



National Audit Office

**The UK's independent public spending watchdog**

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Reference FOI-1575

## NATIONAL EMPLOYMENT SAVINGS TRUST (NEST)

Thank you for your email and complaint letter of 22 November 2022. As confirmed by our correspondence team, because you have requested specific information that we may hold, your enquiry has been handled as an FOI request. This letter also covers the themes raised in your email and complaint letter.

### FOI request

You requested the response that the NAO received from NEST in respect of your whistle-blowing disclosure.

Your request is being handled under the terms of the Freedom of Information Act 2000 (FOIA). The specific information you requested is set out at Annex A, where we also provide our full response. While we hold information in scope of your request, we consider it to be exempt from disclosure under Section 33 (public audit functions) of the FOIA. Annex B explains this exemption and how it applies to your request, and our consideration of the Public Interest Test in relation to the S.33. exemption.

### Email and complaint letter

As I explained in my letter of 18 November, we have carefully considered the matters you raised in your initial disclosure. Being a prescribed person under whistleblowing legislation does not give the Comptroller and Auditor General (C&AG) any additional powers nor does it require the C&AG to investigate every disclosure he receives; the decision whether to investigate is based on the matters raised and the C&AG's statutory remit and powers. Our guidance on this subject can be found on our website [here](#).

We have considered the themes raised in your letter and sought additional information from NEST where needed to support our thinking. As I explained, having followed up these matters with NEST we do not intend to pursue them further at this time. In your email and complaint letter you asked about the criteria or standards that were applied to arrive at this conclusion.

When people write to us, we always consider whether any information received is indicative of a specific issue or wider thematic issues that would cause us to investigate further and potentially report to Parliament, consistent with our public audit role and responsibilities. We use the discretion provided to the C&AG to decide what action, if any, we judge it is appropriate to take. We consider:

- the subject matter and available information;
- relevant processes in place at the organisation(s) concerned;
- our remit, and legal right to access and audit the relevant organisation(s);
- our professional standards, and core values;
- whether other bodies are doing or have done similar investigations;
- our existing work commitments; and
- the resources involved and the likely scale of the task.

In the case of your information, we discussed this with you to ensure we understood your concerns and we considered the issues you raised with reference to the above areas ahead of engaging directly with senior people at NEST. Informed by this work and as noted above, we will not be pursuing these matters further at the present time. However, we will keep your concerns in view to inform any future decisions that we may make about undertaking additional audit work at NEST.

### **Next steps**

I would like to thank you for taking the time to raise this matter with the NAO. Should you be dissatisfied with my response, the next stages under our complaints policy can be found [here](#). Annex C sets out the steps you may wish to take if you are not satisfied with the way we have handled your request for information under the FOIA.

Yours sincerely,

s.40

## **Annex A**

### **Request for information about NEST Freedom of Information Questions and Answers**

*(Your request in italics, NAO response in plain text)*

*"Can I please see the responses provided by Nest? I was not given the opportunity to comment on NEST's responses. Their word is not necessarily 'gospel'."*

#### **NAO response**

We have searched our records and can confirm that we hold information falling within the scope of your request – but consider this information exempt from disclosure. The following exemption applies: section 33 public audit

Please see Annex B for details of this exemption and how it applies to your request.

## **Annex B**

**This annex sets out the exemptions that we have applied to your request.**

### **Section 33 Freedom of Information Act 2000 – Public Audit**

Section 33 of the Freedom of Information Act 2000 (FOIA) provides that:

*33.-(1) This section applies to any public authority which has functions in relation to—*

*(a) the audit of the accounts of other public authorities, or (b) the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.*

*(2) Information held by a public authority to which this section applies is exempt information if its disclosure would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).*

#### **Reasons why we have applied the Section 33 exemption:**

We have applied the Section 33 exemption to information we hold in scope of your request and which we are withholding from release namely *the response received from NEST*.

This information was provided to the NAO by NEST in confidence as its auditor. NEST regards the information it has provided to the NAO as confidential and commercially sensitive. NEST believes its release would be likely to prejudice their commercial interests and would not serve the public interest. Given these strongly held views, we believe that NAO's release of the information would prejudice the effective performance of our public audit functions going forward and that the Section 33 exemption applies.

The audit process is enhanced significantly by audited bodies or third-party entities responding promptly to information requests and/or volunteering information to support a constructive, timely and effective audit. The disclosure by NAO of sensitive information beyond that required for audit reporting purposes and in the face of representations against such disclosure would impair the provision of audit information in the future – it would reduce, if not cut off, critical information flows. It would incentivise NEST and other audited bodies to take a minimalist approach to NAO information requests or, in the case of bodies whose engagement is optional, serve to discourage such information sharing altogether.

Audited bodies regularly challenge the extent of the NAO's access rights and seek to place conditions around meeting information requests. Such issues consume time and resources as we work them through. The disclosure of this sensitive information would encourage NEST and other audited bodies to approach our audit work in this way going forwards.

An effective, efficient audit is supported through an open and constructive approach between the NAO and the audited body. As such it is critically important that we have a safe space to gather information and knowledge and can engage in a free and frank way with audited bodies. The release of this information would remove this safe space - precipitating a backdrop of increased challenge and procedure around requests for audit information. This would require the NAO to formally assert our statutory access rights more frequently and potentially seek to enforce them, leading to significant delay, escalation of issues and increased audit costs.

Section 17(3) of the Budget Responsibility and National Audit Act 2011 places a duty on the C&AG to "aim to carry out functions effectively and cost effectively". Given the above factors, we consider that our disclosure of the information requested would be at odds with this statutory requirement – it would serve to undermine the effectiveness and increase the cost of the C&AG's public audit functions.

For the reasons set out above, we consider it appropriate to apply the public audit exemption available under Section 33(2) of the FOIA.

#### **Reasons why the public interest in maintaining the exclusion outweighs the public interest in disclosing the information in this case:**

The NAO is independent of government and scrutinises public spending on behalf of Parliament. Our work serves the public interest by helping Parliament hold government to account, providing transparency on matters of public interest and driving improvement in the use of public resources.

We recognise that there is a public interest in knowing that the use of public money is subject to appropriate levels of accountability and transparency, delivered through an effective audit function. We consider that

disclosure of sensitive audit evidence supplied to the NAO by departments and other public bodies in pursuit of our statutory functions and beyond that published in our reports would impair the audit process for the reasons set out above. Bodies and officials would be reluctant to engage with us, which would delay and diminish the audit process.

The NAO's work puts information into the public domain and helps Parliament hold government to account. In our view, the balance of public interest rests with the NAO being able to deliver an effective and efficient public audit function and report our findings to the public.

Given the negative impact that would result from disclosure, we consider it appropriate to maintain the Section 33 public audit exemption in this instance.

## **Annex C**

### **Statement of Policy**

Our policy is to respond to requests made under the Freedom of Information Act 2000 as helpfully and promptly as possible, having regard to the principles set out in the Act. I therefore hope you are happy with the way we have handled your request. If you are not, then you should take the following steps.

In the first instance, within 40 working days, write to the National Audit Office Freedom of Information (FOI) Team at [FOI.requests@nao.org.uk](mailto:FOI.requests@nao.org.uk) or by post to:

FOI Team, Green 2, National Audit Office, 157-197 Buckingham Palace Road, London, SW1W 9SP

The Head of FOI will arrange a review, which will be conducted by a senior member of staff who was not involved in decisions relating to your original request. Once the review has been completed, we will write informing you of the outcome.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:  
<https://ico.org.uk/>

or

Information Commissioner's Office Wycliffe House Water Lane Wilmslow Cheshire SK9 5AF