

## Ombudsman's Determination

Applicant	Mr N
Scheme	NEST ( <b>the Scheme</b> )
Respondent	L&M Survey Services Limited ( <b>the Employer</b> )

## Outcome

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

## Complaint summary

2. Mr N has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme.
3. Mr N has said that the missing contributions amounted to £620.29.

## Background information, including submissions from the parties

4. On 18 April 2017, Mr N began his employment with the Employer.
5. Between April 2020 and October 2021, contributions were deducted from his pay, but were not remitted to the Scheme. A breakdown of the contributions has been included in the Appendix.
6. On 22 June 2020, Mr N contacted the Employer and requested that all unpaid contributions were paid into the Scheme. The Employer responded on the same day and said that the only reason for the delay was because the member of staff responsible for contributions was not "around". It promised to respond later in the week.
7. On 17 August 2020, Mr N contacted his Employer to chase the progress. The Employer said that payments would be brought up to date by the end of the month.
8. On 24 November 2020, the May 2020 contributions were paid into the Scheme.

9. On 19 October 2021, Mr N lodged a complaint with The Pensions Ombudsman (TPO).
10. On 11 November 2021, some of the outstanding contributions were paid.
11. However, some of the contributions remained outstanding. The Employer has not paid contributions due for April 2020, July 2020, September 2020, December 2020 or October 2021.
12. Mr N provided copies of the payslips the period that referenced the outstanding contributions deducted from his pay and the corresponding employer contributions.
13. On 21 June 2022, TPO asked the Employer for its response to Mr N's complaint. This request was repeated on 5 July 2022. But the Employer failed to respond.

### **Caseworker's Opinion**

14. Mr N's complaint was considered by one of our Caseworkers who concluded that further action was required by the Employer as it had failed to remit 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 Employer had not responded to any of TPO's communications, she had to base her Opinion solely on the information provided by Mr N.
  - The Caseworker said that she had no reason to doubt the information provided by Mr N. So, in the Caseworker's opinion, on the balance of probabilities, contributions had been deducted from Mr N's salary, that had not been paid into the Scheme. In addition, the Employer had not paid any of the employer contributions that were due over the same period. As a result of its maladministration, Mr N was not in the financial position he ought to be in.
  - In the Caseworker's view, Mr N had suffered significant distress and inconvenience due to the Employer's maladministration. The Caseworker was of the view that an award of £500 for non-financial injustice was appropriate in the circumstances.
15. The Employer 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 the level of award for maladministration.

### **Ombudsman's decision**

16. Mr N has complained that the Employer has not paid all the contributions due to his Scheme account.

17. The available evidence indicates that employee contributions were deducted but held back by the Employer and not paid into the Scheme. The Employer failed to rectify this and did not engage with either my Office or Mr N. It has also failed to respond to the Caseworker's Opinion.
18. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr N to suffer a financial loss. The Employer shall take remedial action to put this right.
19. Mr N is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which he has suffered. This was exacerbated by its failure to respond during my Office's investigation into Mr N's complaint.

### **Directions**

20. To put matters right, the Employer shall, within 28 days of the date of this Determination:
  - (i) pay Mr N £1,000 for the serious distress and inconvenience he has experienced;
  - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr N'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
  - (iii) forward the Schedule to Mr N.
21. The Employer shall, within 14 days of receiving a request by Mr N, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.
22. Within 14 days of receiving confirmation from Mr N that he agrees with the information on the Schedule, the Employer shall:
  - (i) pay the missing contributions into the Scheme;
  - (ii) establish with the Scheme administrator, NEST, whether the late payment of contributions has meant that fewer units were purchased in Mr N's Scheme account than he would have otherwise secured, had the contributions been paid on time; and
  - (iii) pay any reasonable administration fee should NEST charge a fee for carrying out the above calculation.

**Anthony Arter**

CAS-79518-N7R7

Pensions Ombudsman

30 September 2022



Pay for	Employee contributions	Employer contributions	Payment due date	Paid to the Scheme
1 April 2020 to 30 April 2020	£91.32	£68.49	14 May 2020	Not paid
1 May 2020 to 31 May 2020	£91.32	£68.49	14 June 2020	24 November 2020
1 June 2020 to 30 June 2020	£105.62	£79.22	14 July 2020	11 November 2021
1 July 2020 to 31 July 2020	£124.37	£93.28	14 August 2020	Not paid
1 August 2020 to 31 August 2020	£107.87	£80.90	14 September 2020	11 November 2021
1 September 2020 to 31 September 2020	£118.42	£88.82	14 October 2020	Not paid
1 October 2020 to 31 October 2020	£121.17	£90.88	14 November 2020	11 November 2021
1 November 2020 to 30 November 2020	£127.17	£95.38	14 December 2020	11 November 2021
1 December 2020 to 31 December 2020	£106.37	£79.78	14 January 2021	Not paid
1 January 2021 to 31 January 2021	£102.37	£76.78	14 February 2021	11 November 2021
1 February 2021 to 28 February 2021	£123.72	£92.79	14 March 2021	11 November 2021
1 March 2021 to 31 March 2021	£142.67	£107.00	14 April 2021	11 November 2021

1 April 2021 to 30 April 2021	£146.76	£110.07	14 May 2021	11 November 2021
1 May 2021 to 31 May 2021	£126.45	£94.84	14 June 2021	11 November 2021
1 June 2021 to 30 June 2021	£123.70	£92.78	14 July 2021	11 November 2021
1 July 2021 to 31 July 2021	£115.20	£86.40	14 August 2021	11 November 2021
1 August 2021 to 31 August 2021	£105.20	£78.90	14 September 2021	11 November 2021
1 September 2021 to 31 September 2021	£117.50	£88.13	14 October 2021	11 November 2021
1 October 2021 to 31 October 2021	£146.76	£110.07	14 November 2021	Not paid
	<b>£2,243.96</b>	<b>£1,683.00</b>	Total payable	
	£1,656.72	£1,242.56	Less amount paid	
	<b>£587.24</b>	<b>£440.44</b>	Total	
	£232.79	£174.60	Less amounts not matching payslips	
	<b><u>£354.45</u></b>		Total employee contributions due	
		<b><u>£265.84</u></b>	Total employer contributions due	