

## Ombudsman's Determination

Applicant	Ms T
Scheme	NEST Pensions Plan ( <b>the Plan</b> )
Respondent	The Farm Fresh Market Ltd ( <b>the Employer</b> )

## Outcome

1. Ms T'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 Ms T £1,000 for the serious distress and inconvenience it has caused her.

## Complaint summary

2. Ms T has complained that the Employer, despite deducting pension contributions from her pay, has failed to pay them into the Plan.
3. Ms T has said that the missing contributions amounted to £192.04.

## Background information, including submissions from the parties

4. In March 2021, Ms T began her employment with the Employer.
5. On 31 July 2021, the first contributions were deducted from Ms T's salary.
6. On 10 December 2021, Ms T left employment with the Employer.
7. On 1 January 2022, Ms T realised pensions deductions had not been paid into the Plan.
8. On 7 January 2022, Ms T first raised the issue with the Employer. The Employer said it would resolve the issue with its accountant and arrange a payment plan. It said that the reason the contributions were not being paid was because NEST had old account details. The Employer also confirmed the employee contributions.
9. On 16 February 2022, the Employer said the funds would be paid the following day. However, no payment was made.

10. On 21 February 2022, The Employer told Ms T that the money had left the account. Ms T said nothing had been received by the Plan. The Employer said a direct debit had been set up and agreed to send over a reference number. However, the Employer failed to send over the reference number as agreed.
11. On 1 March 2022, Ms T asked for an update on the situation. The Employer said it had already set up a direct debit and was trying to resolve the situation.
12. On 2 March 2022, Ms T spoke to NEST which confirmed the Employer had not enrolled her into the Plan.
13. On 5 March 2022, Ms T chased the Employer for an update on the position.
14. On 8 March 2022, Ms T complained to the Employer.
15. On 17 March 2022, the Employer asked Ms T to send it a copy of her payslips. She only had payslips from July onwards. She raised this with the Employer but received no response to her email.
16. On 19 March and 21 March 2022 Ms T chased up the Employer. It responded saying £230.37 should be leaving the account the following day and would be paid into the Plan.
17. On 23 March 2022, the Employer provided a screenshot from NEST showing 7 April 2022 as for the date Ms T would be enrolled into the Plan. It also confirmed outstanding employee contributions of £190.04 and employer contributions of £142.53.
18. On 7 April 2022, Ms T was enrolled into the Plan.
19. On 25 April 2022, Ms T chased the Employer again. The Employer said the outstanding contributions should be in the account by the end of the day.
20. On 3 May 2022, Ms T checked and there was still nothing in the Plan. The Employer said bailiffs had come and taken everything.
21. On 5 May 2022, Ms T chased the Employer again. It said the company had “gone bust” and it was now at the hands of the liquidators who would pay the debt through sale of equipment and stock.
22. On 18 May 2022, Ms T submitted an application to The Pensions Ombudsman (**TPO**)
23. Ms T provided copies of the payslips that she held for the period from July 2021 to November 2021, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. These deductions amounted to £332.57. A breakdown of the deductions has been included in the Appendix.
24. On 15 August 2022, TPO wrote to the Employer to ask for more information in response to Ms T’s complaint. This request was repeated on 31 August 2022. Neither of these requests received a response.

25. Although the Employer told Ms T that it had “gone bust” and was in the hands of the liquidators, it has not provided any evidence of this to TPO. As of 17 November 2022, the Employer is still showing as active on the Companies House Register.

### **Adjudicator’s Opinion**

26. Ms T’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 Plan. 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. 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 Ms T.
  - The Caseworker said that he had no reason to doubt the information provided by Ms T. So, in the Caseworker’s Opinion, on the balance of probabilities, contributions had been deducted from Ms T’s salary, which had not been paid into the Plan. 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, Ms T was not in the financial position she ought to be in.
  - In the Caseworker’s view, Ms T had suffered significant distress and inconvenience due to the Employer’s maladministration. The Caseworker was of the opinion that an award of £500 for non-financial injustice was appropriate in the circumstances.
27. 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 for the level of award for maladministration.

### **Ombudsman’s decision**

28. Ms T has complained that the Employer has not paid all the contributions due to her Plan account.
29. The available evidence supports the view that employee contributions were deducted but held back by the Employer and not paid into the Plan. The Employer failed to rectify this and did not engage with either my Office or Ms T. It has also failed to respond to the Caseworker’s Opinion.
30. The Employer’s failure to pay employee and employer contributions into the Plan amounts to unjust enrichment and has caused Ms T to suffer a financial loss. The Employer shall take remedial action to put this right.

31. Ms T 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 Ms T's complaint.

## Directions

32. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Ms T £1,000 for the serious distress and inconvenience she has experienced;
  - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Ms T's pay in respect of the period of her employment. The Schedule shall also include the corresponding employer contributions that were due to the Plan; and
  - (iii) forward the Schedule to Ms T.
33. The Employer shall, within 14 days of receiving a request by Ms T, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.
34. Within 14 days of receiving confirmation from Ms T that she agrees with the information on the Schedule, the Employer shall:
- (i) pay the missing contributions to the Plan;
  - (ii) establish with the Plan whether the late payment of contributions has meant that fewer units were purchased in Ms T's Plan account than she would have otherwise secured, had the contributions been paid on time; and
  - (iii) pay any reasonable administration fee should the Plan administrator charge a fee for carrying out the above calculation.
35. Within 14 days of receiving confirmation from NEST of any shortfall in Ms T's units, pay the cost of purchasing any additional units required to make up the shortfall

**Anthony Arter**

Pensions Ombudsman  
18 November 2022

**Appendix**

Date	Employee contributions	Employer contributions
31/07/2021	£34.64	Monthly contribution not shown on payslip
31/08/2021	£31.20	Monthly contribution not shown on payslip
30/09/2021	£32.20	Monthly contribution not shown on payslip
31/10/2021	£61.40	Monthly contribution not shown on payslip
30/11/2021	£30.60	Monthly contribution not shown on payslip
Total Unpaid Employee Contributions	<b><u>£190.04</u></b>	
Total Unpaid Employer Contributions		<b><u>Unknown</u></b>