

## Ombudsman's Determination

Applicant	Mrs S
Scheme	NEST Pension Scheme ( <b>the Scheme</b> )
Respondent	J&Y Webber Services Limited ( <b>the Employer</b> )

## Outcome

1. Mrs S' complaint is upheld and, to put matters right, the Employer shall pay £370.77 into the Scheme. The Employer shall ensure that Mrs S 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 Mrs S £500 for the significant distress and inconvenience it has caused her.

## Complaint summary

3. Mrs S has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
4. Mrs S has said that the missing contributions amounted to £370.77.

## 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 2023, Mrs S began her employment with the Employer.
7. Between June 2023 and September 2023, the Employer failed to pay pension contributions into the Scheme.
8. On 1 November 2023, Mrs S brought her complaint to The Pensions Ombudsman (TPO).
9. Mrs S provided copies of the payslips that she held for the period from June 2023 to September 2023, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. These deductions amounted to £370.77. A breakdown of the deductions has been included in the Appendix.

10. On 24 May 2024, TPO wrote to the Employer for more information in response to Mrs S' complaint.
11. On 15 June 2024, the Employer responded to TPO and confirmed it was looking into the issue of Mrs S' unpaid contributions and would respond to her complaint.
12. On 20 June 2024, the Employer told TPO that The Pensions Regulator (TPR) had previously agreed that it could bring all of its pension contributions up to date by the end of May 2024. It said that TPR had agreed to extend this to July 2024.
13. On the same day, TPO told the Employer that it would need to provide evidence to show that it had paid Mrs S' contributions and also considered if she had suffered an investment loss due to the late payment of her contributions.
14. On 27 June 2024, the Employer informed TPO that its TPR deadline to pay the outstanding contributions was now 17 July 2024. It sent screenshots showing the contributions it had paid, which it said would be allocated to the Scheme. The Employer was unable to provide evidence of any contributions that the Scheme administrator had credited to Mrs S' Scheme account and it said it was awaiting confirmation of any potential investment loss due to the late payment of contributions.
15. Later that same day, TPO acknowledged the Employer's email and said it would ask Mrs S to check her Scheme account after 17 July 2024 to see what contributions had been paid.
16. On 3 August 2024, Mrs S emailed TPO and said that the Scheme administrator had not credited any of the outstanding contributions to her Scheme account.
17. On 14 August 2024, TPO asked the Employer if there were any updates regarding the payment of Mrs S' unpaid contributions. No response was received.
18. On 22 August 2024, TPO advised the Employer that it would begin its formal investigation into Mrs S' complaint.
19. On 23 August 2024, the Employer emailed TPO to advise that its directors would have to approve any payment, but it would update TPO further as soon as possible.
20. On the same day, TPO emailed the Employer to state that it would allow the directors until 30 August 2024 to informally resolve Mrs S' complaint.
21. On 2 September 2024, TPO told the Employer that it would formally investigate Mrs S' complaint as there were no further updates received from the Employer.

## **Adjudicator's Opinion**

22. Mrs 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 provided a full response to the complaint raised by Mrs S, he had to base his Opinion solely on the information provided by Mrs S.
- The Adjudicator said that he had no reason to doubt the information provided by Mrs S. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Mrs 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, Mrs S was not in the financial position she ought to be in.
- In the Adjudicator's view, Mrs S 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.

23. 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**

24. Mrs S has complained that the Employer has not paid all the contributions due to her Scheme account.
25. 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 fully engage with TPO or Mrs S. It has also failed to respond to the Adjudicator's Opinion.
26. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mrs S to suffer a financial loss. The Employer shall take remedial action to put this right.
27. Mrs S is entitled to a distress and inconvenience award in respect of the significant ongoing non-financial injustice which she has suffered. This was exacerbated by its failure to fully respond during TPO's investigation into Mrs S' complaint.

### **Directions**

28. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mrs S £500 for the significant distress and inconvenience she has experienced;
  - (ii) pay £370.77 into Mrs S' Scheme account. This figure represents the amount that, according to the figures provided by Mrs S, have been deducted from her pay,

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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 Mrs 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.

29. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Mrs S' units, pay the cost of purchasing any additional units required to make up the shortfall.

**Anthony Arter CBE**

Deputy Pensions Ombudsman

7 October 2024

**Appendix**

Date	Employee contributions	Employer contributions
June 2023	£54.83	£41.12
July 2023	£35.72	£26.79
August 2023	£75.20	£56.40
September 2023	£46.12	£34.59
Totals	£211.87	£158.90