

Ombudsman's Determination

Applicant	Mr R
Scheme	NEST (the Scheme)
Respondent	D-LEC Services Lincoln Limited (D-LEC)

Outcome

1. Mr R's complaint is upheld and, to put matters right, D-LEC shall pay the missing contributions in respect of his pension and make good any shortfall in units. In addition, D-LEC shall pay Mr R £1,000 for the serious distress and inconvenience it caused him.

Complaint summary

2. Mr R has complained that his former employer, D-LEC, has failed to pay all the pension contributions into the Scheme.

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.
4. Mr R was employed by D-LEC.
5. On 4 July 2018, D-LEC enrolled Mr R into the Scheme. According to a breakdown of contributions provided by NEST, D-LEC paid a total of £297.92 into Mr R's Scheme account. This represented the employee and employer contributions that were due for May and June 2018.
6. On 13 October 2019, Mr R left D-LEC's employment. He asked it to remit any pension contributions that were owed to the Scheme.
7. Mr R said that:-
 - D-LEC deducted contributions from his pay up to the time that he left its employment.

- After the initial payment in July 2018, D-LEC had failed to remit any further employee or employer contributions to his Scheme account.
 - D-LEC sent him electronic copies of his payslips to his work email address. As he no longer has access to this email account, he is unable to confirm the amount of the outstanding contributions. He is also unable to provide a copy of his contract of employment.
8. D-LEC has not responded to enquiries from The Pensions Ombudsman's Office (**TPO's Office**). They consisted of seven separate communications over an extended period.

Adjudicator's Opinion

9. Mr R's complaint was considered by one of our Adjudicators who concluded that further action was required by D-LEC as it had failed to remit the contributions that were due to the Scheme. The Adjudicator's findings are summarised below:-
- The Adjudicator stated that TPO's Office's normal approach, in cases such as these, was to seek agreement from all parties as to the facts of the case, including the dates and amounts of contributions involved. He said that, as D-LEC had not responded to any of TPO's Office's communications, he had to base his Opinion solely on the information provided by Mr R.
 - The Adjudicator said that he had no reason to doubt the information provided by Mr R. So, in the Adjudicator's opinion, on the balance of probabilities, contributions had been deducted from Mr R's salary, that had not been paid into the Scheme for the period from July 2018 to October 2019. In addition, D-LEC had not paid any of the employer contributions that were due over the same period. As a result of its maladministration, Mr R was not in the financial position he ought to be in.
 - In the Adjudicator's view, Mr R had suffered serious distress and inconvenience due to D-LEC's maladministration. An award of £1,000 for non-financial injustice was appropriate in the circumstances.
10. D-LEC did not respond to the Adjudicator's Opinion and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion.

Ombudsman's decision

11. Mr R has complained that D-LEC has not paid all the contributions due to his Scheme account.
12. The available evidence supports the view that employee contributions, in respect of the period from July 2018 to October 2019, were deducted but held back by D-LEC

and not paid into the Scheme. D-LEC failed to rectify this and did not engage with either my Office or Mr R. It also failed to respond to the Adjudicator's Opinion.

13. D-LEC's failure, to pay the employee and employer contributions across to the Scheme amounts to unjust enrichment and has caused Mr R to suffer a financial loss. D-LEC shall take remedial action to put this right.
14. Mr R is entitled to a distress and inconvenience award in respect of the serious on-going non-financial injustice D-LEC has caused him to suffer. This was made worse by its failure to respond during my Office's investigation into Mr R's complaint.
15. I uphold Mr R's complaint.

Directions

16. To put matters right, D-LEC shall, within 28 days of the date of this Determination:
 - pay Mr R £1,000 for the serious distress and inconvenience he has experienced;
 - produce a schedule (the **Schedule**) showing the employee contributions deducted from Mr R's pay in respect of the period of his employment. The Schedule shall also include the corresponding employer contributions that were due to the Scheme; and
 - forward the Schedule to Mr R.
17. D-LEC shall, within 28 days of receiving a request from Mr R, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.
18. Within 28 days of receiving confirmation from Mr R that he agrees with the information in the Schedule, D-LEC shall:
 - pay the missing contributions to the Scheme;
 - establish with NEST whether the late payment of contributions has meant that fewer units were purchased in Mr R's Scheme account than he would otherwise have secured, had the contributions been paid on time; and
 - pay any reasonable administration fee should NEST charge a fee for carrying out the above calculation.
19. Within 21 days of receiving confirmation from NEST of any shortfall in Mr R's units, pay the cost of purchasing any additional units required to make up that shortfall.

Anthony Arter

Pensions Ombudsman
14 December 2021