

## Ombudsman's Determination

Applicant	Miss H
Scheme	NEST Pension Scheme ( <b>the Scheme</b> )
Respondents	Certify Lets Ltd ( <b>the Employer</b> )

## Outcome

1. Miss H's complaint is upheld and, to put matters right, the Employer shall pay £1,786.53 into the Scheme. The Employer shall ensure that Miss H 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 Miss H £1,000 for the serious distress and inconvenience it has caused her.

## Complaint summary

3. Miss H has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
4. Miss H has said that the missing contributions amounted to £1,786.53.

## 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 October 2021, Miss H began her employment with the Employer.
7. Between January 2023 to September 2023, the Employer failed to pay pension contributions into the Scheme.
8. In September 2023, Miss H ceased employment with the Employer.
9. On 17 November 2023, Miss H formally complained to the Employer that her pension contributions had not been paid into the Scheme.
10. On 28 November 2023, Miss H brought her complaint to The Pensions Ombudsman (**TPO**) and explained that the Employer had not responded to her concerns.

11. Miss H provided copies of the payslips that she held for the period from January 2023 to September 2023, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. These deductions amounted to £1,786.53. A breakdown of the deductions has been included in the Appendix.
12. Miss H also provided TPO with a screenshot from the Scheme account, which demonstrated that the only payments made to it were from her employment prior to the Employer.
13. On 2 February 2024, TPO asked the Employer for its formal response to Miss H's complaint. This request was repeated on 20 February 2024. Neither of these requests received a response.

### **Caseworker's Opinion**

14. Miss H's complaint was considered by one of our Caseworkers 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 Caseworker's findings are summarised below:-
  - The Caseworker 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 engaged with TPO's communications, he had to base his Opinion solely on the information provided by Miss H.
  - The Caseworker said that he had no reason to doubt the information provided by Miss H. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Miss H's salary, but had not all been paid into the Scheme. In addition, the Employer had not paid all the employer contributions that were due over the same period. As a result of its maladministration, Miss H was not in the financial position she ought to be in.
  - In the Caseworker's view, Miss H had suffered serious distress and inconvenience due to the Employer's maladministration. The Caseworker was of the opinion that an award of £1,000 for non-financial injustice was appropriate in the circumstances.
15. The Employer did not respond to the Caseworker's Opinion and the complaint was passed to me to consider. I agree with the Caseworker's Opinion.

### **Ombudsman's decision**

16. Miss H has complained that the Employer has not paid all the contributions due to her Scheme account.

17. 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 resolve Miss H's complaint following the Caseworker's Opinion.
18. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Miss H to suffer a financial loss. The Employer shall take remedial action to put this right.
19. Miss H is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which she has suffered. This was exacerbated by its failure to resolve the dispute during TPO's investigation into Miss H's complaint.

## **Directions**

20. To put matters right, the Employer shall, within 28 days of the date of this Determination:
  - (i) pay Miss H £1,000 for the serious distress and inconvenience she has experienced;
  - (ii) pay £1,786.53 into Miss H's Scheme account. This figure represents the amount that, according to the figures provided by Miss H, 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 also have 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 Miss H'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.
21. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Miss H's units, pay the cost of purchasing any additional units required to make up the shortfall.

**Anthony Arter CBE**

Deputy Pensions Ombudsman

5 June 2024

**Appendix**

Date	Employee contributions	Employer contributions
January 2023	£73.15	£121.92
February 2023	£80.65	£134.42
March 2023	£80.65	£134.42
April 2023	£80.65	£134.42
May 2023	£50.65	£84.42
June 2023	£65.65	£109.42
July 2023	£85.65	£142.75
August 2023	£85.42	£142.37
September 2023	£67.47	£112.45
<b>Total</b>	<b>£669.94</b>	<b>£1,116.59</b>