

## Ombudsman's Determination

Applicant	Ms T
Scheme	NEST Pension Scheme ( <b>the Scheme</b> )
Respondent	The Power50 Limited ( <b>the Employer</b> )

## Outcome

1. Ms T's complaint is upheld and, to put matters right, the Employer shall pay £3,555.63 into the Scheme. The Employer shall ensure that Ms T is not financially disadvantaged by its maladministration. So, it shall arrange for any investment loss to be calculated and also paid into the Scheme.
2. In addition, the Employer shall pay Ms T £500 for the significant distress and inconvenience it has caused her.

## Complaint summary

3. Ms T has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
4. Ms T has said that the missing contributions amounted to £3,555.63.

## 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 January 2022, Ms T began her employment with the Employer.
7. Between January 2022 and April 2023, the Employer failed to pay pension contributions into the Scheme.
8. On 24 August 2023, Ms T brought her complaint to The Pensions Ombudsman (**TPO**).
9. Ms T provided copies of the payslips that she held for the period from January 2022 to April 2023, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. These deductions amounted to £3,555.63. A breakdown of the deductions has been included in the Appendix.

10. On 9 May 2024, TPO asked the Employer for its formal response to Ms T's complaint about her unpaid contributions.
11. On 10 May 2024, the Employer responded to TPO. It said it was in the process of being put into voluntary liquidation and it would ask the liquidator how it should reply to Ms T's complaint. On the same day, TPO asked the Employer for the liquidator's details.
12. On 21 and 24 May 2024, TPO repeated its request to the Employer for the liquidator's details but received no response.
13. On 18 June and 4 July 2024, TPO informed the Employer that it would formally investigate Ms T's complaint if it could not be informally resolved.
14. On 12 July 2024, the Employer emailed TPO the name of the liquidator. On the same day, TPO asked it for the liquidator's email address.
15. On 17 July 2024, TPO asked the Employer again for the liquidator's email address.
16. On 29 July 2024, TPO told the Employer that it would continue to investigate Ms T's complaint as the Employer was still showing as active on Companies House.
17. On 5 August 2024, the Employer emailed TPO to state that it would speak to the liquidator and try to provide a further update by 12 August 2024.
18. On 16 August 2024, TPO told the Employer that it would formally investigate Ms T's complaint.
19. On the same day, the Employer told TPO that there was little it could do as it had not traded for two years, and it had no liquid assets.

## **Adjudicator's Opinion**

20. Ms T'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 the Employer had told TPO that it had not traded for two years, had no liquid assets and was in the process of voluntary liquidation. However, the Employer was unable to provide evidence to support this and was showing as "active" on Companies House. The Adjudicator decided to proceed with his investigation and had to base his Opinion solely on the information provided by Ms T.
  - The Adjudicator said that he had no reason to doubt the information provided by Ms T. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Ms T'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 T was not in the financial position she ought to be in.

- In the Adjudicator's view, Ms T had suffered significant distress and inconvenience due to the Employer's maladministration. The Adjudicator was of the opinion that an award of £500 for non-financial injustice was appropriate in the circumstances.

21. The Employer did not respond to the Adjudicator's Opinion and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

22. Ms T has complained that the Employer has not paid all the contributions due to her Scheme account.

23. 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 although there was some engagement with TPO there was none with Ms T. It has also failed to respond to the Adjudicator's Opinion.

24. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Ms T to suffer a financial loss. The Employer shall take remedial action to put this right.

25. Ms T is entitled to a distress and inconvenience award in respect of the significant ongoing non-financial injustice which she has suffered.

### **Directions**

26. To put matters right, the Employer shall, within 28 days of the date of this Determination:

- (i) pay Ms T £500 for the significant distress and inconvenience she has experienced;
- (ii) pay £3,555.63 into Ms T's Scheme account. This figure represents the amount that, according to the figures provided by Ms T, 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 administrator whether the late payment of contributions has meant that fewer units were purchased in Ms T'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.

CAS-110440-G7Q3

27. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Ms T's units, pay the cost of purchasing any additional units required to make up the shortfall.

**Anthony Arter CBE**

Deputy Pensions Ombudsman

19 September 2024

**Appendix**

Date	Employee contributions	Employer contributions
January 2022	£75.71	£56.79
February 2022	£105.87	£79.41
March 2022	£105.87	£79.41
April 2022	£105.87	£79.40
May 2022	£105.87	£79.40
June 2022	£105.87	£79.41
July 2022	£105.87	£79.41
August 2022	£146.76	£110.07
September 2022	£146.76	£110.07
October 2022	£146.76	£110.07
November 2022	£146.76	£110.07
December 2022	£146.76	£110.07
January 2023	£146.76	£110.07
February 2023	£146.76	£110.07
March 2023	£146.76	£110.07
April 2023	£146.76	£110.07
Totals	£2,031.77	£1,523.86