

## Ombudsman's Determination

Applicant	Ms S
Scheme	NEST ( <b>the Scheme</b> )
Respondent	Vocational Skills Solutions Limited ( <b>the Employer</b> )

## Outcome

1. Ms S' complaint is upheld and, to put matters right, the Employer shall pay the missing contributions in respect of her pension and make good any shortfall in units. In addition, the Employer shall pay Ms S £500 for the significant distress and inconvenience it has caused her.

## Complaint summary

2. Ms S has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
3. Ms S has said that the missing contributions amounted to £694.48.

## Background information, including submissions from the parties

4. Between September 2021 and March 2022, the Employer failed to pay pension contributions into the Scheme.
5. On 25 April 2022, Ms S brought her complaint to The Pensions Ombudsman (**TPO**).
6. Ms S provided copies of the payslips that she held for the period from September 2021 to March 2022, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. A breakdown of the deductions has been included in the Appendix.
7. On 25 July 2022, the Employer contacted TPO to explain the only contributions that remained outstanding were the contributions relating to December 2021, January 2022 and February 2022 which amounted to £356.77. This included both employee and employer contributions.

8. On 8 September 2022, TPO asked the Employer for evidence to support its suggestion that only three months were outstanding. TPO also asked for confirmation of when the unpaid contributions would be brought up to date.
9. On 13 September 2022, the Employer said it was not in a financial position to pay Mrs S until the end of the year.
10. On 10 November 2022, TPO asked the Employer whether it had paid anymore contributions into Ms S' Scheme account. However, the Employer failed to respond.

### **Caseworker's Opinion**

11. Ms S' complaint was considered by one of our Caseworkers who concluded that further action was required by the Employer as it had failed to remit all of the contributions that were due to the Scheme. The Caseworker's findings are summarised below:-
  - The Caseworker said 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. In this case, the Employer accepted that contributions had not been paid.
  - As a result of the Employer's maladministration, Ms S was not in the financial position she ought to be in.
  - In the Caseworker's view, Ms S had suffered serious distress and inconvenience due to the Employer's maladministration. The Caseworker was of the opinion that an award of £1,000 for non-financial injustice was appropriate in the circumstances.
12. The Employer responded and said that, although it had made further payments, contributions were still outstanding. It said that it was in financial difficulty; but, it hoped to bring the payments up to date soon.

### **Ombudsman's decision**

13. Ms S has complained that the Employer has not paid all the contributions due to her Scheme account.
14. 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.
15. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Ms S to suffer a financial loss. The Employer shall take remedial action to put this right.
16. I acknowledge that, during our investigation, the Employer paid most of the contributions into the Scheme. I also note the Employer's comments that it is in

financial difficulty. However, it has a duty to ensure that all pension contributions are paid into the Scheme on time.

17. Ms S is entitled to a distress and inconvenience award in respect of the ongoing non-financial injustice which she has suffered. However, given that the employer has paid further contributions into the Scheme I have reduced the distress and inconvenience award to £500 in respect of the significant distress and inconvenience which Ms S has suffered.

### **Directions**

18. To put matters right, the Employer shall, within 28 days of the date of this Determination:
  - (i) pay Ms S £500 for the significant distress and inconvenience she has experienced;
  - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Ms S' pay in respect of the period of her employment. The Schedule shall also include the corresponding employer contributions that were due to the Scheme; and
  - (iii) forward the Schedule to Ms S.
19. The Employer shall, within 14 days of receiving a request by Ms S, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.
20. Within 14 days of receiving confirmation from Ms S that she agrees with the information on the Schedule, the Employer shall:
  - (i) pay the missing contributions to the Scheme;
  - (ii) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Ms S's Scheme account than she would have otherwise secured, had the contributions been paid on time; and
  - (iii) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.

CAS-87346-Q4Y0

21. Within 14 days of receiving confirmation from the Scheme administrator (NEST) of any shortfall in Ms S' units, pay the cost of purchasing any additional units required to make up the shortfall.

**Anthony Arter CBE**

Deputy Pensions Ombudsman  
26 April 2023

**Appendix**

Date	Employee contributions	Employer contributions
30/9/21	£45.04	£33.78
30/10/21	£45.04	£33.78
30/11/21	£66.70	£50.03
30/12/21	£66.71	£50.03
30/01/22	£58.37	£43.78
28/02/22	£70.45	£52.84
30/3/22	£44.53	£33.40