

## Ombudsman's Determination

Applicant	Mrs E
Scheme	NEST ( <b>the Scheme</b> )
Respondent	Book In Style Ltd ( <b>the Employer</b> )

## Outcome

Mrs E's complaint is upheld and, to put matters right, the Employer shall pay the missing contributions in respect of her pension and make good any shortfall in units. In addition, the Employer shall pay Mrs E £1,000 for the serious distress and inconvenience it has caused her.

## Complaint summary

1. Mrs E has complained that the Employer, despite deducting contributions from her pay, has failed to pay the contributions into the Scheme.
2. Mrs E has said that the missing contributions amounted to £1,493.78 in employee contributions. Employer contributions were also due to the Scheme however these are not shown on Mrs E's payslips. It is therefore unclear what contributions the Employer owes to the Scheme.

## Background information, including submissions from the parties

3. In January 2020, Mrs E began her employment with the Employer.
4. On 27 July 2020, Mrs E emailed the Employer to check her wages as there had been no pensions deductions. On 31 July 2020 she queried her payslip as £82.98 had been deducted for pensions rather than £45.86.
5. On 1 August 2020, the Employer clarified that the NEST deductions should be 5% of pay and it looked as though only 1% was being deducted. The employer said this was being investigated by its accountant.
6. On 19 November 2020, Mrs E says she first became aware of the issue that contributions were not being paid into the Scheme. On 20 November 2020, Mrs E received an email from the Employer saying it was currently in the process of merging

the World Travel Lounge Ltd and Book in Style Ltd pensions schemes. The Employer confirmed that the contributions already made were safe.

7. On 10 May 2021, Mrs E again raised the issue of the unpaid pension contributions as it was her last day of employment with the Employer.
8. Between 15 January 2021 and 15 October 2021, Mrs E received several letters from the Scheme reporting Book in Style Ltd to the Pensions Regulator (**TPR**) for unpaid contributions.
9. On 2 October 2021, Mrs E sent a final email to the Employer requesting an update on the pension contributions, and also, on the same day, she made an application to The Pensions Ombudsman (**TPO**).
10. Mrs E provided copies of the payslips that she held for the period from January 2020 to June 2021, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. These deductions amounted to £1,493.78. A breakdown of the deductions has been included in the Appendix.
11. Employer contributions are also due to the Scheme by the Employer. The payslips provided do not show what employer contributions were due, therefore the amount of employer contributions owing is unclear.
12. On 17 May 2022, TPO wrote to the Employer to ask for more information in response to Mrs E's complaint. This request was repeated on 27 May 2022. Neither of these requests received a response.

## **Adjudicator's Opinion**

13. Mrs E'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 as to the facts of the case, including the dates and amounts of contributions involved. He said that, as the Employer had not responded to any of TPO's communications, he had to base his Opinion solely on the information provided by Mrs E.
  - The Adjudicator said that he had no reason to doubt the information provided by Mrs E. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Mrs E'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, Mrs E was not in the financial position she ought to be in.
  - In the Adjudicator's view, Mrs E had suffered significant distress and inconvenience due to the Employer's maladministration. The Adjudicator was of

the view that an award of £500 for non-financial injustice was appropriate in the circumstances.

14. 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, except the level of award for maladministration.

### **Ombudsman's decision**

15. Mrs E has complained that the Employer has not paid all the contributions due to her Scheme account.
16. The available evidence supports the view 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 Mrs E. It has also failed to respond to the Adjudicator's Opinion.
17. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mrs E to suffer a financial loss. The Employer shall take remedial action to put this right.
18. Mrs E 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 my Office's investigation into Mrs E's complaint.

### **Directions**

19. To put matters right, the Employer shall, within 28 days of the date of this Determination:
  - (i) pay Mrs E £1,000 for the serious distress and inconvenience she has experienced;
  - (ii) 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
  - (iii) forward the Schedule to Mrs E.
20. The Employer shall, within 14 days of receiving a request by Mrs E, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.
21. Within 14 days of receiving confirmation from Mrs E that she agrees with the information on the Schedule, the Employer shall:
  - (i) pay the missing contributions to the Scheme;

(ii) establish with NEST whether the late payment of contributions has meant that fewer units were purchased in Mrs E's Scheme account than she 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.

22. Within 14 days of receiving confirmation from NEST of any shortfall in Mrs E's units, pay the cost of purchasing any additional units required to make up the shortfall.

**Anthony Arter**

Pensions Ombudsman  
28 September 2022

**Appendix**

Date	Employee contributions	Employer contributions
31/01/2020	£82.59	£61.94 (paid)
29/02/2020	£62.85	£47.14 (paid)
31/03/2020	£46.18	£34.64 (paid)
30/04/2020	£45.86	£34.40 (paid)
31/05/2020	£45.86	£34.30 (paid)
30/06/2020	£45.86	£34.40 (paid)
21/07/2020	£82.98	Unknown
31/08/2020	£106.09	Unknown
30/09/2020	£78.17	Unknown
31/10/2020	£104.17	Unknown
30/11/2020	£104.17	Unknown
31/12/2020	£104.17	Unknown
31/01/2021	£104.17	Unknown
28/02/2021	£104.17	Unknown
31/03/2021	£104.17	Unknown
30/04/2021	£106.78	Unknown
31/05/2021	£30.51	Unknown
30/06/2021	£135.03	Unknown
Total unpaid employee contributions	<b><u>£1,493.78</u></b>	
Total unpaid employer contributions		<b><u>Unknown</u></b>