

## Ombudsman's Determination

Applicant	Mrs E
Scheme	National Employment Savings Trust ( <b>NEST</b> )
Respondent	Nantcwmrhys Ltd (trading as 3 A's Leisure) ( <b>the Employer</b> )

## Outcome

1. Mrs E's complaint is upheld and, to put matters right, the Employer shall pay any missing contributions, in respect of her period employment with it, into her NEST account; redress her for investment loss resulting from late payment of contributions; and, pay her £1,000 to recognise the serious distress and inconvenience caused.

## Complaint summary

2. Mrs E's complaint against the Employer is about its repeated failure, since April 2018, to correctly pay pension contributions on her behalf to her auto-enrolment with NEST.

## Background information, including submissions from the parties

3. Initially, Mrs E started working for the Employer. After that, she was auto-enrolled in a pension account with another firm. She says the Employer mis-managed this.
4. In March 2018, the Employer auto-enrolled Mrs E into an account with NEST. As a result of the alleged mis-management with the other firm, the Employer paid a lump sum to her NEST account in respect of past contributions.
5. Sometime after that, Mrs E checked her NEST account and discovered contributions were not being made to it. She spoke with some colleagues, who said they also had missing contributions. She approached the Employer and asked for the missing contributions to be made. However, this was not done.
6. After that, Mrs E complained to the Employer in writing but this did not resolve the issue and the contributions remained unpaid. In June 2018, Mrs E contacted The Pensions Advisory Service (**TPAS**) for help. In July 2018, at its suggestion, Mrs E contacted our Early Resolution Team (**ERT**). After that, there were various e-mails, between Mrs E, our ERT and the Employer, as the parties tried to resolve the matter.

7. In October 2018 the Employer paid £104 to Mrs E's NEST account in respect of her unpaid contributions. But Mrs E said that this was less than half the total contributions due. After that, there was further correspondence, between Mrs E, ERT and the Employer, however the outstanding contributions remained unpaid.
8. On 8 November 2018, the Employer contacted ERT and said:

“I have been linking up Sage [its payroll system] - Nest during the last couple of days. It's now linked up and I have sent the information to Nest via Sage”.
9. On 13 November 2018, at ERT's request, NEST e-mailed it and said:

“Please see attached as requested the contributions that have been paid to date for [Mrs E]. I can confirm that there are overdue contribution schedules [my emphasis] for [Mrs E] going back to 27 July 2018 ...”
10. Unable to resolve the matter with our ERT, Mrs E referred her complaint to us.
11. In June 2019, we wrote to the Employer and requested its response to Mrs E's complaint. However, no further contact was received. In October 2019, Mrs E e-mailed us, alleging assault by a representative of the Employer.
12. On 18 November 2019, we contacted the Employer re-requesting its response to the complaint. On 24 and 25 November 2019, Mrs E e-mailed us and said that most of the missing contributions seemed to have been paid. However, there also seemed to be unexplained deductions from her NEST account. Further, she had been unable to verify that all contributions had been paid, as the Employer had failed to provide payslips. Finally, she said deductions had possibly been under-applied as she could not reconcile the sums paid with the applicable percentage deductions.
13. On 3 December 2019, the Employer responded to the complaint. It attached details of the contributions made into Mrs E's NEST account, from June 2016 to October 2019, and said all contributions were up to date, but that it could look into the matter further if necessary.

## **Adjudicator's Opinion**

14. Mrs E's complaint was considered by one of our Adjudicators, who concluded that further action was required by the Employer. His findings are summarised below:-
  - First, late payment of contributions. According to NEST's letter of September 2019, and Mrs E's of November 2019, most of Mrs E's NEST contributions in respect of her employment with the Employer had been made. Notwithstanding this, the Adjudicator said further action was required to resolve this matter. As Mrs E had been unable to reconcile the sums paid to her NEST account with the applicable percentage deductions, the Employer should confirm that the correct contributions had been made to her NEST account and provide evidence of this.

- Second, investment loss. Employers have a legal obligation to pay contributions to employees' auto-enrolment by their payment due date, that is the latest date when contributions must be cleared in NEST's account for the employee. (Usually, this is the 22<sup>nd</sup> of the month after the month employer pays the employee.) However, there was evidence, for instance Mrs E's email of October 2018, and NEST's e-mail of November 2018, that some contributions were made late. So the Employer should request a loss calculation from NEST to ascertain if Mrs E had incurred an investment loss as a result of late payment of contributions.
  - Third, non-financial injustice. Based on the available evidence, Mrs E first queried non-payment of contributions in March 2018. After failing to resolve this issue, she contacted TPAS in June 2018, our ERT in July 2018 and filed a complaint in November 2018. There was also evidence, from November 2018, that the Employer said or implied that all contributions had been made. Yet some remained outstanding. After that, no further contact was received from the Employer. Nor was there further contact from the Employer following our request, in June 2019, for its response to Mrs E's complaint. In short, it took too long for the Employer to pay all contributions to Mrs E's NEST account and there were still outstanding issues. The Ombudsman's guidance on "redress for non-financial injustice" provides that an award of £1,000 should be paid when there has been maladministration which has caused: (i) a serious level of distress/inconvenience materially affecting the applicant; (ii) this occurred on several occasions; (iii) there was a lasting effect over a long period; and, (iiii) the respondent was slow to put things right. One or more of these factors applied to Mrs E's case, therefore an award of £1,000 was justified.
  - In summary, the Adjudicator said Mrs E's complaint should be upheld and that the Employer should do two things. First, notify NEST of any outstanding contributions to Mrs E's NEST account, from March 2018 to December 2019, and confirm the dates they should have been invested; confirm that the contributions paid to her NEST account were correct; and, request a loss calculation, from NEST, in order to ascertain if there was any difference between (a) the current value of Mrs E's NEST account, and (b) the notional value of the same account assuming that no contributions has been paid late. Second, the Employer should pay Mrs E £1,000 for the serious distress and inconvenience caused by this matter.
15. Mrs E accepted the Opinion and made no substantive comments. The Employer did not accept the Opinion and made further comments. The key points were:-
- After liaising with NEST, it had ascertained that there was a contributions shortfall of £82.90, which would be paid into Mrs E's NEST account as soon as possible. In addition, it had contacted NEST and requested a loss calculation.
  - It had experienced problems processing payments from Sage to NEST. But this had now been resolved, as employees' salaries and their pension contributions had been outsourced to accountants.

- It was a small company dealing with large demands in difficult economic times. In its view, an award of £1,000 was too high, especially as Mrs E's NEST account was worth only £1,275.
  - Although Mrs E had mentioned suffering distress, there were two sides to the story and she had made life very difficult for its members of staff.
16. After that, the Employer contacted the Adjudicator and said NEST was unable to carry out a loss calculation. So, the Adjudicator contacted NEST directly and it was subsequently able to do so. It said:-

“Our back office team has completed the gains/loss calculation for [Mrs E]. The team carried out the calculation by looking at the late payment letters she had received.

[She] received nine late payment letters with her employer making payments for three of these. The other schedules were submitted by her employer with a notification stating that [she] had insufficient earnings for contributions to be paid over.

The team has calculated that [she] has made a loss from the late payment with figures as:

Member contributions: £2.84 loss  
Employer contributions: £5.20 loss  
Total loss: £8.04.”

17. The Adjudicator contacted the Employer and said awards for non-financial injustice are made in line with our published guidance. Further, he explained that the level of award is unrelated to the size of the employer or the member's benefits. He also said he had only considered the pension-related matters Mrs E had raised. And finally, he provided NEST's loss calculation to the Employer, and asked it to confirm if it would accept his Opinion. However, the Employer did not respond.
18. The Employer has provided its further comments, which do not change the outcome. I agree with the Adjudicator and will therefore only respond to the key points made by it for completeness.

### **Ombudsman's decision**

19. First, late payment of contributions. In its response to the Opinion, the Employer has confirmed that there was a small contributions shortfall of £80, which it has agreed to pay to Mrs E's NEST account. It has also provided evidence, from its payroll system, showing all deductions taken from her pay in respect of her period of employment with it. Mrs E has had the chance to review this evidence and has made no further comments. Other than the above-mentioned sum, there is no sign of further missing contributions.

20. Second, investment loss. NEST has provided a loss calculation, which shows that the investment loss resulting from the Employer's late payment of contributions is estimated to be £8.04. So, the Employer should pay this sum into her NEST account.
21. Third, non-financial injustice. I acknowledge both the Employer and Mrs E's pension benefits are relatively small. However, the absolute size of a person's pension does not dictate the level of distress and inconvenience which may be caused to them if it is not administered properly. In line with our published guidance<sup>1</sup>, I consider that an award of £500 is appropriate in the circumstances of this case. This is because Mrs E started querying non-payment of contributions back in March 2018. She made several direct attempts to resolve the matter with the Employer, without success. The Employer also failed to take adequate steps to resolve the matter when asked to do so by the Ombudsman's office. I am satisfied that a problem occurred on several occasions, it was not a particularly complex issue to resolve, and the respondent was slow to put matters right. However, awards for distress and inconvenience are not intended to be punitive and I am satisfied that in this case there has been no lasting effect on Mrs E's pension.
22. Mrs E has made serious allegations against the Employer, as mentioned at paragraph 11. I understand that these are the subject of investigation by the appropriate authorities and they have not formed part of my assessment, which is limited to the Employer's administration of her auto-enrolment with NEST.
23. Therefore, I uphold this complaint.

## Directions

24. Within 14 days of the date of this Determination, the Employer shall:-
  - Notify NEST of any outstanding contributions to Mrs E's NEST account, from March 2018 to date, and confirm the dates that contributions should have been invested (if the Employer has not done so already);
  - Pay Mrs E redress of £8.04 into her NEST account (in line with NEST's calculation); and;
  - Pay Mrs E £500 to recognise the significant distress and inconvenience this matter has caused.

## Karen Johnston

Deputy Pensions Ombudsman  
25 February 2020

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<sup>1</sup><https://www.pensions-ombudsman.org.uk/wp-content/uploads/Updated-Non-financial-injustice-September-2018-2.pdf>