

Ombudsman's Determination

Applicant	Miss N
Scheme	National Employment Savings Trust – NEST (the Trust)
Respondents	Vermuyden Care Limited (the Employer)

Outcome

1. Miss N's complaint is upheld and to put matters right the Employer shall pay the missing contributions in respect of this pension and make good any shortfall in units.
2. In addition, the Employer shall pay Miss N A £1,000 for the serious distress and inconvenience it has caused her.

Complaint summary

3. Miss N has complained that despite deducting contributions from her pay the Employer has failed to pay them into the Trust.
4. Miss N has said that the missing contributions amount to £1,018.48.

Background information, including submissions from the parties

5. In August 2021, Miss N began her employment with the Employer.
6. Between December 2021 and October 2022, pension deductions were taken from Miss N's salary but the Employer failed to pay any pension contributions into the Trust.
7. On 20 April 2023, Miss N brought her complaint to The Pensions Ombudsman (**TPO**).
8. Miss N provided copies of the payslips that she held for the period from December 2021 to October 2022. These payslips detailed the pension contributions deducted from her pay and the corresponding employer contributions. Deductions amounted to £1,018.48. A breakdown of the deductions has been included in the Appendix.
9. On 11 January 2024, the Employer contacted TPO and explained that it was not sure how to calculate investment loss on the outstanding contributions. TPO in response, said that these could be calculated by contacting the Trust directly and provided contact details to assist with this process.

10. In January and February 2024, TPO chased the Employer again. But the Employer failed to respond by the set deadline.
11. On 18 June 2024, TPO issued an Opinion to the Employer upholding the complaint and provided a deadline of 2 July 2024 for it to provide any comments or evidence to support its position.
12. On 4 July 2024, TPO updated the Employer that the deadline for any comments on the Opinion had since passed and the case would progress to a Determination.
13. On 4 July 2024, the Employer responded to TPO and said that it was unable to make the payment due to the business struggling financially. The Employer asked if there was any way of arranging a payment plan.
14. On 17 July 2024, TPO informed the Employer that a payment plan could have been arranged with NEST. The case would proceed to Determination on the basis that the Employer had not arranged these payments following the outcome of the Opinion.

Adjudicator's Opinion

15. Miss N's complaint was considered by one of our Adjudicators who concluded that further action was required by the Employer as it had failed to pay the contributions that were due to the Trust. 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 value of contributions owed.
 - The Employer has responded intermittently during the investigation and has not contested the value of contributions owed to Miss N.
 - The Adjudicator said that he had no reason to doubt the information provided by Miss N. So, in the Adjudicator's view, on the balance of probabilities, contributions had been deducted from Miss N's salary but had not been paid into the Trust. In addition, the Employer had not paid any of the employer contributions that were due over the same period. As a result of this maladministration, Miss N was not in the financial position she ought to be, and the Employer should pay the missing contributions into the Trust.
 - In the Adjudicator's view, Miss N had suffered 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.
16. The Employer did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion and note the additional points raised by the Employer. In summary the Employer has said that:

- It was aware that it owed contributions to Miss N but had been unable to pay them due to business difficulties.
- It had not realised that the owed contributions could be paid in instalments instead of a one-off payment.

As the employer did not agree with the Adjudicator's Opinion the complaint was passed to me to consider. I have reviewed the evidence and agree with the Adjudicator's Opinion.

Ombudsman's decision

17. Miss N has complained that the Employer did not pay all the contributions due to the Trust on his behalf.
18. I find that the employee contributions were deducted but held back by the Employer and not paid into the Trust. The Employer also failed to pay employer contributions which were due to the Trust. The Employer failed to rectify this, despite several opportunities to do so following the Adjudicator's Opinion.
19. The Adjudicator contacted the Employer a number of times to resolve this complaint prior to the issuing of the Opinion. It is only after the Opinion had been issued and after the deadline for comment had passed that the Employer has offered to contribute to a payment plan.
20. The Employer previously said that it was unsure of how to make contributions to the Trust. In response the Adjudicator provided clear directions of how to contact the Trust and pay the outstanding contributions plus any investment loss. The Employer has not acknowledged this information and as a result the case has been passed to me to determine.
21. All employers are expected to take their pension enrolment duties seriously. The Employer's failure to pay the deducted employee contributions into the Trust as well as its failure to make employer contributions amounts to maladministration. It also means the Employer has benefited from not meeting its pension liabilities and has been unjustly enriched as a result. This will have caused Miss N to suffer a considerable financial loss. The Employer shall take remedial action to put this right.
22. Miss N is also entitled to an award in respect of the distress and serious ongoing non-financial injustice which she has suffered. This was exacerbated by the Employer's failure to rectify this issue during TPO's investigation into Miss N's complaint and I consider that the amount suggested by the Adjudicator, in his Opinion, is justified.
23. I uphold Miss N's complaint.

Directions

24. To put matters right, 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 experienced;
 - (ii) Pay £1,018.48 into Miss N's Trust account. This figure represents the amount that, according to the figures provided by Miss N, have been deducted from her pay, but not paid into the Trust account. It also includes the employer contributions for the relevant period which should also have been paid but have not been to date;
 - (iii) Establish with the Trust administrator whether the late payment of contributions has meant that fewer units were purchased in Miss N's Trust account that she would have otherwise secured had the contributions been paid on time; and
 - (iv) Pay any reasonable administration fee should the Trust administrator charge a fee for carrying out the above calculation.
25. Within 14 days of receiving confirmation from the Trust administrator of any shortfall in Miss N's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman

22 October 2024

Appendix

Date	Employee contributions	Employer contributions
December 2021	£80.93	£60.70
January 2022	£77.44	£58.08
February 2022	£45.81	£34.36
March 2022	£9.09	£6.82
April 2022	£45.36	£34.02
May 2022	£50.07	£37.56
June 2022	£49.29	£36.97
July 2022	£59.02	£44.27
August 2022	£58.56	£43.92
September 2022	£58.14	£43.60
October 2022	£48.27	£36.20