

Ombudsman's Determination

Applicant	Mrs S
Scheme	NEST (the Scheme)
Respondent	Children of Towan (the Employer)

Outcome

1. Mrs S' complaint is upheld and, to put matters right, the Employer shall pay £642.25 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 £1,000 for the serious 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. The available evidence shows that the missing contributions amounted to £642.25.

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. On 16 January 2020, Mrs S began her employment with the Employer.
7. Between January 2022 and November 2022, the Employer failed to pay pension contributions in full into the Scheme.
8. Following the complaint being referred to The Pensions Ombudsman (**TPO**), Mrs S provided copies of the payslips that she held for the period from January 2022 to November 2022, which detailed the pension contributions deducted from her pay. These deductions amounted to £534.10. A breakdown of the deductions has been included in the Appendix. The payslips did not show the employer contributions which have also not been paid into the Scheme.

9. Mrs S also provided screenshots from her Scheme account which showed that pension contributions had been remitted to the Scheme from January 2022 to March 2022. The employee contributions that were remitted to the Scheme from January 2022 to March 2022 totalled £125.24, and they did not match the contributions that had been deducted from the payslips for those months. The employee contributions deducted from the payslips from January 2022 to March 2022 amounted to £152.61.
10. On 29 April 2024, TPO wrote to the Employer to ask for more information in response to Mrs S' complaint.
11. On 10 June 2024, TPO chased the Employer again, but the Employer failed to respond by the deadline.
12. On 1 July 2024, TPO received a schedule (**the Schedule**) from the Scheme administrator. This showed the employee and employer contributions that had been remitted to the Scheme by the Employer, which were in line with the minimum automatic enrolment contribution rate of 3% employer and 5% employee contributions. The Schedule also confirmed that the employee contributions remitted to the Scheme was lower than the amounts deducted from Mrs S' payslips between January 2022 and March 2022. It also showed that the latest contribution that had been remitted to the Scheme was for the March 2022 pay period.
13. On 10 July 2024, TPO telephoned the Employer but received no response.
14. On 11 July 2024, TPO sent a letter to the Employer's address requesting a response to Mrs S' complaint. The Employer failed to respond by the deadline.

Adjudicator's Opinion

15. 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. She said that, as the Employer had not responded to any of TPO's communications, she had to base her Opinion solely on the information provided by Mrs S.
 - Based on the information provided by Mrs S and the Scheme administrator, £408.86 in employee contributions had not been remitted to the Scheme. The Employer had partially paid employee contributions between January 2022 and March 2022, and paid no employee contributions from April 2022 to October 2022. Mrs S did not meet the earnings threshold for the November 2022 pay period, and so pension deductions were not made from her pay that month.
 - Mrs S' payslips did not show the employer pension contributions in respect of Mrs S pay for January 2022 to October 2022, even though she was still enrolled in the

Scheme and her pay met the pension qualifying earnings threshold. Information provided by the Scheme administrator confirmed that £93.93 in employer contributions was paid between January 2022 and March 2022, and that the last pension contribution was received by the Scheme on 10 March 2022.

- Contributions should have been paid into the Scheme, as calculated in accordance with the statutory minimum automatic enrolment contribution rate of 3% and 5% for employer and employee contributions. It was the Adjudicator's view, on the balance of probabilities that £233.39 in employer contributions had not been remitted into the Scheme for these months.
 - The Adjudicator said that she 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' pay 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 serious 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 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

17. Mrs S has complained that the Employer has not paid all the contributions due to her Scheme account.
18. 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 engage with TPO or Mrs S. It has also failed to respond to the Adjudicator's Opinion.
19. I find that a total of £642.25 has not been paid into the Scheme. This is based on the payslips provided by Mrs S and the Schedule produced by the Scheme administrator which show that £408.86 in employee contributions have not been remitted to the Scheme. Mrs S' payslips do not show the Employer contributions between January and November 2022. The Schedule shows that previous pension contributions were paid in line with the statutory minimum automatic enrolment contribution rate of 3% and 5% for employer and employee contributions. I therefore agree with the Adjudicator that on the balance of probabilities, £233.39 in employer contributions have also not been remitted into the Scheme.

20. 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.
21. Mrs S 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 respond during TPO's investigation into Mrs S' complaint.

Directions

22. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Mrs S £1,000 for the serious distress and inconvenience she has experienced;
 - (ii) pay £642.25 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, but not paid into the Scheme account. It also includes the employer contributions for the relevant period which should have been paid but have not been to date;
 - (iii) establish with the Scheme 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.
23. 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

2 October 2024

Appendix

Payslip period	Gross Salary (£)	Employee contributions (£)	Employer contributions (£)	Employee contributions paid (£)	Employer contributions paid (£)
January 2022	1057.33	50.87	*	40.68	30.51
February 2022	1057.33	50.87	*	42.28	31.71
March 2022	1017.33	50.87	*	42.28	31.71
April 2022	1268.63	55.95	*		
May 2022	1119.00	55.95	*		
June 2022	1017.33	50.87	*		
July 2022	1017.33	50.87	*		
August 2022	1119.07	55.95	*		
September 2022	1119.07	55.95	*		
October 2022	1119.07	55.95	*		
November 2022	308.00	No deductions made	-		

* *Employer contributions are not shown on the payslips.*