

Ombudsman's Determination

Applicant	Mr N
Scheme	NEST (the Scheme)
Respondent	Data Acquisition & Testing Services Limited (the Employer)

Outcome

1. Mr N's complaint is upheld and, to put matters right, the Employer shall make good any shortfall in units. In addition, the Employer shall pay Mr N £500 for the significant distress and inconvenience it has caused him.

Complaint summary

2. Mr N had complained that the Employer, despite deducting contributions from his pay, failed to pay them into the Scheme on time.
3. He said that, although contributions have now been paid, he has been financially disadvantaged as a result of the delay.

Background information, including submissions from the parties

4. Between October 2019 and June 2021, the Employer failed to pay pension contributions into the Scheme.
5. In October 2021, Mr N brought his complaint to The Pensions Ombudsman (**TPO**).
6. Mr N provided copies of the payslips that he held for the duration of his employment, which detailed the pension contributions deducted from his pay and the corresponding employer contributions.
7. In August 2022, the Employer told TPO that Mr N's pension contributions had now been paid. It said correspondence regarding any financial loss would be sent out by the end of September 2022 and this would be paid as soon as possible, subject to employee agreement.
8. On 24 August 2022, Mr N emailed TPO and confirmed that the unpaid contributions had been paid.

9. On 22 November 2022, the Employer wrote to TPO and apologised for the delay in calculating the financial loss. It said that there had been a bereavement that had caused a delay.
10. On 13 March 2023, the Employer wrote to Mr N and made an offer to pay £1,633.02 to cover any financial loss. It said that this equated to interest calculated at 21% per annum.
11. Later in March 2023, Mr N accepted the Employer's offer.
12. On 16 May 2023, TPO asked the Employer whether it had taken the required steps to make the payment and resolve Mr N's complaint. This request was repeated on 1 June 2023 and 20 June 2023. None of these requests received a response.
13. In August 2023, TPO chased the Employer again. But the Employer failed to respond by the deadline.

Caseworker's Opinion

14. Mr N's complaint was considered by one of our Caseworkers who concluded that further action was required by the Employer as it had failed to account for any potential financial loss associated with the late payment of contributions. The Caseworker's findings are summarised below:-
 - The Caseworker said that, as the Employer had stopped responding to of TPO's communications, she had to base her Opinion on the information provided by Mr N.
 - The Caseworker said that she had no reason to doubt the information provided by Mr N. The Employer also agreed that contributions had been paid late. So, it was clear that contributions had been deducted from Mr N's salary, but had not been paid into the Scheme on time.
 - 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 N was not in the financial position he ought to be in.
 - The Caseworker was satisfied that employee and employer contributions had now been remitted to the Scheme. However, the Employer failed to make good any potential financial loss caused by the length of time the contributions were not invested.
 - In the Caseworker's view, Mr N had suffered significant distress and inconvenience due to the Employer's maladministration. The Caseworker was of the opinion that an award of £500 for non-financial injustice was appropriate in the circumstances.
15. The Employer did not respond to TPO in relation to the Caseworker's Opinion. However, Mr N said that the Employer had contacted him separately and agreed to make a payment of £1,433.02, which was said to cover the financial loss. The

Caseworker contacted the Employer to find out whether the offer meant that the Employer accepted the Opinion. The employer failed to respond, so the complaint was passed to me to consider. I agree with the Caseworker's Opinion.

Ombudsman's decision

16. Mr N has complained that he has been financially disadvantaged as a result of the delay in contributions being paid into the Scheme.
17. I find that employee contributions were deducted but held back by the Employer and paid into the Scheme late. Although the Employer has paid the pension contributions, it has failed to address the potential financial loss. The Employer shall take remedial action to put this right.
18. Mr N is entitled to a distress and inconvenience award in respect of the significant ongoing non-financial injustice which he has suffered. In my view, Mr N distress and inconvenience was exacerbated by the length of time this matter as taken to resolve and the Employer's failure to respond during my Office's investigation into Mr N's complaint.

Directions

19. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Mr N £500 for the significant distress and inconvenience he has experienced;
 - (ii) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Mr N's Scheme account than he 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.
20. Within 14 days of receiving confirmation from NEST of any shortfall in Mr N's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman
02 November 2023