Ombudsman's Determination

Applicant	Mr I
Scheme	NEST (**the Scheme**)
Respondents	Alderforce North Limited (**the Employer**)

Outcome

1. Mr I's complaint is upheld and to put matters right the Employer shall pay £594.38 into the Scheme. The Employer shall ensure that Mr I is not financially disadvantaged by its maladministration. So, it shall arrange for any investment loss to be calculated and any shortfall paid into the Scheme.

2. In addition, the Employer shall pay £1,000 for the serious distress and inconvenience caused to him.

Complaint summary

3. Mr I has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme.

4. The available evidence shows that £594.38 in unpaid pension contributions is due to the Scheme.

Background information, including submissions from the parties

5. The sequence of events is not in dispute, so I have only set out the key points.

6. In July 2020, Mr I began his employment with the Employer.

7. Between August 2020 and December 2021, the Employer failed to pay pension contributions into the Scheme on eight occasions (see Appendix).

8. In March 2021, Mr I became aware that his contributions were not being paid into his NEST account.

9. On 6 September 2022, Mr I formally complained to the Employer and explained that he had contacted the Pensions Ombudsman (**TPO**) for advice on his unpaid pension contributions.

10. On 3 November 2022, Mr I brought his complaint to The Pensions Ombudsman (**TPO**).

11. Mr I provided copies of payslips for the period from August 2020 to December 2021, which detailed the employee contributions deducted from his pay by the Employer, as well as the employer contributions. These contributions amounted to £594.38. A breakdown of the deductions has been included in Appendix One.

12. On 3 September 2024, TPO contacted the Employer with details of Mr I's complaint and asked for its formal response with a deadline of 17 September 2024.

13. On 17 September 2024, TPO had not received a response from the Employer and as a result the case progressed to Opinion.

Adjudicator's Opinion

14. Mr I'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:-

    - Having reviewed the available evidence, it was the Adjudicator's opinion that not all the contributions had been paid into the Scheme. The payslips provided by Mr I confirmed that £594.38 in contributions were due to Mr I's Scheme account and the Employer provided no further evidence to dispute this position. So, in the Adjudicator's opinion an error has occurred, and the Employer was responsible.

    - The Adjudicator said that he had no reason to doubt the information provided by Mr I and he confirmed that this was consistent with the available payslips. The Employer only engaged with TPO once the opinion had been issued and confirmed that the outstanding amount of £594.38 was correct.

    - In its response to the opinion the Employer confirmed that it would pay the outstanding contributions but disputed the distress and inconvenience payment of £1,000. To date the outstanding contributions have not been paid into Mr I's Scheme account.

    - So, in the Adjudicator's opinion, contributions had been deducted from Mr I's salary but 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 I was not in the financial position he ought to be in.

    - In the Adjudicator's view, Mr I had suffered serious distress and inconvenience due to the Employer's maladministration. The Adjudicator was of the opinion that an award of £1,000 for non-financial injustice was appropriate in the circumstances.

15. The Employer responded to the Opinion and raised the following points:-

- At the time of this incident the Employer only had two temporary payroll staff in the team due to the sudden departure of established payroll staff. This impacted its response to Mr I's complaint.

- Payroll operations have been updated and improved since this incident. Employee complaints are now responded to within five working days.

- Payroll issues that require immediate attention are highlighted in weekly reports.

- Based on the above changes the Employer requested that the £1,000 distress and inconvenience payment was reduced to a lower amount.

- The Employer was in the process of arranging the payment of £594.38 into Mr I's Scheme account.

16. The Employer disagreed with the level of distress and inconvenience payment suggested in the Adjudicator's opinion, so the complaint was passed to me to consider. I agree with the Adjudicator's Opinion.

Ombudsman's decision

17. Mr I complained that the Employer has not paid all the contributions into his Scheme account.

18. I find that employee and employer contributions were deducted but held back by the Employer and not paid into the Scheme. The Employer has now conceded this was the case (albeit only after my Adjudicator provided his Opinion). The Employer failed to rectify this and only engaged with TPO after the deadline set out in the Adjudicator's Opinion. There was a severe lack of engagement by the Employer which has meant this process has taken longer to resolve than would otherwise have been the case.

19. The Courts have confirmed[1] that the Pensions Ombudsman has the power to direct a payment for distress and inconvenience (i.e. for non-financial injustice) sustained as a consequence of maladministration. There needs to be a causal link between the distress and inconvenience suffered and the maladministration.

20. In the past, the Courts indicated that an award of up to £1,000 might be appropriate, other than in exceptional cases. However, the upper level of awards was reviewed by my predecessor following the *Baugniet v Capita Employee Benefits* [2017] EWHC 501 (Ch) and *Smith v Sheffield Teaching Hospitals* [2018] 004 PBLR 004 (011) cases, and our current approach is now set out in a guidance note issued in 2018 entitled Redress for Non-Financial Injustice (the **Guidance**). This is reviewed from time to time.

[1] For example, see *Westminster City Council v Haywood* [1996] 2 All ER 467 (obiter), as confirmed in *City and County of Swansea v Johnson* [1999] 17 PBLR, and in also later cases.

21. In this case, the Employer missed several opportunities to put the matter right and failed to engage in the investigation carried out by my office. This accords with the "serious" level of distress and inconvenience set out in the Guidance – notably that the Employer was slow to put matters right (and indeed still hasn't done so), failed to engage on several occasions and this resulted in the distress and inconvenience continuing over a prolonged period. As a result, the Employer has caused Mr I serious distress and inconvenience and, although I have considered how this sits against the lower figure claimed as financial loss, I am of the view that the amount of £1,000 in respect of Mr I's distress and inconvenience is justified.

22. Under the Scheme Rules the Employer was obliged to pay to the Scheme, at least 3% of Mr I's qualifying earnings in the relevant pay reference period, and the employer and employee contributions must amount to at least 8% of Mr I's qualifying earnings in the relevant pay reference period. The relevant provisions of the Scheme Rules are outlined in Appendix Two.

23. I find that the Employer has acted in breach of the Scheme Rules by not paying all contributions due to the Scheme. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr I to suffer a financial loss. The Employer shall take remedial action to put this right.

24. For the reasons given above, Mr I is entitled to a distress and inconvenience payment award in respect of the serious ongoing non-financial injustice which he has suffered.

25. Therefore, I uphold Mr I's complaint.

Directions

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

    (i) pay Mr I £1,000 for the serious distress and inconvenience he has experienced;

    (ii) pay £594.38 into Mr I's Scheme account. This figure represents the employee contributions of £464.45 and the employer contributions of £129.93.

    (iii) establish with the Scheme administrator whether the late payment of contributions has meant that fewer units were purchased in Mr I's Scheme account that he would have otherwise secured, had the contributions been paid on time; and

    (iv) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.

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

Dominic Harris

Pensions Ombudsman
09 October 2025

Appendix One

Date	Employee contributions	Employer contributions
28 August 2020 (Period 11)	£20.69	£15.52
25 September 2020 (Period 13)	£106.53	£14.19
09 October 2020 (Period 14)	£94.07	£13.16
24 September 2021 (Period 13)	£149.55	£16.86
08 October 2021 (Period 14)	£19.39	£14.54
05 November 2021 (Period 16)	£27.65	£20.74
19 November 2021 (Period 17)	£25.13	£18.84
03 December 2021 (Period 18)	£21.44	£16.08
Subtotal:	£464.45	£129.93
Total unpaid contributions:	£594.38	

Appendix Two

Rule 7.1.1

Where in respect of a member a participating employer has elected to use the Scheme to:

(a) fulfil its duties under:(i) in relation to Great Britain, section 2(1) (by virtue of section), 3(2), 5(2) or 7(3) of the 2008 Act; or(ii) in relation to Northern Ireland, section 2(1) (by virtue of section), 3(2), 5(2) or 7(3) of the 2008 NI Act), or

(b) arrange for a worker to become a member of the Scheme within article 19(2A) of the Order, from the date that admission to membership or the making of contribution arrangements in relation to that member takes effect, the participating employer shall pay and the Trustee shall accept such contributions as may be required in order for the Scheme to meet the quality requirement referred to in Part 1 of the 2008 Act (Part 1 of the 2008 NI Act), or the alternative requirement referred to in Part 1 of the 2008 Act (or Part 1 of the 2008 NI Act), in relation to the member, having regard to the contributions being paid by the member under rule 9.1.

Section 20 Pensions Act 2008

20 **Quality requirement: UK money purchase schemes**

(1) A money purchase scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if under the scheme—

(a) the jobholder's employer must pay contributions in respect of the jobholder;

(b) the employer's contribution, however calculated, must be equal to or more than 3% of the amount of the jobholder's qualifying earnings in the relevant pay reference period;

(c) the total amount of contributions paid by the jobholder and the employer, however calculated, must be equal to or more than 8% of the amount of the jobholder's qualifying earnings in the relevant pay reference period.