

Ombudsman's Determination

Applicant	Ms N
Scheme	NEST Pension Scheme (the Scheme)
Respondent	Alchemilla (the Employer)

Outcome

1. Ms N'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 N £1,000 for the serious distress and inconvenience it has caused her.

Complaint summary

2. Ms N has complained that the Employer, despite deducting contributions from her pay, has failed to pay the contributions into the Scheme.
3. Ms N has said that the missing contributions amounted to £197.81.

Background information, including submissions from the parties

4. In September 2017, Ms N began her employment with the Employer.
5. Ms N said that between 2 April 2018 and 5 April 2019, the Employer failed to remit pension contributions into the Scheme.
6. On 20 November 2019, Ms N brought her complaint regarding the unpaid pension contributions to The Pensions Ombudsman (**TPO**).
7. Ms N provided copies of the payslips that she held for the period from 2 April 2018 to 5 April 2019 which detailed the pension contributions deducted from her pay and the corresponding employer contributions. These deductions amounted to £197.81. A breakdown of the deductions has been included in the Appendix.
8. On 15 July 2021, TPO asked the Employer for its formal response to Ms N's complaint. This request was repeated on 2 September 2021. Neither of these requests received a response.

9. On 28 July 2022 and 12 August 2022, TPO chased the Employer again. But the Employer failed to respond.

Caseworker's Opinion

10. Ms N'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. She said that, as the Employer had not responded to any of TPO's communications, she had to base her Opinion solely on the information provided by Ms N.
 - The Caseworker said that she had no reason to doubt the information provided by Ms N. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Ms N'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, Ms N was not in the financial position she ought to be in.
 - In the Caseworker's view, Ms N had suffered significant distress and inconvenience due to the Employer's maladministration. The Caseworker was of the view that an award of £500 for non-financial injustice was appropriate in the circumstances.
11. 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 the level of award for the distress and inconvenience which Ms N has suffered

Ombudsman's decision

12. Ms N has complained that the Employer has not paid all the contributions due to her Scheme account.
13. 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 Ms N. It has also failed to respond to the Caseworker's Opinion.
14. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Ms N to suffer a financial loss. The Employer shall take remedial action to put this right.

15. Ms N 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 N's complaint.

Directions

16. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Ms N £1,000 for the serious distress and inconvenience she has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Ms N'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 Ms N.
17. The Employer shall, within 14 days of receiving a request by Ms N, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.
18. Within 14 days of receiving confirmation from Ms N that she 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 Ms N's Scheme account than she 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.
19. Within 14 days of receiving confirmation from NEST of any shortfall in Ms N's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter

Pensions Ombudsman

31 October 2022

Appendix

Date	Employee contributions	Employer contributions
April 2018	£13.19	£10.99
May 2018	£9.25	£11.10
June 2018	£14.10	£16.91
July 2018	£16.08	£19.30
August 2018	£9.11	£10.92
September 2018	£9.71	£11.64
October 2018	£10.33	£12.40
November 2018	£9.40	£11.28
December 2018	£6.88	£8.24
January 2019	£5.35	£6.40
February 2019	£5.05	£6.06
March 2019	£18.66	£22.40
April 2019	£3.95	£4.74
Total	£128.86	£154.58

Total contributions	£283.44
Contributions remitted to the Scheme	£85.63
Unpaid contributions	£197.81