

## Ombudsman's Determination

Applicant	Mr D
Scheme	National Employment Savings Trust ( <b>the Scheme</b> )
Respondent	NEST Corporation ( <b>NEST</b> )

## Outcome

1. Mr D's complaint against NEST is partly upheld, but there is a part of the complaint I do not agree with. To put matters right for the part that is upheld, NEST shall pay Mr D £500 for the significant distress and inconvenience caused.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr D's complaint against NEST is that: it failed to carry out his instruction to transfer his benefits to Friends Life; switched investment funds without his authority; provided incomplete and unclear information; and caused a delay when it finally transferred his benefits.

## Background information, including submissions from the parties

4. Originally, Mr D was enrolled into the Scheme by his then employer.
5. In March 2016, Mr D spoke with a NEST representative on the phone about transferring out to Friends Life. He says he was told there was nothing more he needed to do and that the transfer would be completed by May 2016.
6. NEST says it only made a note of his intention to initiate a transfer but did also talk him through the transfer process by reference to his online account. At the same time, in order to facilitate a transfer out, it switched Mr D's investments from (1) the NEST 2023 Retirement Fund to (2) the NEST 2016 Retirement Fund, which included lower-risk investments designed to protect members' benefits before retirement.
7. On 21 March 2016, NEST wrote to Mr D, saying his investments had been switched from fund (1) to (2). It also said, information regarding his current investments could be found online.

8. In March 2017, Mr D discovered that the transfer had not been carried out, so he contacted NEST to query this. Later, he complained about its failure to carry out the transfer, and the fact that it switched his investments, which had caused him to suffer a loss of investment growth. As a result, around the same time, he re-requested a transfer to Friends Life.
9. In May 2017, NEST responded to Mr D's query. The key points were: -
  - There was an internal issue at NEST, which meant his 2017 request to transfer his benefits had been delayed. But this had been resolved and a transfer out pack had been sent to his online mailbox.
  - Mr D thought his benefits were invested in the "NEST Higher Risk Fund". But they were invested in the "NEST Retirement Date Fund", a default fund invested based on the intended year of retirement. It was sorry the fund had not met his expectations, but investment growth was not guaranteed.
  - Mr D's transfer out request in 2017 was not processed due to system issues.
  - His transfer out request in 2016 was not processed due to a misunderstanding, i.e. at the time, a NEST operator told him how to use his online account to process a transfer. But no request was received from him, so no transfer out was processed.
10. On 21 July 2017, NEST wrote to Mr D and confirmed his transfer to Friends Life had been completed. He raised a formal complaint about the delays.
11. On 22 September 2017, NEST responded under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**). In summary: -
  - In March 2016, Mr D contacted NEST about logging into his online account and asked about taking benefits as he was over age 55. But he did not specifically request a transfer out. So, the operator went through the options but did not specifically cover transferring out.
  - NEST sent Mr D a message entitled "Taking your money out of NEST", which said he could select the "Take your money out" option via his online account. It also said if he made no decision before 6 May 2016, his retirement date would be re-set to 4 March 2023.
  - NEST did not hear from Mr D again until March 2017. Nor was there any sign that he submitted his retirement decision during that time.
  - As no retirement decision or transfer request was submitted by Mr D in 2016, it was not responsible for failing to carry out a transfer. Nor was it responsible for loss of potential investment growth resulting from the investment switch.
  - The performance of NEST's 2016 Retirement Date fund, which Mr D was invested in from April 2016 to March 2017, was in line with published figures.

- NEST had caused a delay transferring out Mr D's benefits in 2017. He first requested transfer out forms on 3 April 2017 but, due to a technical issue, his enrolment with his employer still showed as active. So, it was unable to send him transfer out forms, or process a transfer out, until he stopped making contributions.
- There was no unit price difference between 19 May 2017, when a transfer out could have been processed, and 21 July 2017, when it was actually processed, therefore, no financial loss was caused by this delay.
- It apologised that the transfer took longer than expected and offered him £100 for the distress and inconvenience this had caused.

12. Mr D appealed.

13. On 7 March 2018, NEST responded under stage two IDR. The main points were: -

- In the 17 March 2016 phone call, a NEST representative talked Mr D through changing his retirement date online, so he could transfer out. But the representative also stated that bringing the retirement date forward would generate retirement forms to be sent to him.
- This was incorrect; Mr D would always have had to complete the initiation process via his online account to receive the forms. However, the representative also told Mr D, he would have to complete and return the forms and submit evidence of his identity. There was no sign he did this, so no forms were sent, and no transfer was processed in 2016.
- But while Mr D's own calculations showed a loss of about £1,300, this assumed investment in the 2023 Retirement Date Fund, which he was not invested in.
- NEST made two errors. First, it incorrectly advised Mr D that bringing his retirement date forward would generate retirement forms. Second, it did not make clear that this would cause his investments to switch to lower-risk ones. If Mr D had been aware of this, it is more likely he would have followed up his transfer request. Therefore, an award of £300 was warranted.
- But whilst the forms were not sent to Mr D when NEST said they would be, equally, he did not follow this up when no forms were received.
- Mr D was prevented from initiating his transfer out request in 2017 because NEST was unable to show him in its system as having stopped contributions. This was caused by a NEST system error but was fixed as quickly as possible in March 2018, and Mr D had not incurred a loss of investment growth due to this delay.
- In summary, it was upholding Mr D's complaint in part because it could have made clearer the consequences of changing his retirement date.

14. Dissatisfied with NEST's responses, Mr D referred his complaint to this Office.

## **Adjudicator's Opinion**

15. Mr N's complaint was considered by one of our Adjudicators who concluded that further action was required by NEST. The Adjudicator's findings are summarised below: -

- Part of Mr D's complaint concerned what had occurred, when he enquired about transferring, his retirement date was brought forward to 6 May 2016 and his investments were switched from "NEST 2023 Retirement Date Fund" to "NEST 2016 Retirement Date Fund". NEST said this would automatically trigger the relevant forms to be issued to Mr N.
- This was incorrect. He was always required to initiate the transfer out process himself, and request forms via his online account.
- NEST could have been clearer, on the phone, about the fact Mr D's investments had been switched into a lower-risk fund. But NEST did then write to him, on 21 March 2016, and explained that his benefits had been switched to the NEST 2016 Retirement Date Fund.
- NEST's process, where members want to start taking benefits or transfer out, was to bring their retirement date forward and switch to lower-risk funds. This was reasonable in order to protect the value of members' benefits. It was not an administrative error.
- The important question was, the impression Mr D was left with after he spoke with NEST in March 2016. He says he was told everything would be arranged, and there was nothing more he needed to do. But having listened to the call, the Adjudicator did not consider that NEST had misled him. Whilst it did incorrectly say, transfer out forms would be issued to him, it also made clear he would have to complete, sign and return the forms. It also made clear that he would have to provide evidence of his identity.
- As Mr D did not actually initiate the transfer out process and did not chase the forms he was (incorrectly) told would be issued, NEST did not make an administrative error when it did not process a transfer out.
- Another part of Mr D's complaint was that, after he initiated the transfer out process in 2017, NEST delayed the transfer of his benefits. NEST acknowledged that, due to a system problem, his enrolment with his employer was still active, so it was unable to issue transfer out forms, until he stopped making contributions.
- But NEST had carried out a calculation which concluded Mr D did not lose out as a result of this delay because there was no difference between the unit price on 19 May 2017, when a transfer out could have been carried out, and 21 July 2017, when it actually was completed.
- In summary, whilst NEST mis-informed Mr D that transfer out forms would be issued, it also said he would need to complete forms before a transfer out could be processed. When no forms were received, it would have been reasonable for Mr D to query this.

Had he done so, NEST would have told him that no transfer out could be processed without the necessary documents. NEST also correctly informed Mr D his investments had been switched so, it was not responsible for any loss of investment growth relative to the fund that Mr D was previously invested in.

- NEST offered Mr D a total of £400 for the incorrect information in 2016 and the delay in 2017. However, the Adjudicator did not consider that was sufficient. He said that the Ombudsman's guidelines specified an award of £500 where there had been an administrative error which caused significant distress and inconvenience. He was satisfied the two instances in 2016 and 2017 constituted an administrative error; and, that Mr D had experienced significant distress and inconvenience.
- Therefore, as NEST had already offered Mr D £400, he said it should increase its offer by £100 to £500 in total.

16. Mr D accepted the Adjudicator's Opinion but made the following comments:

"However I believe that the point has been missed in that the money should have not been transferred because NEST did not have the authority until all the signed paperwork to transfer the whole sum to the new pension scheme. NEST did not receive the transfer papers, therefor [sic] they had no authority to transfer money until 2017, when there were again problems in what should have been a simple process. The system set up by NEST operates in their interest and not that of the fund holder."

17. NEST did not accept the Opinion and made the following comments:

"A sum of £400 was given to Mr [D] to compensate for the delay caused by the Scheme in his transfer request and to reimburse him part of the loss he incurred due to a NEST call centre Operator guiding him through bringing his retirement date forward, without making it clear that this would move his pot into a lower yielding fund. However Mr [D] was advised that he would be required to complete forms and send NEST his evidence of identity in order to complete a retirement claim, which were not received, which is why the Trustee does not feel wholly responsible for the losses and the distress and inconvenience experienced by the Complainant."

## **Ombudsman's decision**

18. I have considered Mr D's further comment. I agree the problems identified should not have occurred and my award recognises the effect this has had on Mr D. But I do not agree that NEST had no authority to change the investments underlying his benefits. NEST's process, in common with that of many other pension providers, is to disinvest in anticipation of a member's either taking benefits from a scheme or transferring to another scheme. This is to protect the value of the benefits, to prevent a significant fall in their value between the time benefits or a transfer is requested, and when they come into payment or are transferred out.

**PO-22225**

19. I have also considered NEST's further comments. I agree it is not responsible for any financial loss resulting from Mr D's being invested in a lower-risk risk fund for several months, because it informed him by letter that the investment switch had taken place. My award does not therefore reflect financial loss. However, I find that the incorrect information in 2016 and the delay in 2017 constitute administrative errors and that Mr D has suffered significant distress and inconvenience as a result.
20. An award of £500 is appropriate in the circumstances and in line with my published guidance on "non-financial injustice".
21. Therefore, I uphold Mr D's complaint in part.

**Directions**

22. Within 28 days of the date of this Determination, NEST shall pay Mr N £500 for the significant distress and inconvenience he has suffered. (It can deduct from this sum, any monies that have been paid to Mr D from the £400 previously offered to him).

**Anthony Arter**

Pensions Ombudsman  
18 December 2018