

## Ombudsman's Determination

Applicant	Mr H
Scheme	NEST ( <b>the Scheme</b> )
Respondent	ME Estate Agents (Alton) Limited ( <b>the Employer</b> )

## Outcome

1. Mr H'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 H £1,000 for the serious distress and inconvenience it has caused him.

## Complaint summary

2. Mr H has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme.
3. Mr H has said that the missing contributions amounted to £3,000.

## Background information, including submissions from the parties

4. In 1 May 2019, Mr H began his employment with the Employer.
5. On 11 October 2022, Mr H resigned from his employment with the Employer. Amongst other things, he said that he would not take any further action against the Employer as long as it settled all outstanding pension contributions by the end of November 2022.
6. The next day, the Employer wrote to Mr H and said that it accepted his resignation. It said that all outstanding pension contributions would be paid by the end of November 2022.
7. Despite its assurances, the Employer did not pay all outstanding pension contributions by the November deadline.
8. On 7 December 2022, Mr H brought his complaint to The Pensions Ombudsman (**TPO**).

9. Mr H provided copies of the payslips that he held for the period, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. Mr H stated that the overall unpaid contributions amounted to £3,000. A breakdown of the deductions has been included in the Appendix. Please note, the Appendix only includes the deductions from the payslips Mr H has sent to TPO. So, it may not show the full extent of the unpaid contributions.
10. On 23 May 2023, TPO emailed the Employer and asked for a response to the complaint. This request was repeated on 14 July 2023. Neither of these requests received a response.

### **Caseworker's Opinion**

11. Mr H'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. 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 Mr H.
  - The Caseworker said that he had no reason to doubt the information provided by Mr H. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr H's salary, but 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 H was not in the financial position he ought to be in.
  - In the Caseworker's view, Mr H had suffered serious distress and inconvenience due to the Employer's maladministration. The Caseworker was of the opinion that an award of £1,000 for non-financial injustice was appropriate in the circumstances.
12. 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.

### **Ombudsman's decision**

13. Mr H has complained that the Employer has not paid all the contributions due to his Scheme account.
14. I find 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 TPO or Mr H. It has also failed to respond to the Caseworker's Opinion.

15. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr H to suffer a financial loss. The Employer shall take remedial action to put this right.
16. Mr H is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which he has suffered. In my view, Mr H distress and inconvenience was exacerbated by the Employer's failure to respond during TPO's investigation into Mr H's complaint.

### **Directions**

17. To put matters right, the Employer shall, within 28 days of the date of this Determination:
  - (i) pay Mr H £1,000 for the serious distress and inconvenience he has experienced;
  - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr H'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 H.
18. The Employer shall, within 14 days of receiving a request by Mr H, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.
19. Within 14 days of receiving confirmation from Mr H that he agrees with the information on the Schedule, the Employer shall:
  - (i) pay the missing contributions to the Scheme;
  - (ii) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Mr H's Scheme account than he 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.
20. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Mr H's units, pay the cost of purchasing any additional units required to make up the shortfall.

**Anthony Arter CBE**

Deputy Pensions Ombudsman  
1 December 2023

**Appendix**

Date	Employee contributions	Employer contributions
31/05/2021	£146.76	£110.07
30/07/2021	£103.63	Not stated
29/10/2021	£96.41	Not stated
30/11/2021	£104.72	Not stated
31/12/2021	£82.20	Not stated
30/01/2022	£79.20	Not stated
31/03/2022	£95.97	Not stated
30/04/2022	£79.20	Not stated
31/05/2022	£79.20	Not stated
30/07/2022	£79.20	Not stated
31/08/2022	£79.20	Not stated