

Ombudsman's Determination

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| Applicant | Mr L |
| Scheme | The Smart Pension Master Trust (the Trust) |
| Respondent | Watchet Marina Ltd (the Employer) |

Outcome

1. Mr L's complaint is upheld and, to put matters right, the Employer shall pay £3,702.30 into the Trust. The Employer should ensure that Mr L is not financially disadvantaged by its maladministration. So, it should arrange for any investment loss to be calculated and paid into the Trust.
2. In addition, the Employer shall pay £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

3. Mr L has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Trust.
4. Mr L has said that the missing contributions amounted to £3,702.30.

Background information, including submissions from the parties

5. The sequence of events is not in dispute, so I have only set out the salient points.
6. On 1 April 2021, Mr L began his employment with Cardiff Marine Services (**CMS**). He was also enrolled into the Trust.
7. Between September 2021 and September 2023, the Employer failed to pay pension contributions into the Trust.
8. On 16 September 2021, Mr L received a notice from the Trust administrator that it had notified The Pensions Regulator (**TPR**) of late and missing payments into the Trust. Mr L received these notifications each month.
9. On 24 March 2023, Mr L formally complained to CMS about the late and missing contributions.

10. On 27 April 2023, Mr L's complaint was partially upheld by CMS. However, there was no agreed timescale for when the outstanding pension contributions would be paid.
11. On 10 June 2023, Mr L's balance in the Trust was £735.53.
12. On 17 June 2023, a screenshot from Mr L's online Trust account showed that CMS had paid £455.40 in employee contributions and £336.60 in employer contributions. It also said that it was currently processing £3,258 in contributions.
13. On 30 June 2023, Mr L received a letter from RSM UK Restructuring Advisory LLP. This advised that CMS was in administration and intended to terminate Mr L's service on this date.
14. The letter also confirmed that the termination meant the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) applied. This meant Mr L's employment had been transferred to the Employer.
15. On 22 July 2023, Mr L brought his complaint to The Pensions Ombudsman (**TPO**).
16. Mr L provided copies of the payslips that he held for the period from September 2021 to June 2023, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These deductions amounted to £3,702.30, This figure does not include the unpaid contributions for July to September 2023 as these payslips had not been provided. A breakdown of the deductions has been included in the Appendix.
17. On 20 October 2023, TPO asked the Employer for a response to Mr L's complaint. This request was repeated on 7 November 2023.
18. On 7 November 2023, the Employer responded to TPO. It acknowledged Mr L's contributions had not been paid into the Trust. It said that it did not have the funds to bring the account up to date, but it was undergoing a restructure and hoped to be able to do so in the following months. However, it did not provide TPO with a timescale of when it planned to pay the outstanding contributions.

Caseworker's Opinion

19. Mr L'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 Trust. 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. He said that although the Employer had responded to TPO and acknowledged the contributions had not been paid into the Trust, it did not provide TPO with a timescale of when Mr L's contributions would be paid.

- The Caseworker said that he had no reason to doubt the information provided by Mr L and the Employer has also confirmed contributions had been deducted from Mr L's salary but had not been paid into the Trust. 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 L was not in the financial position he ought to be in.
- In the Caseworker's view, Mr L had suffered serious distress and inconvenience due to the Employer's maladministration. The Caseworker was of the opinion that an award of £1,000 for non-financial injustice was appropriate in the circumstances.

20. 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.

Ombudsman's decision

21. Mr L has complained that the Employer has not paid all the contributions due to the Trust.
22. I find that employee contributions were deducted but held back by the Employer and not paid into the Trust. The Employer failed to rectify this and did not engage with TPO when it requested a timescale of when the contributions would be paid into the Trust. It has also failed to respond to the Caseworker's Opinion.
23. The Employer's failure to pay employee and employer contributions into the Trust amounts to unjust enrichment and has caused Mr L to suffer a financial loss. The Employer shall take remedial action to put this right.
24. Mr L 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 resolve the dispute during TPO's investigation into Mrs L's complaint.

Directions

25. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mr L £1,000 for the serious distress and inconvenience he has experienced.
 - (ii) pay £3,702.30 into Mr L's Trust account. This figure represents the amount that, according to the figures provided by Mr L, have been deducted from his pay, but not paid into the Trust account. It also includes the employer contributions for the relevant period which should have also been paid but have not been to date;

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- (iii) establish with the Trust whether the late payment of contributions has meant that fewer units were purchased in Mr L's Trust account than he would have otherwise secured, had the contributions been paid on time; and
- (iv) pay any reasonable administration fee should the Trust administrator charge a fee for carrying out the above calculation.

26. Within 14 days of receiving confirmation from the Trust administrator of any shortfall in Mr L's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman

7 June 2024

Appendix

| Date | Employee contributions | Employer contributions |
|---|------------------------|------------------------|
| 30/09/2021 | £99.00 | £59.40 |
| 29/10/2021 | £99.00 | £59.40 |
| 30/11/2021 | £99.00 | £59.40 |
| 31/12/2021 | £99.00 | £59.40 |
| 31/01/2022 | £99.00 | £59.40 |
| 28/02/2022 | £99.00 | £59.40 |
| 31/03/2022 | £99.00 | £59.40 |
| 29/04/2022 | £103.69 | £62.21 |
| 31/05/2022 | £103.69 | £62.21 |
| 30/06/2022 | £103.69 | £62.21 |
| 29/07/2022 | £103.69 | £62.21 |
| 31/08/2022 | £103.69 | £62.21 |
| 30/09/2022 | £103.69 | £62.21 |
| 31/10/2022 | £103.69 | £62.21 |
| 30/11/2022 | £103.69 | £62.21 |
| 30/12/2022 | £103.69 | £62.21 |
| 31/01/2023 | £103.69 | £62.21 |
| 28/02/2023 | £103.69 | £62.21 |
| 31/03/2023 | £103.69 | £62.21 |
| 28/04/2023 | £103.69 | £62.21 |
| 31/05/2023 | £136.50 | £81.90 |
| 30/06/2023 | £136.50 | £81.90 |
| | £2,313.97 | £1,388.33 |
| Total Unpaid Contributions: <u>£3,702.30</u> | | |