

# Maintaining Contributions

A response to The Pensions Regulator

---

## 1. Introduction

NEST<sup>1</sup> welcomes the opportunity to comment on the consultation document Maintaining Contributions published on 27 September 2012 by The Pensions Regulator. The comments contained in this response relate to the review of Code of practice no 5: Reporting late payment of contributions to occupational pension schemes and its accompanying guidance notes.

It's noted that on page 13 of the consultation document a number of questions have been raised for providers to comment on. Although NEST has not answered these questions individually, our response covers the questions raised.

### Key headlines

- NEST is concerned that the proposed new guidance places unacceptable burdens and responsibilities on providers to monitor contributions. Having considered the consultation proposals we strongly believe that there is a disproportionate shift of responsibility being placed upon providers and trustees, and by extension to members.
- NEST believes it's the responsibility of the regulator to police the compliance of employers in meeting their obligations.
- NEST feels that members could be disadvantaged due to providers incurring significant costs in chasing the contributions of non-compliant employers
- NEST predicts significant high volumes of late payments which would need to be referred to the regulator after 120 days.
- It won't be scaleable for NEST to telephone employers in relation to late payments.

NEST is the scheme established by government as part of its reforms to the UK pension system. It's designed to make it easy for employers to meet their new workplace pension duties that were introduced in October 2012.

The aim of NEST is to provide high-quality low-cost provision to low and moderate earners and a key factor for us when considering our response has been reducing unnecessary burdens on the scheme. This will reduce costs and keep member charges low.

---

<sup>1</sup> We use the term NEST to refer to the scheme's legal name, the National Employment Savings Trust. We sometimes also use it to refer to the scheme's Trustee, the National Employment Savings Trust Corporation.

---

Low charges are a critical success factor for the pension reforms. The level of charges can make a significant difference to the members' pension pots at retirement and we aim to keep charges low so that members retain more of their savings. This is particularly true for workers with low to moderate earnings who are the particular focus of the policy intent underpinning the reforms and who form NEST's target market.

NEST believes that it's essential that a culture of employer compliance is created and sustained. Underpinning any such culture we believe there's a need for the regulator to set out and implement a credible, detailed and cost effective enforcement regime. This should cover all employer duties introduced by the reforms, including those relating to employers' continuing obligation to make minimum contributions to a qualifying scheme. A credible enforcement regime of this nature is an essential prerequisite for any level of scheme activity to be successful. Without clarity on this it's difficult to judge what actions are most appropriate for schemes themselves to undertake in order to assure positive outcomes for pension savers.

NEST would strongly urge the regulator to clarify its proposed enforcement regime with regard to maintaining contributions as a necessary step prior to imposing additional obligations on providers.

Having considered the consultation proposals we strongly believe that there's a disproportionate shift of responsibility being placed upon providers and trustees, and by extension to members. This will lead to additional costs being incurred by schemes and inevitably be passed on to scheme members, reducing overall levels of pension saving. In extreme circumstances NEST would question the legalities of forcing trustees to spend a disproportionate amount of money chasing late payments, when it may not be in the best interests of the majority of their membership.

This paper is being submitted publicly by NEST. We're happy to discuss any aspect of the paper and contact details are given below.

Email: [michael.desouza@nestcorporation.org.uk](mailto:michael.desouza@nestcorporation.org.uk)

Telephone: 0207 940 8519

Post: **Michael De Souza**  
**NEST Corporation Policy and Legislation Team**  
**Second Floor**  
**St Dunstan's House**  
**201-211 Borough High Street**  
**London**  
**SE1 1JA**

---

## 2. General observations

The introduction of automatic enrolment from 1 October 2012 marked a significant change to pension provision in the UK. Over the next few years a large number of employers will be required to become involved in pension provision for the first time. As a result of this, it's anticipated that providers will see a dramatic increase in the number of active members participating.

While many employers will embrace automatic enrolment positively and see the benefits it offers to their workforce, many will see the duties as an additional burden in an already difficult economic climate. There's a risk that these employers may not meet their obligations through either ignorance of the requirements or as a result of deliberate non-compliance. It's anticipated that this will lead to a significantly higher number of contributions not being paid in accordance with the payment schedule agreed between the provider and the employer. This will bring new challenges for the regulator, given its new objective 'to maximise compliance with the duties under Chapter 1 of Part 1 (and the safeguards in sections 50 and 54) of the Pensions Act 2008'<sup>2</sup>

Prior to automatic enrolment the provision of pensions to a workforce was voluntary. This meant that the dealings that the regulator had with providers and employers was generally co-operative. However, the regulator will now be required to regulate a much larger number of employers with the potential for a significant proportion to be uncooperative. NEST has had several meetings with the regulator over the past six months and both parties have shared their views on the issue of late payments. However, having considered the proposals within the consultation document, we strongly believe that there's a disproportionate shift of responsibility being placed on providers and their trustees, and by extension to members. This will ultimately lead to additional costs being incurred by providers. As NEST is a not-for-profit scheme this would be detrimental to members and hinder our operating model. In simple terms it would mean that members are paying out of their retirement income for the chasing of non-compliant employers.

It's noted from the consultation document that the regulator states:

*'The introduction of automatic enrolment and the other employer duties and safeguards under the Pensions Act 2008 does not fundamentally alter any of the existing legislative requirements on the payment of contributions to a pension scheme which continue to apply today' and 'The regulator does not consider its role to be to chase the missing contributions owed to schemes by employers.'*

NEST would like to highlight the previously mentioned statutory objective for the regulator to enforce employer compliance with legislation. This includes the employer's obligation to make minimum statutory contributions. The consultation document is completely silent on what the regulator intends to do about enforcing these employer duties and there's no mention of the process that the regulator would follow once a case has been referred to it after the 120 day period has passed. NEST also would like to highlight Chapter 2 Section 37 (Unpaid Contribution Notices) of the Pensions Act 2008, which specifies the regulator's power to issue compliance notices and fines. NEST would encourage and support the regulator in providing greater clarity in this area.

There are serious practical problems with the proposal that providers should monitor whether the correct level of contributions are paid across, and determine a reason when this doesn't occur. The use of qualifying earnings, along with the different levels of certified earnings and variable pay reference periods, leads to a greater complexity in the calculation of contributions than was previously the case. Automatic enrolment also introduces into pensions a large number of workers with shift-based working patterns and variable pay. It's very difficult to see how providers could perform these checks as contributions would be inherently variable. The check would be without meaning as the scheme would be reliant on the employer providing the correct pay period information.

---

<sup>2</sup> 'Objectives of the Regulator' Chapter 3 Section 65 of the Pensions Act 2008

While NEST acknowledges that as a provider of a workplace pension solution it has duties and responsibilities, we don't have the ability to police the compliance of employers in meeting their obligations. It would be very difficult, if not impossible for NEST, or any other large provider to know whether any employer hasn't paid its contributions on time as a deliberate act of fraud or purely an administrative error. Although we may spot patterns to late payments through our monitoring, we can't be tasked with trying to make a determination as to the reason for an employer's actions as the cost of trying to ascertain this would be prohibitively large.

We believe that the consultation doesn't take into account new approaches for calculating, recording and monitoring contributions in an automatic enrolment world. What's being proposed is difficult for providers to achieve and the regulator is placing an undue burden on them.

NEST has also noted that within the consultation is the requirement for providers and their trustees to chase and recover missing contributions. NEST has a process in place, which has been outlined to the regulator. However, due to our need to keep our costs low we don't chase employers via telephone. NEST acknowledges that the regulator has offered some degree of flexibility on this issue, but we highlight the fact that the regulator doesn't appear to have considered the economic viability of such recovery methods. In an environment with a large number of small and micro employers, providers could easily spend more money attempting to recover outstanding contributions, than they would earn from charges on these payments. The balance of this cost would be borne by their membership.

In addition, NEST is concerned that there's likely to be a significant number of cases of employers failing to pay their contributions on time. We anticipate that once staging is complete, NEST will experience approximately one million instances of payments that are over one month late per year. We estimate that a quarter of these contribution events could remain unpaid past 120 days and would need to be reported to the regulator. In addition, approximately fifty thousand employers would have three or more instances where payments are over one month late during the course of a year. Based on this estimate it would be important to understand what assumptions the regulator has made and their plan for managing such a quantity of late payments.

### 3. Consultation themes

The consultation document has a number of themes running through it and we've identified what the implications are for NEST of implementing the regulator's proposed guidance.

1. Empowering members to monitor contributions themselves by giving them sufficient information so that they can determine how contributions are calculated and when they'll be paid or when historic payments were made.

*NEST currently provides some of this information via our web enabled system and in the welcome pack literature. However, the government with NEST's support determined it inappropriate for NEST to provide the full detail of how contributions are calculated and introduced an exemption. This was due to NEST providing a multiple employer scheme with the potential for employers to use differing definitions of pensionable pay.*

2. The regulator is keen for providers to be proactive and anticipate contribution payment issues, to notice when they occur, flag them and then to ascertain reasons from the employer as to why the payments are late.

*After staging is complete and a huge number of small to micro employers have started their duties under automatic enrolment, it won't be viable to anticipate potential contribution payment issues or determine accurate reasons when such issues occur. The cost of attempting to maintain a dialogue would be prohibitive for any provider engaged with a large number of such employers. Whilst NEST is able to detect when schedules or payments are incomplete or not received at all, we're not able to determine if the amounts contained on the schedules have been correctly calculated due to being reliant on the employer providing pay period earnings.*

3. The regulator has suggested that before reporting a payment failure, a provider will need to commence some form of reminder and recovery process. The consultation highlights that a minimum of three contacts should be made and recommends that at least one of these should be by telephone. In addition, it's proposed to increase the 90-day deadline to 120 days before a provider should report to the regulator.

*NEST goes over and above the current guidelines of three payment chases within 90 days but none are done by telephone. In a pensions landscape with a large number of small and micro employers, the cost of telephoning non-paying employers could be, in many cases, higher than the charges recoverable from the debt the provider is chasing.*

4. The consultation document recommends what information should be sent to the regulator when trustees report an employer.

*For reporting to the regulator we currently provide or have access to most of the information requested. However, valuing unpaid contributions wouldn't be possible in the vast majority of cases, as we don't know from period to period what should have been paid with certainty. NEST would be supportive of any requirement to submit information to the regulator electronically and to develop standardised reporting for this task.*

## 4. Member information

The consultation document encourages getting members more involved in the monitoring of contributions into their scheme. We understand that the regulator is keen for members to better understand and monitor:

- contribution rates of the member and the employer
- how contributions are calculated
- when contributions are due
- what contributions have been paid, charges that have been deducted and when the payment was received.

NEST provides some of the information but to varying degrees of detail and in different places on our website and in member literature. Members are aware of the rates of contribution that their employer is paying and are also able to view details of what historical contributions have been paid and when. These totals are broken down to show the split between member and employer contributions as well as the tax relief, and outlines the contribution charges that have been deducted. Members are also able to request details of when contributions are due to NEST but these details aren't displayed in the member area, and have to be requested.

However, the government determined it inappropriate for NEST to provide the full detail of how contributions are calculated. It introduced an exemption for this purpose due to NEST providing a multiple employer scheme with the potential for employers to use differing definitions of pensionable pay.<sup>3</sup>

NEST would also like to add that employers have a duty to provide members with the above information under section 10 of the Pensions Act 2008 ('PA08'). It's unclear what benefit there is in the duplication of this information, especially given the additional cost that such disclosure would entail for providers.

NEST feels that if the proposals were to be implemented, the information we'd have to provide to the member would remain unchanged. We'd continue to provide the information as outlined under PA08 and under our scheme rules.

---

<sup>3</sup> The Application of Pension Legislation to the National Employment Savings Trust Corporation Regulations 2011 (2011 No. 673 Regulation 2).

If NEST were required to provide greater information to members there would be significant cost implications arising from having to do work to develop and redesign our systems, as well as the greatly increased dialogue we'd need to have with employers on variable pay period earnings. At most NEST would only repeat the information already provided to members by the employer.

## 5. Providers' reactions to payment issues

The consultation document requires the providers and their trustees to be proactive and anticipate contribution payment issues, to notice when they occur and to flag them. Finally they should ascertain reasons from the employer why the payment is late.

Within the consultation it also states:

*'Exceptionally, where there is a current or imminent danger to member's and/or the employer's payments unless immediate preventative action is taken, trustees should report [to the employer] by telephone as soon as they become aware of the occurrence. The trustees should then confirm telephone reports in writing, for example by letter or email, as soon as reasonably practicable and in any event within ten working days.'*

NEST currently has a relationship with its volunteer and large employers as part of the on-boarding process. This relationship is in place to help us to explain our systems and to help identify and solve problems and misinterpretations of the NEST site during set-up and contribution payment. However, while we're able to provide this support at the current time, once the scheme achieves scale and moves to a self-service model, for the majority of employers it would not continue to be viable.

Determining circumstances of payments in imminent danger by working with employers is not scalable as we increase the number of employers in the scheme. Our operating model means that we only react to a non-payment by an employer and don't have the close relationship that would alert us to such behaviours ahead of time.

Instances of late payments are identified by NEST based on their due date, and would include the following sets of circumstances:

- no contribution schedule received
- incomplete contribution schedule received and no/partial/full payment received
- complete contribution schedule received and no/partial payment received.

A minor or significant grading is given depending on the number of members affected and if we're awaiting contribution data and/or just payment of contributions. In addition, we'd check if there have been any previous instances of late payments and if any of these are still outstanding. This points-based system is in place to identify severity of the non payment and is used alongside MI reports, which identify employers and trends for our operations department. NEST understands that this has been seen by the regulator and viewed favourably.

It's important to note that while the above processes enable NEST to flag the majority of late payments, there'll be cases where contributions are inherently variable and NEST would be reliant on the employer providing the correct pay period information within the contribution schedule. Any mistakes made here, whether intentionally or by administrative error, would not trigger a late payment flag, assuming contribution rate calculations on these earnings are correct and the full payment amount is received. Contributions that don't match the earnings provided won't be validated and are returned to the employer. If these aren't corrected by the due date they'll be flagged as late. We therefore question the regulator's indication that providers should be able to detect failures in contribution payments in all circumstances.

NEST also questions the regulator's indication that a provider should always ascertain a reason for a late payment. Compared to some other providers, NEST doesn't have the kind of relationships with employers that are likely to enable us to always make such a determination.

After staging is complete, we anticipate approximately one million instances of late payments past one month per year. The employment of telephone personnel to attempt to contact employers, and document reasons for their late payments would involve a high level of training and cost. In addition, the volume of calls needed would require a large investment in resources, equipment and buildings. We would also question the effectiveness and benefit of such additional cost as any employer deliberately and fraudulently avoiding their duties is unlikely to provide a truthful reason.

## 6. Chasing for payment

The consultation document proposes that before reporting a payment failure to the regulator, a minimum of three contacts should be made by the provider (or someone acting on their behalf) as part of the reminder and recovery action. Of these three reminders the regulator has suggested that at least one of these should be by telephone. However, it's acknowledged that individual providers and trustees require flexibility to adapt and build processes that suit their own ways of working.

Currently we chase employers every 25 days up to the 90 days deadline by secure message. Employers receive a notification by email to their email address that a secure message is waiting for them. This communication is issued to the primary contact. At present we also phone our large and volunteer employers about contribution issues including late payment. However, this is primarily to enable us to work hand-in-hand with employers to refine our contribution process. A by-product of this relationship is that we discuss late payments with these employers but this isn't a scalable process when we increase the number of employers in the scheme.

NEST has concerns at the indication that the regulator would generally expect providers to chase late payments via telephone. This would add significant additional costs to our operating model. As previously indicated to the regulator, if we were to chase each occurrence of late payment via telephone this could cost NEST in excess of £5-10 million per year based on one million instances of late payments per year once we hit steady state. In a large number of cases of small and micro employers, these costs would significantly outweigh the amounts due to the scheme. This cost differential would ultimately be carried by the membership of the scheme and could have a negative effect on the NEST operating model and on this basis we question the member benefit of such an obligation and we'd be very reluctant to be forced into such a duty.

It's also debatable how effective telephoning employers is to chase for late payment from a number of points of view:

- the number of calls required to receive a contribution payment
- being able to get through to the correct person with authority within a call
- effectiveness in prompting an employer to pay a contribution schedule
- where there are multiple delegates, who would a provider call?

From NEST's point of view, we'd question whether this is a good use of member's money paying for telephone personnel to chase potentially small outstanding contributions, by a means we believe to have a low success rate.

---

## 7. Reporting

The consultation provides guidance on what the report to the regulator should include when reporting a material failure. The report should include:

- employer name
- employer contact details
- unique scheme reference number. This will vary according to scheme type - if it's a single employer occupational scheme, the pension scheme registry (PSR) number. If it's a multi-employer occupational scheme, the employer pension scheme reference. If it's a personal pension scheme, the PSR number for the master contract and the employer's policy number.
- due date in respect of contributions
- period(s) in respect of which contributions are due
- where the employer is a company, the company registration number (CRN)
- total number of active scheme members and the number of members affected by the payment failure
- the amount of member and employer contributions outstanding
- total amount of employer contributions an employer has failed to pay across in each period
- total amount of worker contributions an employer has failed to pay across in each period
- confirmation that actions taken by the trustee or manager to secure payment have been applied and simple late payment failures have been resolved.

Some of this information we already collect, and other parts we could collect from employers during set-up. However, we can't always determine the amount of contributions outstanding. As detailed earlier, we'll flag a late payment when an incomplete schedule and/or payment is received.

However, our experience is that there'll be a significant number of cases where neither schedule nor payment is received. In these instances we have no pay period earnings on which to base a calculation of the contribution amounts outstanding. If this were to become a reportable instance NEST would be unable to provide such detail to the regulator.

NEST can't collect the company registration number as a mandatory field, given our public service obligation and the fact that the CRN doesn't cover partnerships or charities. These groups are expected to make up one third of NEST scheme users.

If this becomes a requirement it would have cost implications of development work carried out on our systems along with managing the process of updating our existing employer records, but we'd only be able to include this as an optional field and as such it would be incomplete. NEST therefore questions whether this is required information when reporting to the regulator.

NEST supports the regulator's proposition for standardised reporting to be developed for all providers to report instances of late payments. NEST's expectations are that we'll experience around one million instances of late payments each year that are one month overdue. Of these a quarter may remain unresolved by 120 days. Our calculations also suggest that approximately fifty thousand employers each year may be reported earlier than 120 days. This could mean over 25,000 reports per month from NEST to the regulator when we're operating at scale.

Further to previous conversations with the regulator, NEST suggests that such reporting would be in the format of a consolidated file for each provider and submitted electronically. This would make the process more cost efficient for both NEST and the regulator.

In addition, the regulator should consider the process for the ability for a provider to flag contribution payment issues to them in cases of urgency when it could be detrimental, or not in the members' interest, to wait for the 120 day deadline.

---

## 8. Consultation clarification

While reviewing the maintaining contributions consultation document and drafting our response a number of questions have arisen that we'd like to have clarified.

- On page 11, paragraph 3 under the heading of 'Recovery' it states:

*'We want to ensure that all trustees and providers have effective systems in place for their interventions with the employer to get the money that is due paid across to the scheme. As stated above, our expectation is that all schemes will, where reasonable, establish the circumstances of the late payment and identify the serious cases of wilful and deliberate failure to pay so that these may be reported to the regulator.'*

An explanation of what 'where reasonable' means in this context would be beneficial. Does this take into account NEST's business model of not having direct relationships with employers and therefore, not being able to determine the cause of the non-payment?

- Guidance for specific paragraphs 35 to 37 – Appendix B – Page 23

*'For example if employer contribution payments decreased one month (compared to what the trustees expected was falling to be paid) with no explanation or prior warning and no evidence of consultation with members, the trustees would be expected to query this promptly and ask the employer to rectify any payment errors as soon as possible. There could be a reasonable explanation, such as a business sale under which a number of members have transferred out of the scheme, and the employer has not yet informed the trustees of those departures.'*

What does the regulator mean by the decrease in contributions from one contribution period to the next? Are they looking at individuals having a change in contributions, which could happen regularly within the NEST membership, or is the regulator interested in the decrease in total value of contributions of one contribution schedule against the next? As previously stated in section 5 of this document, NEST relies on employer reported earnings being correct. Any requirement to challenge employers whenever there's a variance isn't viable due to significant costs of doing so along with the expected volume of instances of this in our target market.

- Reporting – means and format of reporting – page 12, left paragraph

*'We propose moving to standardised reporting for material payment failures in terms of content, format and channel and wish to work with industry to establish standards for how reports should be made, including what information should be provided. This may include reporters making nil returns to indicate that best practice in monitoring has been applied and simple late payment failures have been resolved.'*

Is the regulator proposing the guidance that NEST would have to report all employers' payment movements even if they have no instance of late payments?

- Reporting – means and format of reporting – page 24, Appendix B – code paragraph 52

*'The code requires the trustee where reasonable to find out and record the cause of the payment failure. The circumstances which should be reported are described in paragraph 36. Below is a list of some of these circumstances:*

- *fraud*
- *dishonesty*
- *misuse of contributions (e.g. to alleviate cash-flow)*
- *inadequate procedures or systems*
- *employer unwilling to pay*
- *reminder and recovery process exhausted without a response from the employer.'*

What does 'where reasonable' mean in this context? It's not clear how providers would find out these reasons.

The standard reporting format proposed by the regulator doesn't include a requirement for a reason even though the regulator is keen for the providers to determine one. As previously stated in section 5 of this document, NEST questions the effectiveness of this guidance. What is the regulator's view on the reporting of a reason, and if required, where and how should this be communicated?