

## Ombudsman's Determination

Applicant	Mrs A
Scheme	NEST ( <b>the Scheme</b> )
Respondent	Dravens Healthcare Ltd ( <b>the Employer</b> )

## Outcome

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

## Complaint summary

2. Mrs A has complained that the Employer, despite deducting contributions from her pay, has failed to pay contributions into the Scheme.
3. Mrs A has provided payslips that show the missing contributions amounted to £3,481.20.

## Background information, including submissions from the parties and timeline of events

4. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
5. Mrs A has provided copies of the payslips that she held for the period from January 2019 to December 2021, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. These contributions amounted to £4,128.23. A breakdown of the deductions, as supplied by Mrs A, has been included in the Appendix.
6. The Employer paid £723.33 to NEST between January 2019 and December 2021. So, there was a shortfall of £3,481.20 that should have been paid into the Scheme.
7. In October 2021, the Employer confirmed it was investigating the issue.
8. In December 2021, Mrs A chased the Employer but did not receive a response.
9. On 18 January 2022, Mrs A referred the case to The Pensions Ombudsman (**TPO**).

10. In May 2022, a TPO Caseworker (**the Caseworker**) contacted the Employer and requested that the missing payments be made.
11. On 10 May 2022, the Employer told the Caseworker that it has passed on this account to be rectified on several occasions to its current manager, but she has failed to do this. Alternatively, it could arrange to pay Mrs A directly if she so wished.
12. On 10 May 2022, the Caseworker advised the Employer that he was unable to endorse the suggestion that a cash settlement is paid directly to Mrs A as this would not reflect our approach to redress. He asked for the Employer to put forward a revised proposal by 24 May 2022.
13. The Caseworker chased the Employer on 25 May 2022 and set a final deadline of 1 June for it to reply. TPO did not receive a response.

### **Caseworker's Opinion**

14. Mrs A's complaint was considered by one of our Caseworkers who concluded that there had been maladministration on the part of the Employer and further action was required as it had not paid all the contributions that were due to the Scheme. The Caseworker's findings are summarised below:-
  - The Caseworker said 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 the Employer had failed to fully respond to all of TPO's requests, so his Opinion was based solely on the information provided by Mrs A.
  - The Caseworker said that he had no reason to doubt the information provided by Mrs A. So, in the Caseworker's opinion, on the balance of probabilities, contributions had been deducted from Mrs A's salary, but not paid into the Scheme. In addition, the Employer had failed to pay its employer contributions that were due over the same period. As a result of its maladministration, Mrs A had suffered a financial loss.
  - In the Caseworker's view, Mrs A had also suffered significant distress and inconvenience due to the Employer's maladministration and an award of £500 was appropriate.
15. The Employer did not accept the Caseworker's Opinion and the complaint was passed to me to consider.
16. The Employer provided its further comments which do not change the outcome. In summary, it said:-
  - It paid the October, November and December 2021 pension contributions on 30 May 2022. This payment was £443.51. A further payment of £407.20 was paid into the NEST account on 1 August 2022.

- As of 17 August 2022, it had paid a total of £1,199.08 into the NEST account and the total amount left to be paid was £2,282.12. It will continue paying monthly until the payment is fully cleared. However, it hasn't committed to a payment plan because he said the Pensions Regulator told him this was unnecessary.
- It did not agree to pay Mrs P any further compensation and said it was unable to afford this.
- I note the additional points raised by the Employer, but I agree with the Caseworker's Opinion, except the level of award for maladministration.

### **Ombudsman's decision**

17. Mrs A has complained that the Employer has not paid all the contributions due into her Scheme account.
18. 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 has agreed that contributions are outstanding but has failed to fully rectify this.
19. While I appreciate the Employer is facing financial difficulties in making payments, it does not change the fact that contributions are owed to the Scheme. The Employer's failure to pay employee and employer contributions into to the Scheme amounts to unjust enrichment and has caused Mrs A to suffer a financial loss. The Employer shall take remedial action to put this right.
20. Mrs A is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice the Employer has caused her to suffer. This was made worse by its failure to fully co-operate during my Office's investigation into Mrs A's complaint.

### **Directions**

21. To put matters right, the Employer shall, within 28 days of the date of this Determination:
  - (i) pay Mr Y £1,000 for the serious distress and inconvenience she has experienced;
  - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mrs A'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 Mrs A.
22. The Employer shall, within 14 days of receiving a request by Mrs A, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.

23. Within 14 days of receiving confirmation from Mrs A that she agrees with the information on the Schedule, the Employer shall:
- (i) pay the missing contributions to the Scheme;
  - (ii) establish with NEST whether the late payment of contributions has meant that fewer units were purchased in Mrs A's Scheme account than she would have otherwise secured, had the contributions been paid on time; and
  - (iii) pay any reasonable administration fee should NEST charge a fee for carrying out the above calculation.
24. Within 14 days of receiving confirmation from NEST of any shortfall in Mrs A's units, pay to the Scheme the cost of any additional units required to make up that shortfall.

**Anthony Arter**

Pensions Ombudsman  
15 September 2022

## Appendix

Monika Pension estimate						
payrol month	payslip	my contribution, deducted already from my pay (should be	Drawers contribution 3%		paid to NEST by Drawer	
2019						
1	1625	48.75	48.75		22.74	10/4/19
2	1640	27.29	49.20		27.29	10/4/19
3	1760	26.93	52.80		32.5	10/4/19
4	1805	26.72	54.15		48.75	10/4/19
5	1895	33.20	56.85		27.66	10/4/19
6	1625	26.72	48.75		33.2	10/4/19
7	1895	33.20	56.85		22.44	10/4/19
8	1760	29.96	52.80		26.93	10/4/19
9	1760	29.96	52.80		27.66	10/4/19
10	1275	18.32	38.25		33.2	10/4/19
11	1435	46.15	43.05		24.96	10/4/19
12	1475	48.15	44.25		29.96	10/4/19
2020					22.26	10/4/19
1	1275	38.15	38.25		26.72	10/4/19
2	1275	38.15	38.25		25.86	10/29/19
3	1275	38.15	38.25		31.04	10/29/19
4	1275	38.15	38.25		38.15	2/28/20
5	1275	38.15	38.25		22.89	2/28/20
6	1430	71.50	42.90		22.89	2/28/20
7	1430	71.50	42.90		38.15	2/28/20
8	1430	71.50	42.90		38.15	2/28/20
9	1430	71.50	42.90		22.89	2/28/20
10	1430	71.50	42.90		28.89	2/28/20
11	1430	71.50	42.90		48.15	2/28/20
12	1430	71.50	42.90		723.33	Paid
2021						
1	1430	71.50	42.90			
2	1430	71.50	42.90			
3	1966.25	89.38	58.99			
4	2500	125	75			
5	2500	125	75			
6	2500	125	75			
7	2545	127.25	76.35			
8	2545	127.25	76.35			
9	2500	125	75			
10	2500	125	75			
11	2787.98	132.18	83.64			
12	346.15	17.31	10.38			
Total to pay	61885.38	2347.97	1856.56			
Total to pay from Drawers			4204.53			
		to be paid asap	3481.20			