

Ombudsman's Determination

Applicant	Mr Y
Scheme	NEST (the Scheme)
Respondent	PSDT Limited (PSDT)

Outcome

1. Mr Y's complaint is upheld and to put matters right PSDT shall ensure that all of the unpaid employer and employee contributions are paid into Mr Y's Scheme pension. PSDT shall also pay an amount equal to the notional fund value had the contributions been paid into the Scheme at the time when they should have been (if higher than the value of the contributions alone). PSDT shall also pay Mr Y £1,000 for the serious distress and inconvenience caused to him.

Complaint summary

2. Mr Y has complained that his former employer, PSDT, has failed to pay all the pension contributions due to be paid for him to the Scheme.

Background information, including submissions from the parties

3. Mr Y joined PSDT as a full-time employee in March 2019, having previously worked as a contractor for a predecessor company, Mark Priestley SDT Ltd.
4. Mr Y says he was not given a contract of employment, but it was agreed that contributions would be paid into the Scheme. Deductions were made from his salary each month, but, except for one payment in June 2019, none of these have been remitted to the Scheme. Furthermore, again except for one payment in June 2019, PSDT has not made any employer contribution to the Scheme for Mr Y.
5. Mr Y also says that, although deductions were made in March, April and May 2019, his membership in the Scheme did not start until June 2019.

6. Mr Y has shown, by copy of monthly payslips, that the following pension contributions were deducted from his salary: -

March 2019	£100.00
April 2019	£166.67
May 2019	£166.67
June 2019	£166.67
July 2019	£166.67
August 2019	£128.21

7. The Scheme wrote to Mr Y on 1 October 2019 to tell him that the contributions for April 2019, totalling £291.67 (£125.00 employer contribution plus £166.67 personal contribution) had not been paid and that it had reported PSDT to The Pensions Regulator (**TPR**).
8. Mr Y says he resigned from PSDT on 12 September 2019 but was persuaded to return. Mr Y finally left the employment of PSDT in October 2019, although he says he received no salary for September or October 2019.
9. Mr Y has calculated that member contributions of £105.13 for September 2019 and £100 for October 2019 would have been payable.
10. PSDT has not responded to enquiries from this office.

Adjudicator's Opinion

11. Mr Y's complaint was considered by one of our Adjudicators who concluded that further action was required by PSDT. The Adjudicator's findings are summarised below:-
- The Scheme confirmed that Mr Y was automatically enrolled to the Scheme at the end of May 2019 and that PSDT had said his start date was in April 2019.
 - The Scheme also confirmed that the only contribution paid for the period April 2019 to October 2019 was the £291.67 received in June 2019. Mr Y has provided evidence that contributions were deducted from his monthly salary, so there is no doubt that a problem has occurred, and that Mr Y has been disadvantaged as a result.
 - The Scheme said it had sent late payment emails to PSDT, but that no response has been received. It had also scheduled a telephone call to PSDT in an attempt to bring it up to date on their payment schedule.

- It was unclear what action TPR had taken, or was intending to take, but the Adjudicator's view was that Mr Y should be compensated for PSDT's failure in making the contributions and the inconvenience that he has experienced.
 - The contributions deducted from his salary, but not forwarded to the Scheme, totalled £728.22. In addition, it was reasonable to conclude that employer contributions for April 2019 to August 2019 should have been paid. These totalled £625.00 of which only £125.00 had been paid.
 - As Mr Y's membership of the Scheme only started in April 2019, the Adjudicator did not believe it could be said with certainty that an employer payment was due in March, even though a member contribution was deducted from Mr Y's salary for that month.
 - The Adjudicator noted Mr Y's calculation of potential contributions for September and October 2019. However, given Mr Y had resigned, was persuaded to return but had received no salary, the Adjudicator considered an award for those months could not safely be made.
 - The Adjudicator had calculated that if Mr Y had received an investment growth of 8% a year the total contributions would have increased in value to approximately £1,318.85.
 - PSDT had failed to engage with this Office and had not addressed any of the concerns raised by Mr Y. This has caused Mr Y significant distress and inconvenience.
 - The Adjudicator's view was that the complaint should be upheld and that PSDT should award him £500 for the significant inconvenience he has suffered.
12. Mr Y accepted the Adjudicator's Opinion. However, PSDT did not respond to the Adjudicator's Opinion and the complaint was passed to me to consider. Having done so, I agree with the Adjudicator's Opinion except with regard to the addition of the assumed 8% investment growth.

Ombudsman's decision

13. There is a regulatory requirement under the Personal Pension Schemes (Payments by Employers) Regulations 2000, for PSDT to pay the contributions into the Scheme on the due dates. Despite several requests for it to do so, PSDT has failed to provide a satisfactory reason as to why this was not done in Mr Y's case.
14. Whilst he was still employed by PSDT, and since he left, Mr Y has been trying to establish, without success, what has happened to his pension contributions.
15. PSDT has shown a complete disregard of its responsibilities and legal requirements. It has not engaged with either my Office or Mr Y. It has also failed to respond to the

Adjudicator's Opinion and has not remedied matters, as recommended by the Adjudicator. This amounts to maladministration.

16. PSDT's failure to acknowledge my Adjudicator's requests for a response to the complaints, and also its refusal to engage with Mr Y, would have caused Mr Y further distress and inconvenience. So, I have taken this into consideration in increasing my award for the serious distress and inconvenience Mr Y has suffered.
17. The Adjudicator recommended the addition of 8% assumed investment growth in calculating the loss incurred by Mr Y. I consider it more equitable for the Scheme to be asked to calculate any loss in investment growth based on the assumption the unpaid contributions were paid on the due dates and invested in the same fund(s) as the June 2019 contribution.
18. I will be submitting a report to TPR in respect of PSDT's failure to comply with the auto enrolment Regulations.
19. I uphold the complaint.

Directions

20. Within 21 days of the date of this Determination, PSDT shall:

- pay to the Scheme the £500.00 unpaid employer contributions and £728.22 unpaid employee contributions;
- request the Scheme to calculate any loss of investment from the due date of payment of each contribution to the date the contributions are paid into the Scheme, based on the assumption the contributions were invested in the same funds, and in the same proportions, as the June 2019 contribution;
- make good any loss of investment, by paying additional monies into the Scheme as a lump sum to be invested in Mr Y's account, within 21 days of receiving the calculations from the Scheme;
- Pay any reasonable administration fee should the Scheme charge one for the making the necessary calculations; and
- pay Mr Y £1,000 for the serious distress and inconvenience caused by its maladministration.

Anthony Arter

Pensions Ombudsman
17 July 2020