

Ombudsman's Determination

Applicant	Mrs W
Scheme	NOW Pensions (the Scheme)
Respondents	Wentworth Rest Home Limited (the Employer)

Outcome

Mrs W's complaint is upheld and, to put matters right, the Employer shall pay £538.77 into the Scheme. The Employer shall ensure that Mrs W is not financially disadvantaged by its maladministration, so, it shall arrange for any investment loss to be calculated and paid into the Scheme.

1. In addition, the Employer shall pay Mrs W £1,000 for the serious distress and inconvenience it has caused her.

Complaint summary

2. Mrs W has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
3. The available evidence shows that the missing contributions amounted to £538.77.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points.
5. In September 2017, Mrs W began her employment with the Employer.
6. Between December 2022 and May 2023, the Employer failed to pay pension contributions into the Scheme.
7. On 10 May 2023, Mrs W contacted the Employer about the missing pension contributions. She did not receive a response from the Employer.
8. On 20 September 2023, Mrs W complained to the Employer about the missing pension contributions between December 2022 and March 2023. The Employer did not respond to her complaint.

9. On 11 November 2023, Mrs W brought her complaint to The Pensions Ombudsman (TPO).
10. Mrs W provided copies of the payslips that she held for the period from December 2022 to May 2023, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. These deductions amounted to £421.03. A breakdown of the deductions has been included in the Appendix.
11. On 7 May 2024, the Employer provided a screenshot of its payroll record for Mrs W's Scheme account. This showed contributions had been uploaded and collected by the Scheme administrator from December 2022 to May 2023.
12. On the same day, TPO asked the Employer to provide evidence to show that these contributions had been paid into the Scheme.
13. On 12 June 2024, the Scheme administrator confirmed the pension contributions for December 2022 to March 2023 remained unpaid. It explained that it attempted to collect the contributions, but the direct debit was returned unpaid.
14. On 13 June 2024, TPO informed the Employer of the Scheme administrator's response and asked it to confirm what steps it would be taking to pay the outstanding contributions. This request was repeated on 28 June 2024. None of these requests received a response.
15. On 11 July 2024, the Employer agreed the contributions had not been paid and explained it was waiting for the Scheme administrator's agreement to the Employer's proposal to pay the outstanding contributions.
16. On 18 July 2024, TPO contacted the Employer for an update.
17. On the same day, Mrs W provided TPO with an email from the Scheme administrator sent to her on 8 July 2024. The email confirmed that five months contributions between December 2022 and June 2023 remained outstanding. TPO informed the Employer about the missing contribution for June 2023 and requested a response within 14 days.
18. Mrs W provided a payslip for June 2023 which showed the outstanding contribution amount was £117.74. The total outstanding contributions including June 2023, amounted to £538.77.
19. The Employer failed to respond by the deadline given.

Adjudicator's Opinion

20. Mrs W'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 on the facts of the complaint, including the dates and amounts of contributions involved. She said that, as the Employer did not fully engage with TPO or confirm what steps it was taking to pay the outstanding contributions, she had to base her Opinion solely on the information provided by Mrs W.
- The Adjudicator said that she had no reason to doubt the information provided by Mrs W. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Mrs W'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, Mrs W was not in the financial position she ought to be in.
- In the Adjudicator's view, Mrs W 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.

21. 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.

Ombudsman's decision

22. Mrs W has complained that the Employer has not paid all the contributions due to her Scheme account.
23. 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 TPO or Mrs W. It has also failed to respond to the Adjudicator's Opinion.
24. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mrs W to suffer a financial loss. The Employer shall take remedial action to put this right.
25. Mrs W 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 TPO's investigation into Mrs W's complaint.

Directions

26. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mrs W £1,000 for the serious distress and inconvenience she has experienced;

(ii) pay £538.77 into Mrs W's Scheme account. This figure represents the amount that, according to the figures provided by Mrs W, have been deducted from her pay, but not paid into the Scheme account. It also includes the employer contributions for the relevant period which should have also been paid but have not been to date;

(iii) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Mrs W's Scheme account than she 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 Mrs W's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman

3 September 2024

Appendix

Payslip date	Employee contributions	Employer contributions
10 December 2022	£60.21	£36.13
10 January 2023	£76.38	£45.83
10 February 2023	£69.13	£41.48
10 March 2023	£57.42	£34.45
10 June 2023	£73.59	£44.15
Total amount: £538.77	£336.73	£202.04