right, the Employer shall, within 28 days of the date of this Determination:

- (i) pay Miss H £1,000 for the serious distress and inconvenience she has experienced;
- (ii) Produce a schedule (**the Schedule**) showing the employee contributions deducted from Miss H's pay in respect of the period of her employment. The Schedule shall also include the corresponding Employer contributions; and
- (iii) Forward the schedule to Miss H.

46. The Employer shall, within 14 days of receiving a request by Miss H, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.

47. Within 14 days of receiving confirmation from Miss H that she agrees with the information on the Schedule, the Employer shall:

- (i) pay the missing contributions to the Scheme;
- (ii) establish with the Scheme administrator whether the late payment of contributions has meant that fewer units were purchased in Miss H's Scheme account than she would have otherwise secured, had the contributions been paid on time; and
- (iii) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.

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48. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Miss H's units, pay the cost of purchasing any additional units required to make up the shortfall.

**Dominic Harris**

Pensions Ombudsman

21 November 2023

**Appendix**

Date	Employee contributions	Employer contributions
30/09/20	£42.20	£31.65
31/10/20	£82.97	£62.23
30/11/20	£93.33	£70.00
31/12/20	£93.33	£70.00
31/01/21	£93.33	£70.00
28/02/21	£93.33	£70.00
31/03/21 (Paid to NEST already)	£93.33	£70.00
30/04/21	£93.33	£70.00
30/05/21	£93.33	£70.00
30/06/21	£93.33	£70.00
30/07/21	£93.33	£70.00