

Ombudsman's Determination

Applicant	Mrs A
Scheme	NEST (the Scheme)
Respondent	SWG Glasgow Limited (the Employer)

Outcome

1. Mrs A's complaint is upheld and, to put matters right, the Employer shall pay £1,154.54 into the Scheme. The Employer shall ensure that Mrs A 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 A £1,000 for the serious distress and inconvenience it has caused her.

Complaint summary

3. Mrs A 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 £1,154.54

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 2019, Mrs A began her employment with the Employer.
7. Between June 2023 and November 2023, the Employer failed to pay pension contributions into the Scheme.
8. On 23 February 2024, Mrs A brought her complaint to The Pensions Ombudsman (**TPO**).
9. Mrs A provided a copy of the payslip she held for October 2023, which detailed the pension contributions deducted from her pay. This deduction amounted to £119.20 of employee contributions. A breakdown of the deduction has been included in the Appendix. The payslip did not show the employer contributions which have also not been paid into the Scheme.

10. Mrs A was unable to provide payslips for the following months: -
 - June 2023
 - July 2023
 - August 2023
 - September 2023
 - November 2023
11. Mrs A has provided letters from the Scheme Administrator for the period from June 2023 to November 2023, which detailed the employee and employer pension contributions that were unpaid. Based on the letters from the Scheme administrator, the pension contributions amounted to £540.54 of employee contributions and £494.80 of employer contributions for the months where no payslips were provided and the employer contribution missing from the October 2023 payslip.
12. The total outstanding contributions according to the payslips and the letters from the Scheme administrator provided by Mrs A amounted to £1,154.54.
13. On 28 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.
14. On 15 July 2024, TPO chased the Employer. The Employer acknowledged the receipt of the email and said it would respond in 48 hours.
15. On the same day, the Employer responded and said that the first email it had received was on 15 July 2024. TPO responded immediately and sent a copy of the email that was sent on 28 June 2024 to the Employer. The Employer failed to respond by the deadline.
16. On 2 August 2024, the Employer responded and said it was willing to resolve the matter within three weeks. However, it was not willing to agree to an action plan before Mrs A agreed to resolve the matter informally.
17. On 7 August 2024, Mrs A informed TPO that she was willing to wait three weeks for the Employer to resolve the matter.
18. On 8 August 2024, TPO asked the Employer to remit the outstanding pension contributions to Mrs A's Scheme account by 9 September 2024.
19. On 9 August 2024, the Employer asked TPO for bank details to make the payment. TPO advised that the Employer should contact the Scheme administrator to make the payment, and also ask it to calculate the investment loss due to the late payment of the pension contributions.

20. On 12 September 2024, Mrs A confirmed that the outstanding pension contributions had not been paid into the Scheme by the agreed deadline.

Adjudicator's Opinion

21. Mrs A'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 fully engaged with TPO's requests for it to provide its response, she had to base her Opinion solely on the information provided by Mrs A.
 - Based on the information provided by Mrs A, £119.20 in employee contributions had not been remitted to the Scheme. The letters from the Scheme administrator, provided by Mrs A, detailed the employer contribution for October 2023, and the amount of contributions not paid into the Scheme for the months with no payslips. It was the Adjudicator's view, on the balance of probabilities that £1,035.34 had not been remitted into the Scheme for these months. In taking this view, the Adjudicator had considered that the amounts shown on the letters from the Scheme administrator matched the deduction shown on the available October 2023 payslip provided by Mrs A.
 - The Adjudicator said that she had no reason to doubt the information provided by Mrs A. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Mrs A'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 A was not in the financial position she ought to be in.
 - In the Adjudicator's view, Mrs A 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.
22. 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

23. Mrs A has complained that the Employer has not paid all the contributions due to her Scheme account.

24. 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 fully with either TPO or Mrs A. It has also failed to respond to the Adjudicator's Opinion.
25. According to the payslip provided by Mrs A for October 2023, £119.20 in employee contributions was outstanding. This payslip did not include the employer contributions which were also outstanding for this month. The letters provided from the Scheme administrator detailed the employer contribution for October 2023 and the outstanding contributions for the months with no payslips. The letters showed that £1,035.34 had not been remitted to the Scheme for months with no payslips and the employer contribution for October 2023. The amounts shown on the letters provided by the Scheme administrator match the deduction shown on the October 2023 payslip.
26. Based on the payslip provided by Mrs A and the letters provided by the Scheme administrator, I agree with the Adjudicator that, on a balance of probabilities, a total of £1,154.54 has not been remitted to the Scheme.
27. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mrs A to suffer a financial loss. The Employer shall take remedial action to put this right.
28. Mrs A 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 properly respond during TPO's investigation into Mrs A's complaint.

Directions

29. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Mrs A £1,000 for the serious distress and inconvenience she has experienced;
 - (ii) pay £1,154.54 into Mrs A's Scheme account. This figure represents the amount that, according to the figures provided by Mrs A, 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 paid to date;
 - (iii) establish with the Scheme administrator whether the late payment of contributions has meant that fewer units were purchased in Mrs A'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.

CAS-119300-H7J6

30. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Mrs A'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 Month	Employee contributions (£)	Employer contributions (£)
June 2023		
July 2023		
August 2023		
September 2023		
October 2023	119.20	*
November 2023		

* The employer contribution is not included on the payslip