

Ombudsman's Determination

Applicant	Mrs S
Scheme	NEST (the Scheme)
Respondent	SVL Healthcare Service Ltd (the Employer)

Outcome

1. Mrs S' complaint is upheld and, to put matters right, the Employer shall pay £176.31 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 £176.31.

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 November 2017, Mrs S began her employment with the Employer.
7. Between September 2023 and November 2023, the Employer failed to pay pension contributions into the Scheme.
8. On 24 January 2024, 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 September 2023 to November 2023, which detailed the pension contributions deducted from her pay. These deductions amounted to £100.77. A breakdown of the deductions from these payslips has been included in the Appendix. The payslips did not show the employer contributions which have also not been paid into the Scheme.

10. On 10 June 2024, TPO wrote to the Employer to ask for more information in response to Mr T's complaint. The Employer acknowledged the receipt of the email on the same day and said it would respond within three working days. However, no response was received.
11. On 25 June 2024, TPO chased the Employer again. But the Employer failed to respond by the deadline.
12. On 10 July 2024, TPO telephoned the Employer but received no response.
13. On 16 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. It also showed that the latest contribution that had been remitted to the Scheme was for the August 2023 pay period.

Adjudicator's Opinion

14. 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, £100.77 in employee contributions had not been remitted to the Scheme. Mrs S' payslips did not show the employer contributions in respect of Mrs S' pay for September to November 2023, even though she was still enrolled in the Scheme and her pay met the pension qualifying earnings threshold.
 - Mrs S' gross salary for September 2023 was £861.61 and £828.53 for both October and November 2023. Contributions should have been paid into the Scheme in line with the minimum automatic enrolment contribution rate of 3% and 5% employer and employee contributions respectively. It was the Adjudicator's view, on the balance of probabilities that £75.54 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' 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 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.

15. 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

16. Mrs S 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 did not engage with TPO or Mrs S. It has also failed to respond to the Adjudicator's Opinion.

18. Based on the payslips provided by Mrs S and the Schedule produced by the Scheme administrator, I find that the amount of £176.31 has not been remitted to the Scheme. Unpaid employee contributions of £100.77 are detailed on the payslips. The Schedule shows that previous pension contributions have been paid in line with the statutory minimum automatic enrolment contribution rate of 3% and 5% employer and employee contributions respectively. I therefore agree with the Adjudicator that on the balance of probabilities, £75.54 in employer contributions have not been remitted into the Scheme.

19. 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.

20. 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

21. 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 £176.31 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 also been paid but have not been to date;

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(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.

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

Anthony Arter CBE

Deputy Pensions Ombudsman

6 August 2024

Appendix

Payslip month	Gross Salary (£)	Employee contributions (£)	Employer contributions (£)
September 2023	861.61	34.47	*
October 2023	828.53	33.15	*
November 2023	828.53	33.15	*

* The employer contributions for each month are not included in the payslips