

## Ombudsman's Determination

Applicant	Mr S
Scheme	NEST
Respondent	JLE Havant Limited ( <b>JLE</b> )

## Outcome

1. Mr S' complaint is upheld and to put matters right JLE shall take the steps set out in the 'Directions' section of this Determination, paragraphs 26-28 below.

## Complaint summary

2. Mr S has complained that, since he began employment with JLE, JLE has failed to pay the correct contribution amounts into NEST. Further, JLE has failed to pay any contributions into NEST for the period from April to September 2019. He also complained that in attempting to resolve the complaint, he has suffered serious distress and inconvenience.

## Background information, including submissions from the parties and timeline of events

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. Mr S was employed by JLE and enrolled into NEST in June 2018. Mr S left JLE's employment in September 2019.
5. As part of Mr S' automatic enrolment into NEST, monthly deductions were taken from his salary and paid to NEST. JLE also made employer contributions.
6. The last contribution into Mr S' NEST account should have been in October 2019.
7. On 11 August 2019, NEST wrote to Mr S to say that it was reporting JLE to The Pensions Regulator. This was because JLE had not paid contributions for the period between 1 April and 30 April 2019.
8. NEST subsequently sent Mr S similar letters for other contribution periods up until October 2019.

9. NEST has confirmed that it has not received any contributions into Mr S' NEST account since 1 April 2019. So, the employee contributions, deducted between April and October 2019, and the employer contributions in respect of the same period, remained outstanding.
10. In January 2020, JLE confirmed that a total of £591.34 in employee and employer contributions remained outstanding and a schedule had been arranged to make these missing payments.
11. NEST has confirmed that it does not have a repayment plan in place with JLE.

### **Mr S' position**

12. Between August and December 2019, his numerous attempts to resolve the matter directly with JLE led to false promises followed by various excuses.
13. He and his family have found the process frustrating as the actions of JLE have been unlawful.
14. He has provided all pay slips for the periods in question, which show monthly pension deductions.

### **Adjudicator's Opinion**

15. Mr S' complaint was considered by one of our Adjudicators who concluded that there had been maladministration on the part of JLE and further action was required, as it had not paid all the contributions that were due to Mr S' NEST account. The Adjudicator's findings are summarised below:-
  - The missing contributions were not in dispute. NEST had confirmed that no contributions had been paid into Mr S' account since April 2019. This amounted to maladministration.
  - JLE had also confirmed that there were missing contributions and said it did intend to pay these. However, at the date the Adjudicator's Opinion was issued, no progress had been made on this and NEST had confirmed that a repayment plan was not in place. So, it was evident that Mr S had suffered a financial loss due to the missing contributions.
  - In addition to the financial loss, the Adjudicator considered the non-financial injustice Mr S had suffered. He said that, during The Pensions Ombudsman's (TPO's) investigation, JLE had failed to respond on a number of occasions. When JLE finally issued a response, it provided little information that would aid the investigation.
  - Further, prior to TPO's involvement, Mr S made numerous attempts to resolve the issue, but JLE failed to act on promises made. JLE had been slow to put matters right, and this issue had been ongoing for a considerable amount of time. For

these reasons, it was the Adjudicator's view that this would have caused Mr S serious distress and inconvenience, which merited an award of £1,000.

16. JLE did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
17. JLE provided its further comments which do not change the outcome. In summary, it said:-
  - Its accountants had confirmed that, to the best of their knowledge, all payments to Mr S' NEST account were now up to date.
  - It disputed that it had failed to respond in a timely manner or failed to provide information.
  - It did not consider that it had caused Mr S serious distress and inconvenience. It did accept that he would likely have suffered some inconvenience.
  - If JLE made a payment of £1,000 to Mr S, it would cause a financial strain given the very difficult trading conditions JLE is currently facing. It is still suffering from a significant downturn in work over the last 18 months and increases in fuel and other costs.
  - It has put procedures in place to bring the NEST accounts for its employees up to date.
18. I note the additional points raised by JLE, but I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

19. Mr S' complaint concerns JLE's failure to pay contributions to his NEST account for the period from April to October 2019.
20. I note that, following the Adjudicator's Opinion on Mr S' complaint, JLE's accountants subsequently confirmed that all payments to Mr S' NEST account were up to date. However, the contribution schedule requested by the Adjudicator has yet to be provided to The Pensions Ombudsman. So, Mr S has not had the opportunity to validate the steps that have been taken to address the contribution shortfall.
21. JLE has disputed that it failed to respond to Mr S' complaint in a timely manner. It also said that it had not failed to provide information. JLE's position is not supported by the evidence.
22. During the period from April 2019 to October 2019, JLE deducted contributions from Mr S' pay. These contributions, together with the corresponding employer contributions, were not remitted to Mr S' NEST account in a timely manner. It was three years later before JLE made any attempt to remit these contributions, which is a completely unacceptable delay and amounts to maladministration. Furthermore, the contribution schedule has yet to be provided.

23. I acknowledge the difficult trading times that many businesses are experiencing as a result of, among other things, Covid-19, and the war in Ukraine. Nonetheless, Mr S was owed this money and it was unreasonable for him to have to wait three years before JLE made any attempt to pay it to his NEST account.
24. My awards for non-financial injustice are not linked to the magnitude of the financial loss the applicant has suffered. They reflect the time and effort that an applicant has had to spend in pursuing their complaint and also the distress they have suffered. I find that Mr S has suffered serious distress and inconvenience and a £1,000 payment is appropriate.
25. I uphold Mr S' complaint.

## Directions

26. Within 28 days of the date of this Determination, JLE shall:-
- Produce a schedule (the **Schedule**) showing the employee contributions deducted from Mr S' salary for each month of his employment. The Schedule shall also include the corresponding employer contributions.
  - Forward the Schedule to Mr S for him to agree.
  - Pay Mr S £1,000, for the serious distress and inconvenience JLE has caused him.
27. Within 28 days of JLE receiving confirmation that Mr S agrees with the information on the Schedule, JLE shall:-
- Compare the Schedule with the schedule provided by NEST of contributions remitted to it and pay any missing employer and employee contributions to NEST.
  - Establish with NEST whether the late payment of contributions has meant fewer units were purchased in Mr S' NEST account than would have been bought if the contributions had been paid on time.
  - Pay any reasonable administration fee should NEST charge a fee for carrying out the above calculation.
28. If a shortfall in unit(s) is identified, JLE shall, within 21 days of receiving a response from NEST, meet the cost of correcting the shortfall.

**Anthony Arter**

Pensions Ombudsman  
12 July 2022