

Ombudsman's Determination

Applicant	Mr W
Scheme	The Smart Pension Master Trust (the Trust)
Respondent	Mid Air Site Services Ltd (the Employer)

Outcome

1. Mr W's complaint is upheld and, to put matters right, the Employer shall pay £2,792.27 into the Trust. The Employer shall ensure that Mr W is not financially disadvantaged by its maladministration. So, it shall arrange for any investment loss to be calculated and paid into the Trust.
2. In addition, the Employer shall pay Mr W £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

3. Mr W has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Trust.
4. The available evidence shows that the missing contributions amounted to £2,792.27.

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 6 April 2012, Mr W began his employment with the Employer. He was not provided with a contract of employment or employee handbook.
7. On 31 July 2022, Mr W began having pension contributions deducted from his salary. Mr W provided a screenshot from his online Trust account which showed that contributions were to be paid at a rate of 5% for employee contributions and 3% employer contributions.
8. Between July 2022 and September 2023, the Employer failed to pay pension contributions into the Trust.
9. On 3 January 2023, the Trust administrator reported the Employer to The Pensions Regulator (**TPR**), as contributions to the Trust were over 90 days late.

10. Mr W first became aware of the issue of unpaid contributions following receipt of a letter from the Trust administrator on 10 January 2023.
11. On 1 October 2023, Mr W said that the Employer verbally promised that all contributions would be paid back into the Trust.
12. On 2 October 2023, Mr W left his employment with the Employer.
13. On 11 October 2023, the Trust administrator emailed Mr W and said that it had been unable to collect the contributions from the Employer. It also said as the Employer was over 90 days late in paying contributions it had reported them to TPR.
14. On 16 October 2023, Mr W raised a formal complaint with the Employer.
15. On 8 December 2023, Mr W complained to The Pensions Ombudsman (**TPO**).
16. Mr W provided copies of the payslips he held for the period between July 2022 and September 2023, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These contributions amounted to £2,498.74. Mr W was unable to provide a payslip for November 2022.
17. The payslips showing the employee contributions deducted from Mr W's pay and the corresponding employer contributions are provided in the Appendix.
18. On 29 July 2024, a screenshot of Mr W's online Trust account showed that no contributions had been paid by the Employer.
19. On 31 July 2024, TPO asked the Employer for its formal response to Mr W's complaint. This request was repeated on 14 August 2024. None of these requests received a response

Adjudicator's Opinion

20. Mr W's complaint was considered by one of our Adjudicators 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 Adjudicator's findings are summarised below:-
 - The Adjudicator 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, as the Employer had not responded to any of TPO's communications, he had to base his Opinion solely on the information provided by Mr W.
 - The Adjudicator said that he had no reason to doubt the information provided by Mr W, so, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Mr W's salary, but had not been paid into the Trust.

- The Adjudicator said that although Mr W was unable to provide a payslip for November 2022, the difference between the year-to-date gross pay between October 2022 and December 2022 payslips showed that he would have received a gross salary of £6,190.20 for November 2022. This met the qualifying monthly threshold so contributions should have been deducted in line with the statutory minimum automatic enrolment rate of 5% and 3% in employee and employer contributions, as confirmed in the screenshot from his online Trust account. In the Adjudicator's view, on a balance of probabilities, £183.46 in employee contributions and £110.07 in employer contributions were also due to the Trust for November 2022.
- In addition, the Employer had not paid any of the employer contributions that were due from July 2022 to September 2023. As a result of its maladministration, Mr W was not in the financial position he ought to be in.
- In the Adjudicator's view, Mr W had suffered serious distress and inconvenience due to the Employer's maladministration. The Adjudicator was of the opinion that an award of £1,000 for non-financial injustice was appropriate in the circumstances.

21. The Employer did not respond to the Adjudicator's Opinion and the complaint was passed to me to consider, I agree with the Adjudicator's Opinion.

Ombudsman's decision

22. Mr W has complained that the Employer has not paid all the contributions due to his Trust account.
23. 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 or Mr W. It has also failed to respond to the Adjudicator's Opinion.
24. The Employer's failure to pay employee and employer contributions into the Trust amounts to unjust enrichment and has caused Mr W to suffer a financial loss. The Employer shall take remedial action to put this right.
25. Mr W 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 respond during TPO's investigation into Mr W's complaint.

Directions

26. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mr W £1,000 for the serious distress and inconvenience he has experienced;

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- (ii) pay £2,792.27 into Mr W's Scheme account. This figure represents the amount that, according to the figures provided by Mr W, 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;
- (iii) establish with the Trust administrator whether the late payment of contributions has meant that fewer units have accrued in Mr W's Scheme 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.

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

Anthony Arter CBE

Deputy Pensions Ombudsman

15 November 2024

Appendix

Date	Employee contributions	Employer contributions	Gross Pay
31/07/2022	£83.21	£62.40	£2,600.10
31/08/2022	£83.21	£62.40	£2,600.10
30/09/2022	£83.21	£62.40	£2,600.10
31/10/2022	£146.76	£110.07	£6,095.10
30/11/2022	Payslip unavailable		
31/12/2022	£107.51	£80.61	£3,207.60
31/01/2023	£102.42	£76.80	£3,080.36
28/02/2023	£94.65	£70.98	£2,886.17
31/03/2023	£100.61	£75.45	£3,035.10
30/04/2023	£97.40	£73.02	£2,954.87
31/05/2023	£105.40	£79.02	£3,154.95
30/06/2023	£102.44	£76.80	£3,080.85
31/07/2023	£104.68	£78.48	£3,136.80
31/08/2023	£122.21	£91.65	£3,575.10
30/09/2023	£94.27	£70.68	£2,876.53
Total unpaid contributions	£1,427.98	£1,070.76	
		<u>£2,498.74</u>	