

## Ombudsman's Determination

Applicant	Mr E
Scheme	NEST Pension Scheme ( <b>the Scheme</b> )
Respondent	Leiston Old Abbey Limited ( <b>the Employer</b> )

## Outcome

1. Mr E's complaint is upheld and, to put matters right, the Employer shall pay £269.80 into the Scheme. The Employer shall ensure that Mr E 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 Mr E £500 for the significant distress and inconvenience it has caused him.

## Complaint summary

3. Mr E has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme.
4. The available evidence shows that the missing contributions amounted to £269.80.

## 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 August 2022, Mr E began his employment with the Employer. He left the Employer in March 2024.
7. Between December 2022 and November 2023, the Employer failed to pay pension contributions into the Scheme.
8. On 16 November 2023, Mr E brought his complaint to The Pensions Ombudsman (**TPO**).
9. Mr E provided copies of the payslips that he held for the period from December 2022 to November 2023, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These deductions amounted to £1,908.38. A breakdown of the deductions has been included in the Appendix.

10. On 10 May 2024, TPO wrote to the Employer to ask for more information in response to Mr E's complaint. This request was repeated on 18 June 2024.
11. On 24 June 2024, the Employer responded to TPO and said that all of Mr E's contributions had been paid into the Scheme.
12. On the same day, TPO asked the Employer to provide evidence to show that all Mr E's contributions had been paid. TPO also asked the Employer to confirm it had contacted the Scheme administrator to check if Mr E had suffered an investment loss due to the late payment of contributions to the Scheme.
13. On 11 July 2024, TPO chased the Employer for a response to its email of 24 June 2024.
14. On 12 July 2024, the Employer responded to TPO. It apologised and said it would speak to the Scheme administrator about making the outstanding contributions.
15. On 1 August 2024, TPO emailed the Employer and asked if it had contacted the Scheme administrator. No response was received.
16. On 14 August 2024, Mr E told TPO that he had checked his Scheme account and it showed that the Employer had paid all his contributions on 7 June 2024 apart for those that were due in December 2022, February 2023, and October 2023. Mr E advised that the Employer had duplicated its November 2023 contribution payment, so it had paid it twice. The total outstanding contributions amounted to £269.80.

## **Adjudicator's Opinion**

17. Mr E'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 all 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 responded to Mr E's complaint by stating that it had paid all of Mr E's contributions into the Scheme. However, it had not provided evidence to support this, or to show that it had checked with the Scheme administrator whether Mr E had suffered an investment loss due to the late payment of contributions. He had to base his Opinion solely on the information provided by Mr E.
  - The Adjudicator said that he had no reason to doubt the information provided by Mr E. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Mr E's salary but had not been paid into the Scheme. In addition, the Employer had not paid all of the employer contributions that were due over the same period. As a result of its maladministration, Mr E was not in the financial position he ought to be in.

- In the Adjudicator's view, Mr E 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.

18. 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**

19. Mr E has complained that the Employer has not paid all the contributions due to his Scheme account.
20. 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 Mr E. It has also failed to respond to the Adjudicator's Opinion.
21. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr E to suffer a financial loss. The Employer shall take remedial action to put this right.
22. Mr E is entitled to a distress and inconvenience award in respect of the significant ongoing non-financial injustice which he has suffered.

### **Directions**

23. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mr E £500 for the significant distress and inconvenience he has experienced;
  - (ii) pay £269.80 into Mr E's Scheme account. This figure represents the amount that, according to the figures provided by Mr E, have been deducted from his 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 to date;
  - (iii) establish with the Scheme administrator whether the late payment of contributions has meant that fewer units were purchased in Mr E's Scheme account than he 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.
24. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Mr E's units, pay the cost of purchasing any additional units required to make up the shortfall.

CAS-113346-Y1J0

**Anthony Arter CBE**

Deputy Pensions Ombudsman

25 September 2024

**Appendix**

Date	Employee contributions	Employer contributions
December 2022	£72.01	£54.00
January 2023	£73.06 paid	£54.80 paid
February 2023	£77.15	£57.86
March 2023	£70.14 paid	£53.05 paid
April 2023	£96.29 paid	£72.22 paid
May 2023	£89.31 paid	£66.98 paid
June 2023	£87.30 paid	£65.47 paid
July 2023	£83.68 paid	£62.76 paid
August 2023	£85.70 paid	£64.27 paid
September 2023	£86.05 paid	£64.54 paid
October 2023	£93.20	£69.90
November 2023	£88.18 paid twice	£66.14 paid twice
Totals excluding paid amounts	£154.18	£115.62