

## Ombudsman's Determination

Applicant	Mr A
Scheme	National Employment Savings Trust – NEST ( <b>the Trust</b> )
Respondents	Nuleaf Energy Limited ( <b>the Employer</b> )

## Outcome

1. Mr A's complaint is upheld and to put matters right the Employer shall pay the missing contributions in respect of this pension and make good any shortfall in units.
2. In addition, the Employer shall pay Mr A £1,000 for the serious distress and inconvenience it has caused him.

## Complaint summary

3. Mr A has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Trust.
4. Mr A has said that the missing contributions amounted to £800.63.

## Background information, including submissions from the parties

5. In July 2021, Mr A began his employment with the Employer.
6. Between July 2021 and January 2022, the Employer failed to pay pension contributions into the Trust.
7. On 17 March 2023, Mr A brought his complaint to the Pensions Ombudsman (**TPO**).
8. Mr A provided copies of the payslips that he held for the period of July 2021 to January 2022, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These deductions amounted to £800.63. A breakdown of the deductions has been included in the Appendix.
9. On 24 October 2023, TPO asked the Employer for its formal response to Mr A's complaint. This request was repeated on 14 November 2023 and 5 December 2023. None of these requests received a response.

10. In December 2023, TPO chased the Employer again. But the Employer failed to respond by the deadline.

## **Caseworker's Opinion**

11. Mr A's complaint was considered by one of our Caseworkers who concluded that further action was required by the Employer as it had failed to pay the contributions that were due to the Trust. The Caseworker's findings are summarised below: -
  - The Caseworker 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 amount of contributions involved. He said that, as the Employer had not responded to any of TPO's communications, he had to base his Opinion solely on the information provided by Mr A.
  - The Caseworker said that he had no reason to doubt the information provided by Mr A. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr D's salary but had not been paid into the Trust. 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, Mr A was not in the financial position he ought to be in and the Employer should pay the missing contributions into the Trust.
  - In the Caseworker's view, Mr A had suffered 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 did not respond to the Caseworker's Opinion and the complaint was passed to me to consider. I agree with the Caseworker's Opinion. Considerable efforts have been made to contact the Employer and the Employer has not been prepared to engage with TPO. There has been no attempt to either deny liability or to offer an alternative account of events.

## **Ombudsman's decision**

13. Mr A has complained that the Employer did not pay all the contributions due to the Trust on his behalf.
14. I find that the employee contributions were deducted but held back by the Employer and not paid into the Trust. It also failed to pay employer contributions which were due to the Trust. The Employer failed to rectify this and did not engage with either TPO or Mr A. It also failed to respond to the Caseworker's Opinion.
15. The Employer's joint failure to pay employee and employer contributions into the Trust amounts to unjust enrichment and has caused Mr A to suffer a considerable financial loss. The Employer shall take remedial action to put this right.

16. Mr A is also entitled to an award in respect of the distress and serious ongoing non-financial injustice which he has suffered. This was exacerbated by the Employer's failure to respond during TPO's investigation into Mr A's complaint and I consider that the amount suggested by the Caseworker, in their Opinion, is justified.
17. I uphold Mr A's complaint.

## **Directions**

18. To put matters right, the Employer shall, within 28 days of the date of this Determination:
  - (i) pay Mr A £1,000 for the serious distress and inconvenience he has experienced;
  - (ii) pay £800.63 into Mr A's Trust account. This figure represents the amount that, according to the figures provided by Mr A, have been deducted from his pay, but not paid into the Trust 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 Trust administrator whether the late payment of contributions has meant that fewer units were purchased in Mr A's Trust account than he would have otherwise secured had the contributions been paid on time; and
  - (iv) pay any reasonable administration fee should the Trust administrator charge a fee for carrying out the above calculation.
19. Within 14 days of receiving confirmation from the Trust administrator of any shortfall in Mr A's units, pay the cost of purchasing any additional units required to make up the shortfall.

**Anthony Arter CBE**

Deputy Pensions Ombudsman

23 May 2024

**Appendix**

Date	Employee contributions	Employer contributions
1 -31 July 2021	£72.54	£54.40
1 – 31 August 2021	£72.54	£54.40
1 – 30 September 2021	£72.54	£54.40
1 – 31 October 2021	£72.54	£54.40
1 – 30 November 2021	£72.54	£54.40
1 – 31 December 2021	£72.54	£54.40
1 – 31 January 2022	£22.28	£16.71