

Ombudsman's Determination

Applicant	Mr D
Scheme	NEST (the Scheme)
Respondent	(1) LJS Payroll Limited - IN LIQUIDATION (2) Northern Freight Company Limited - IN LIQUIDATION (3) LJS Transport of Settle Limited (4) Lee James Staveley, trading as LJS Transport

Outcome

1. Mr D's complaint is upheld and, to put matters right, the First, Second, Third and Fourth Respondents (**the Respondents**) shall pay the missing contributions in respect of his pension and make good any shortfall in units.
2. In addition, the Respondents shall pay Mr D £2,000 for the exceptional distress and inconvenience it has caused him.
3. At all material times, Mr D was employed by one of the Respondents listed above ((1)-(4)). The Fourth Respondent has at various times been Mr D's employer, administrator and/or the director of Mr D's employer and so this complaint is also upheld against him personally. For the avoidance of doubt, the First, Second, Third and Fourth Respondents are jointly and severally liable to pay Mr D in accordance with the Directions below.

Complaint Summary

4. Mr D has complained that the Respondents, despite deducting contributions from his pay, have failed to pay them into the Scheme.
5. Mr D has said that the missing contributions amounted to £1,939.10.

Background information, including submissions from the parties

6. In June 2014, Mr D began his employment with the Fourth Respondent.
7. The Pensions Ombudsman (**TPO**) is only considering unpaid contributions from November 2017 onwards, due to a jurisdiction decision in this regard.

8. Between April 2018 and January 2020, Mr D's employer failed to pay pension contributions into the Scheme despite deducting these from Mr D's pay.
9. On 6 December 2020, Mr D brought his complaint to The Pensions Ombudsman (TPO).
10. Mr D provided copies of the payslips that he held for the period from April 2018 to January 2020 which detailed the pension contributions deducted from his pay and the corresponding employer contributions. A breakdown of the deductions has been included in the Appendix. Mr d states that these contributions have not been paid into the Scheme (and there is documentary evidence supporting a failure to make accurate and timely payments into the Scheme).
11. On 28 October 2022, TPO asked the Fourth Respondent for a response to Mr D's complaint.
12. On 2 November 2022, TPO noted a voicemail from the Fourth Respondent requesting a call back as they felt that Mr D was confused as to who he was employed by. A call back was attempted with no answer.
13. On 11 November 2022, TPO chased the Fourth Respondent for a response and requested that they either provide an appropriate time for a call or provide their response via email. This request was repeated on 6 December 2022 and 14 December 2022. None of these requests received a response and the Fourth Respondent failed to respond by the deadline.
14. On 24 January 2024, TPO wrote to the Third Respondent, notifying them that they will be listed as a Respondent in the Determination, and giving the Third Respondent a further opportunity to provide any comments. TPO did not receive a response from the Third Respondent.
15. On 24 January 2024, TPO wrote to the liquidators of the First and Second Respondents notifying them that they will be listed as Respondents in the Determination.
16. None of the Respondents have actively engaged with TPO at all during the investigation.

Caseworker's Opinion

17. Mr D's complaint was considered by one of our Caseworkers who concluded that further action was required by the Respondents as they had failed to pay the contributions that were due to the Scheme. The Caseworker's findings are summarised below:-
 - The Caseworker stated that TPO's normal approach, in cases such as these, was to seek agreement from all parties on the facts of the complaint, including the dates and amounts of contributions involved. She said that, as the Respondents

had not responded to any of TPO's communications, she had to base her Opinion solely on the information provided by Mr D.

- The Caseworker said that she had no reason to doubt the information provided by Mr D. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr D's salary but had not been paid into the Scheme. In addition, the Respondents had not paid any of the employer contributions that were due over the same period. As a result of its maladministration, Mr D was not in the financial position he ought to be in and the Respondents should pay the missing contributions to the Scheme.
- In the Caseworker's view, Mr D had suffered severe distress and inconvenience due to the Respondents maladministration. The Caseworker was of the opinion that an award of £1,000 for non-financial injustice was appropriate in the circumstances.

18. The Respondents did not respond to the Caseworker's Opinion and the complaint was passed to me to consider. I agree with the Caseworker's Opinion, except in relation to the level of award for the Respondents' maladministration. Considerable efforts have been made to contact the Respondents and the Respondents have not been prepared to engage with TPO. There has been no attempt to either deny liability or to offer an alternative account of events. I have also noted the conduct of the Respondents to date, and that the Fourth Respondent was disqualified under the Company Directors Disqualification Act 1986, whilst acting for the First Respondent.
19. I have had sight of the short judgment of the Employment Tribunal dated 1 February 2021, relating to a claim for unauthorised deduction of wages. This does not refer to unpaid pension contributions, but solely to unpaid wages and holiday pay, therefore, does not appear to overlap with these findings.

Ombudsman's decision

20. Mr D has complained that the Respondents have not paid all the contributions due to the Scheme on his behalf.
21. I find that employee contributions were deducted but held back by the Respondents and not paid into the Scheme. It also failed to pay over employer contributions which were due to the Scheme. The Respondents failed to rectify this and did not engage with either TPO or Mr D. It has also failed to respond to the Caseworker's Opinion.
22. The Respondents' joint failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr D to suffer a considerable financial loss. The Respondents shall take remedial action to put this right.
23. In some circumstances individuals can be held to be personally liable (for example, under statute or where they act in a way which creates a personal obligation). Although there are various companies named and established, the thread running

through them and person behind all of them, even if assuming a different role, is Mr Staveley - whether acting as employer, administrator, or director. It was plainly maladministration for Mr Staveley to make the decision not to pay over Scheme contributions on behalf of Mr D. It would appear, on the balance of probability, that he will more likely than not know where these contributions are. For those reasons, I also find him to be personally liable to Mr D for the missing contributions. It follows that this remedy is awarded on a joint and several liability basis against the First, Second, Third and Fourth Respondent. It is noted that the First and Second Respondents are in liquidation.

24. Mr D is also entitled to an award in respect of the distress and the severe ongoing non-financial injustice which he has suffered. In my view, Mr D's distress and inconvenience has been exacerbated by the Respondents' failure to respond during TPO's investigation into D's complaint and I consider that an increase to that suggested by the Caseworker, in their Opinion, is justified.

Directions

25. To put matters right, the Respondents shall, within 28 days of the date of this Determination:
- (i) pay Mr D £2,000 for the severe distress and inconvenience he has experienced;
 - (ii) pay the missing contributions to the Scheme, totalling £1,939.10, as set out in the Appendix below;
 - (iii) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Mr D's Scheme account than he would have otherwise secured, had the contributions been paid on time; and
 - (iv) pay within 14 days of receiving confirmation from NEST of any shortfall in Mr D's units, the cost of purchasing any additional units required to make up the shortfall and any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.
 - (v) in the event that (iii) and (iv) are not complied with, and the Scheme is able to confirm fewer units were purchased in Mr D's Scheme account than he would have otherwise secured, had the contributions been paid on time, then the respondents shall pay in accordance with (iv) above upon confirmation of the shortfall amount together with any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.

Anthony Arter CBE

Deputy Pensions Ombudsman

13 May 2024

Appendix

Date	Employee contributions	Employer contributions
April 2018	£44.87	£37.39
May 2018	£59.61	£49.67
June 2018	£40.49	£33.74
July 2018	£45.09	£37.57
August 2018	£70.82	£59.02
September 2018	£48.27	£40.23
October 2018	£0.00	£0.00
November 2018	£0.00	£0.00
December 2018	£0.00	£0.00
January 2019	£58.22	£48.52
February 2019	£0.00	£0.00
March 2019	£0.00	£0.00
April 2019	£0.00	£0.00
May 2019	£90.40	£67.80
June 2019	£78.52	£58.89
July 2019	87.32	£65.49
August 2019	£85.78	£64.34
September 2019	£84.46	£63.35
October 2019	£106.68	£80.01
November 2019	£78.74	£59.06
December 2019	£78.19	£58.64
January 2020	£33.10	£24.82