

## Ombudsman's Determination

Applicant	Ms P
Scheme	NEST Pension Scheme ( <b>the Scheme</b> )
Respondent	Vermuyden Care Limited ( <b>the Employer</b> )

## Outcome

1. Ms P's complaint is upheld and, to put matters right, the Employer shall pay £1,278.03 into the Scheme. The Employer shall ensure that Ms P is not financially disadvantaged by its maladministration. So, it shall arrange for any investment loss to be calculated and paid into the Scheme.
2. In addition, the Employer shall pay Ms P £1,000 for the serious distress and inconvenience it has caused her.

## Complaint summary

3. Ms P has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
4. The available evidence shows the missing contributions amounted to £1,278.03.

## Background information, including submissions from the parties

5. The sequence of events is not in dispute, so I have only set out the salient points.
6. In March 2021, Ms P began her employment with the Employer.
7. Between 8 December 2021 and 30 November 2023, the Employer failed to pay pension contributions into the Scheme.
8. On 15 April 2023, Ms P brought her complaint to The Pensions Ombudsman (**TPO**).
9. Ms P provided the payslips that she held for the period from December 2021 to November 2023, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. A breakdown of the deductions has been included in the Appendix.

10. On 15 May 2024, TPO asked the Employer for its formal response to Ms P's complaint. This request was repeated on 29 May 2024. None of these requests received a response.
11. Ms P provided TPO with a screenshot from her Scheme account. This showed that the Employer paid contributions in May 2023 and July 2023. The outstanding amount following these contributions was £1,278.03. The Appendix has been amended since the Adjudicator's Opinion to reflect these payments from the Employer.
12. Ms P was unable to provide payslips for August and September 2023. She was happy for TPO to proceed based on the payslips she provided.

### **Adjudicator's Opinion**

13. Ms P'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. 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 Ms P.
  - The Adjudicator said that he had no reason to doubt the information provided by Ms P. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Ms P'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, Ms P was not in the financial position she ought to be in.
  - In the Adjudicator's view, Ms P 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.
14. On 4 July 2024, the Employer responded to the Adjudicators Opinion. It said that it did not dispute that money was owed to the Scheme. The Employer said it would need to arrange to pay the contributions in instalments because of its financial situation. It also said that it considered the distress and inconvenience compensation to be excessive and stated that an employee could view all their payslips on a portal.
15. On 17 July 2024, the Employer offered to pay the outstanding unpaid contributions over a period of 10 months and pay Ms P £300 compensation.
16. On 18 July 2024, Ms P informed TPO that she did not wish to accept the Employer's offer. She said the Employer had nearly three years to pay her pension contributions into the Scheme.

17. As the Employer did not accept the Adjudicator's Opinion and Ms P did not accept the proposed offer from the Employer, the complaint was passed to me to consider. I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

18. Ms P has complained that the Employer has not paid all the contributions due to her Scheme account.
19. 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 Ms P until the Adjudicator sent his Opinion to the parties concerned.
20. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Ms P to suffer a financial loss. The Employer shall take remedial action to put this right.
21. Ms P is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which she has suffered.

### **Directions**

22. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Ms P £1,000 for the serious distress and inconvenience she has experienced.
  - (ii) pay £1,278.03 to Ms P's Scheme account. This figure represents the amount that, according to the figures provided by Ms P, 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 paid to date;
  - (iii) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Ms P'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.

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23. Within 14 days of receiving confirmation from the Scheme of any shortfall in Ms P's units, pay the cost of purchasing any additional units required to make up the shortfall.

**Anthony Arter CBE**

Deputy Pensions Ombudsman

14 August 2024

**Appendix**

Date	Employee contributions	Employer contributions
December 2021	£59.20	£44.40
January 2022	£59.20	£44.40
February 2022	£59.20	£44.40
March 2022	£59.20	£44.40
April 2022	£59.20	£44.40
May 2022	£59.20	£44.40
June 2022	£59.20	£44.40
July 2022	£59.20	£44.40
August 2022	£59.20	£44.40
September 2022	£30.75	£23.06
October 2022	£55.51	£41.64
November 2022	£46.78	£35.08
December 2022	£25.52	£19.14
January 2023	£10.54	£7.90
February 2023	£4.27	£3.20
March 2023	£4.27	£3.20
April 2023	£13.07	£9.80
May 2023	£13.07 (paid)	£9.80 (paid)
June 2023	£6.80	£5.10
July 2023	£6.80 (paid)	£5.10 (paid)
October 2023	£0.00	£0.00
November 2023	£0.00	£0.00
Total	£730.31 (excluding paid amounts)	£547.72 (excluding paid amounts)

