

## Ombudsman's Determination

Applicant	Mr E
Scheme	NEST ( <b>the Scheme</b> )
Respondent	Berics Ltd ( <b>Berics</b> )

## Outcome

1. Mr E's complaint is upheld and, to put matters right, Berics shall ensure that:-
  - All of the unpaid employee and employer contributions are paid into the Scheme.
  - An additional payment is made into the Scheme, being the investment return that the contributions would have received had they been invested on time.
  - A payment of £1,000 is made direct to Mr E for the serious distress and inconvenience caused to him.

## Complaint summary

2. Mr E has complained that his former employer, Berics, has failed to pay all the pension contributions due into the Scheme.

## Background information, including submissions from the parties

3. Mr E was employed by Berics.
4. Deductions were made from Mr E's salary each week. Prior to 20 April 2019, these deductions, together with the corresponding employer contributions, were paid into the Scheme. For the period from 20 April 2019 to 27 December 2019, the deductions from Mr E's salary were not paid into the Scheme. In addition, no employer contributions were remitted to the Scheme during this period.
5. On 3 December 2019, Berics emailed Mr E. It said that it would make a one-off lump sum payment to the Scheme that evening in respect of his missing contributions.
6. In January 2020, Mr E emailed Berics on at least five occasions asking it to submit the missing contributions to the Scheme as it had not made the payment promised. No response was received. Mr E also sent a number of WhatsApp messages to his contacts at Berics.

7. Berics has not responded to enquiries from The Pensions Ombudsman's Office (TPO's Office).

### **Adjudicator's Opinion**

8. Mr E's complaint was considered by one of our Adjudicators who concluded that the contributions due had not been fully remitted. An error had occurred and Berics were responsible. The Adjudicator's findings are summarised below:-
  - The Adjudicator noted that Mr E had been unable to provide copies of all of his payslips for the period in question. Based on the information that was available, the Adjudicator produced a history of the contributions due, but not remitted, to the Scheme. This can be found in the Appendix. In summary, £387.82 employee contributions and £291.03 employer contributions had not been remitted.
  - The Adjudicator said that TPO's Office's normal approach for cases like this would be to seek agreement from all parties as to the dates and amounts of contributions involved. He said that, as Berics had not responded to any of TPO's Office's communications, the schedule in the Appendix had been produced based solely on the evidence provided by Mr E.
  - The Adjudicator said that he had no reason to doubt the information provided by Mr E and he confirmed that it was consistent with the copy payslips that Mr E was able to provide. It was the Adjudicator's opinion that contributions had been deducted from Mr E's salary, but they had not been paid into the Scheme. As a result of maladministration from Berics, Mr E was not in the position he ought to have been in.
  - In the Adjudicator's view, Mr E had also suffered serious distress and inconvenience as a result of this maladministration, and an award of £1,000 was appropriate.
9. Berics 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**

10. Mr E has complained that pension contributions have not been paid into the Scheme for the period April to December 2019.
11. Berics has shown a complete disregard of its responsibilities and legal requirements. It has not engaged with either my Office or Mr E since December 2019. 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.
12. The available evidence supports the view that employee contributions were being deducted but held back by Berics and not paid into the Scheme. Berics failure to pay

neither employee nor employer contributions across to the Scheme for the period from 20 April 2019 to 27 December 2019 has caused Mr E to suffer a financial loss, which it must remedy.

13. Mr E is also entitled to a distress and inconvenience award in respect of the serious on-going non-financial injustice Berics has caused him to suffer. This was made worse by its failure to respond to our investigations into Mr E's complaint.
14. I uphold Mr E's complaint and my office will submit a report to the Pensions Regulator.

## **Directions**

15. Within 21 days of the date of this Determination, Berics shall:-
  - Pay £678.85 into Mr E's Scheme account in respect of the missing contributions for the period 20 April 2019 to 27 December 2019.
  - Pay £1,000 direct to Mr E for the serious distress and inconvenience he has experienced.
  - Request that NEST calculate any loss of investment gains from the due date of each contribution to the date of calculation, on the assumption the contributions were invested in Mr E's chosen investment fund(s).
  - Pay any reasonable administration fee should NEST charge a fee for carrying out the above calculation.
16. Within 7 days of receiving confirmation from NEST of any loss of investment gains, pay an additional sum into Mr E's Scheme account, being the investment gains notified by NEST.

**Anthony Arter**

Pensions Ombudsman  
28 May 2021

**Appendix****Summary of missing contributions**

<b>Payment date</b>	<b>Employee contribution (£)</b>	<b>Employer contribution (£)</b>
26 April 2019	10.34	7.75
3 May 2019	10.96	8.22
10 May 2019	10.78	8.09
17 May 2019	10.78	8.09
24 May 2019	10.78	8.09
31 May 2019	10.78	8.09
7 June 2019	10.78	8.09
14 June 2019	10.78	8.09
21 June 2019	10.78	8.09
28 June 2019	10.78	8.09
5 July 2019	10.78	8.09
12 July 2019	10.78	8.09
19 July 2019	10.78	8.09
26 July 2019	10.78	8.09
2 August 2019	10.78	8.09
9 August 2019	10.78	8.09
16 August 2019	10.78	8.09
23 August 2019	10.78	8.09
30 August 2019	10.78	8.09
6 September 2019	10.78	8.09
13 September 2019	10.78	8.09
20 September 2019	10.78	8.09
27 September 2019	10.78	8.09
4 October 2019	10.78	8.09

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11 October 2019	10.78	8.09
18 October 2019	10.78	8.09
25 October 2019	10.78	8.09
1 November 2019	10.78	8.09
8 November 2019	10.78	8.09
15 November 2019	10.78	8.09
22 November 2019	10.78	8.09
29 November 2019	10.78	8.09
6 December 2019	10.78	8.09
13 December 2019	10.78	8.09
20 December 2019	10.78	8.09
27 December 2019	10.78	8.09
<b>Total</b>	<b>387.82</b>	<b>291.03</b>