

## Ombudsman's Determination

Applicant	Miss N
Scheme	NEST Pension Scheme ( <b>the Scheme</b> )
Respondent	Chlachain Inn ( <b>the Employer</b> )

## Outcome

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

## Complaint summary

2. Miss N has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
3. Miss N has said that the missing contributions amounted to £621.51

## Background information, including submissions from the parties

4. In June 2019, Miss N began her employment with the Employer.
5. On 2 May 2021, Miss N brought her complaint regarding the unpaid pension contributions to The Pensions Ombudsman (**TPO**).
6. Miss N has said that the missing contributions amounted to £621.51.
7. On 15 September 2021, the Employer told TPO that it did not dispute Miss N's complaint and agreed pay the missing contributions.
8. On 14 June 2022, TPO chased the Employer and asked whether the unpaid contributions had been paid.
9. On 29 June 2022, the Employer responded and asked how to make the payment.
10. On 30 June 2022, TPO wrote to the Employer and said that the Employer would have to contact the Scheme administrator in order to make a payment.

11. On 25 July 2022, TPO chased the Employer to find out whether the payment had been made b

### **Caseworker's Opinion**

12. Miss 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 said that she had no reason to doubt the information provided by Miss N. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Miss 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, Miss N was not in the financial position she ought to be in.
  - In the Caseworker's view, Miss 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.
13. 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 maladministration.

### **Ombudsman's decision**

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

## **Directions**

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

**Anthony Arter**

Pensions Ombudsman  
28 October 2022