

Ombudsman's Determination

Applicant	Mrs N
Scheme	NEST Pension Scheme (the Scheme)
Respondents	J&Y Webber Services Ltd T/A Bluebird Care (the Employer)

Outcome

1. Mrs N's complaint is upheld and, to put matters right, the Employer shall pay £642.23 into the Scheme. The Employer shall ensure that Mrs N 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 N £1,000 for the serious distress and inconvenience it has caused her.

Complaint summary

3. Mrs N has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
4. Mrs N has said that the missing contributions amounted to £642.23.

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 2020, Mrs N began her employment with the Employer.
7. Mrs N has said that she was enrolled in a separate pension scheme until March 2021 and all contributions were paid.
8. On 12 April 2021, Mrs N was enrolled into the Scheme and contributions were paid from 13 May 2021.
9. Between March 2022 and January 2024, the Employer failed to pay all pension contributions to the Scheme, or when they were paid, they were significantly late.
10. On 15 May 2023, Mrs N complained to the Employer that contributions were not being paid to the Scheme and that she was suffering an accumulated loss.

11. On 12 February 2024, Mrs N brought her complaint to The Pensions Ombudsman (TPO).
12. Mrs N provided copies of the payslips that she held for the period from March 2022 to January 2024, which detailed pension contributions deducted from her pay and the corresponding employer contributions.
13. Mrs N provided TPO with a breakdown of payments made into the Scheme since March 2022. This showed they were consistently paid late and that some were still outstanding.
14. On 29 May 2024, the Employer made four payments into the Scheme, which were the unpaid pension contributions for January 2023 to April 2023.
15. The pension contributions outstanding for Mrs N for the period May 2023 to September 2023, November 2023, and January 2024 amounted to £275.24 in employer contributions and £366.99 in employee contributions, a total of £642.23. A breakdown of these deductions has been included in the Appendix.
16. On 5 June 2024, TPO wrote to the Employer asking for its formal response to Mrs N's complaint about the remaining unpaid pension contributions. No response was received.
17. On 11 July 2024, TPO wrote again to the Employer's address. But the Employer failed to respond by the deadline.

Adjudicator's Opinion

18. Mrs N's complaint was considered by one of our Adjudicator's 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 engaged with TPO's communications, he had to base his Opinion solely on the information provided by Mrs N.
 - The Adjudicator said that he had no reason to doubt the information provided by Mrs N. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Mrs N'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, Mrs N was not in the financial position she ought to be in.
 - In the Adjudicator's view, Mrs N 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.

19. 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

20. Mrs N has complained that the Employer has not paid all the contributions due to her Scheme account.
21. 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 Mrs N's complaint following the Adjudicator's Opinion.
22. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mrs N to suffer a financial loss. The Employer shall take remedial action to put this right.
23. Mrs N 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 Mrs N's complaint

Directions

24. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mrs N £1,000 for the serious distress and inconvenience she has experienced;
 - (ii) pay £642.23 into Mrs N's Scheme account. This figure represents the amount that, according to the figures provided by Mrs N, 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 administrator whether the late payment of contributions has meant that fewer units were purchased in Mrs N'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.

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

Anthony Arter CBE

Deputy Pensions Ombudsman

25 September 2024

Appendix

Month	Employer contributions	Employee contribution	Date paid to Scheme	Monthly total not paid to Scheme
March 2022	£28.40	£37.87	29/06/2022	
April 2022	£28.40	£37.87	15/08/2022	
May 2022	£28.40	£37.87	12/09/2022	
June 2022	£28.40	£37.87	28/11/2022	
July 2022	£28.40	£37.87	13/07/2023	
August 2022	£45.80	£60.53	25/08/2023	
September 2022	£36.90	£49.20	05/01/2024	
October 2022	£36.90	£49.20	05/01/2024	
November 2022	£40.65	£54.20	29/05/2023	
December 2022	£40.65	£54.20	07/02/2024	
January 2023	£40.65	£54.20	29/05/2024	
February 2023	£40.65	£54.20	29/05/2024	
March 2023	£40.65	£54.20	29/05/2024	
April 2023	£40.65	£54.20	29/05/2024	
May 2023	£40.65	£54.20	Not paid	£94.85
June 2023	£40.65	£54.20	Not paid	£94.85
July 2023	£40.65	£54.20	Not paid	£94.85
August 2023	£40.65	£54.20	Not paid	£94.85
September 2023	£49.34	£65.79	Not paid	£115.13
October 2023	£45.65	£60.87	04/01/2024	
November 2023	£47.45	£63.27	Not paid	£110.72
December 2023	£46.10	£61.47	31/01/2024	
January 2024	£15.85	£21.13	Not paid	£36.98
Total contributions unpaid				£642.23

