

Ombudsman's Determination

Applicant	Mr G
Scheme	Smart Pension Master Trust (the Scheme)
Respondents	Bodyshop Repair Network Limited (the Employer)

Outcome

1. Mr G's complaint is upheld and, to put matters right, the Employer shall pay the missing contributions into the Scheme. It should also make an additional payment into the Scheme, being the investment return that the contributions would have received had they been invested on time. In addition, the Employer shall pay Mr G £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

2. Mr G complained that the Employer, despite deducting pension contributions from his pay, has failed to pay some of these into the Scheme. It also paid a number of pension contributions into the Scheme late.
3. Although the majority of the unpaid contributions have now been paid into the Scheme, pension contributions deducted from his pay amounting to £366.85 have still not been remitted. The Employer has also not arranged for any investment loss to be calculated and paid into the Scheme or made any award for the distress and inconvenience caused.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
5. On 2 January 2019, Smart Pension, the Scheme administrator, reported the Employer to The Pensions Regulator (**TPR**) for late payment of pension contributions to the Scheme since November 2018.
6. On 15 February 2019, the Employer requested a payment plan from Smart Pension in order to bring the Scheme contributions up to date. As per the terms of the

payment plan, Mr G's contributions, up to and including 31 January 2019, were due to be paid to the Scheme by April 2019.

7. On 12 March 2019, Smart Pension was unable to collect payment for the first instalment and the Employer defaulted on the payment plan.
8. On 28 March 2019, Smart Pension again reported the Employer to TPR and continued to attempt to take payment for contributions uploaded to its platform.
9. On 23 April 2019, Mr G contacted the Employer to ask when contributions paid to the Scheme would be brought up to date.
10. On 13 June 2019, Mr G contacted the Employer to advise that Smart Pension had confirmed the contributions to the Scheme were still not up to date. Mr G also ceased working for the Employer on this date.
11. On 17 June 2019, the Employer requested a new payment plan from Smart Pension.
12. On 25 June 2019, Smart Pension confirmed a three-month payment plan which included Mr G's contributions up to and including 28 February 2019 in the first instalment. Payment for Mr G's remaining contributions was included in the second instalment.
13. In September 2019, Smart Pension advised Mr G that payments were up to date to the end of May 2019.
14. The Appendix provides a summary of the late payments from 1 November 2018 to 28 February 2019 and 1 March to 31 May 2019. These were paid to the Scheme on 17 July 2019 and 28 August 2019 respectively. The appendix also shows an extract from Mr G's payslip of 5 July 2019 showing the pension contributions deducted along with confirmation that these were not received by the Scheme. These deductions amount to £294.10 and, with the unpaid employer contribution of £72.75 not shown on the payslip, totals an amount of £366.85.

Smart Pension's position

15. Payments are up to date to the end of May 2019. However, an employee contribution of £121.25 and an employer contribution of £72.75 are outstanding. In addition, the Pension Increase Deduction of £172.85 had not been paid to the Scheme for the period 1 June 2019 to 14 June 2019.

The Employer's position

16. It does not understand why it is being approached by The Pensions Ombudsman (TPO) as the issues were caused by Smart Pension and Mr G's payments are all up to date.
17. It had uploaded the payroll to Smart Pension who had not calculated the month of June 2019 as it was not a full month worked. The Pension Increase Deduction was

due to Smart Pension not calculating the correct increases in employer and employee contributions with effect from April 2019.

18. Any redress should come from Smart Pension who has made errors in its administration of the Scheme. The matter was also being investigated by "GRC" relating to the way Smart Pension handled pension matters.

Adjudicator's Opinion

19. Mr G's complaint was considered by one of our Adjudicators who concluded that further action was required by the Employer as it had failed to pay some contributions deducted from Mr G's pay into the Scheme. It also paid a number of pension contributions into the Scheme late. The Adjudicator's findings are summarised in paragraphs 20 to 25 below.
20. Our normal approach is to put the applicant in the position they would have been had contributions been paid on time. This can mean making a payment to redress any investment loss due to the delay in paying the contributions to the Scheme.
21. This complaint should be upheld because the Employer has failed to provide evidence to show that the contributions due to the Scheme for the period 1 June to 14 June 2019 amounting to £366.85 have been paid.
22. The Employer was responsible for delaying contributions to the Scheme from 1 November 2018 to 28 February 2019 and 1 March to 31 May 2019.
23. Due to the delays in paying all of the above contributions to the Scheme, the Employer should also make up any investment loss that the late payment of those contributions has caused.
24. It is disappointing that the Employer failed to co-operate fully with TPO or Smart Pension. Despite requesting evidence that all of the outstanding contributions had been paid to the Scheme and a copy of the alleged complaint correspondence with GRC, this has not been forthcoming from the Employer. Furthermore, despite TPO requesting clarity, the Employer failed to explain who GRC are. As a consequence, this matter took far longer to resolve than would otherwise have been the case.
25. On discovering the error, Mr G thought his contributions had been lost. The error occurred over an extended period and the Employer was slow to put matters right to the extent that it did. Mr G will have suffered serious distress and inconvenience as a result of this maladministration and this case should be upheld.
26. Mr G confirmed that he agreed with the Adjudicator's Opinion.
27. 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

28. Mr G has complained that the Employer, despite deducting pension contributions from his pay, has failed to pay some of these into the Scheme. It also paid a number of pension contributions into the Scheme late. The Employer has not arranged for any investment loss to be calculated and paid into the Scheme in respect of the late payment of contributions and has not made any award for the distress and inconvenience caused.
29. The Employer has failed to provide evidence to show that the contributions due to the Scheme for the period 1 June to 14 June 2019 amounting to £366.85 have been paid. While the Employer did remit outstanding payments up to the end of May 2019, it failed to fully rectify this and did not engage with either my Office or Mr G adequately. It has also failed to respond to the Adjudicator's Opinion.
30. The Employer's failure to pay employee and employer contributions into to the Scheme on time amounts to unjust enrichment and has caused Mr G to suffer a financial loss. The Employer shall take remedial action to put this right.
31. Mr G is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice the Employer has caused him to suffer. The distress and inconvenience Mr G suffered was exacerbated by its failure to respond during my Office's investigation into Mr G's complaint.

Directions

32. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay £366.85 into Mr G's account in the Scheme in respect of the total shortfall of contributions for the period 1 June to 14 June 2019;
 - (ii) establish with Smart Pension whether the late payment of contributions has meant that fewer units were purchased in Mr G's Scheme account than he would have otherwise secured, had the contributions been paid on time. This is on the assumption the contributions were invested in Mr G's chosen investment fund(s) for the periods 1 November 2018 to 28 February 2019, 1 March to 31 May 2019 and 1 June to 14 June 2019;
 - (iii) pay any reasonable administration fee charged by Smart Pension for making the necessary calculations;
 - (iv) pay Mr G £1,000 for the serious distress and inconvenience he has experienced.

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33. Within 14 days of receiving confirmation from Smart Pension of any shortfall in Mr G's units, pay the cost of purchasing any additional units required to make up that shortfall in Mr G's Scheme account.

Anthony Arter CBE

Deputy Pensions Ombudsman
7 February 2023

Appendix

Assessment	Frequency	Contribution Start Date	Contribution End Date	Employer Contribution	Employee Contribution	AVC	Total	STATE	Employer uploaded contribution	Payment Received	Contribution Invested on
Eligible Jobholders	Monthly	01 May, 2019	31 May, 2019	£85.32	£142.20	£0.00	£227.52	invested	05 August, 2019 16:24	28 August 2019	02 September 2019
Eligible Jobholders	Monthly	01 April, 2019	30 April, 2019	£85.46	£142.43	£0.00	£227.89	invested	05 August, 2019 16:14	28 August 2019	02 September 2019
Eligible Jobholders	Monthly	01 March, 2019	31 March, 2019	£60.18	£90.27	£0.00	£150.45	invested	05 August, 2019 15:55	28 August 2019	02 September 2019
Eligible Jobholders	Monthly	01 February, 2019	28 February, 2019	£65.94	£98.91	£0.00	£164.85	invested	26 April, 2019 15:04	17 July 2019	20 July 2019
Eligible Jobholders	Monthly	01 January, 2019	31 January, 2019	£70.62	£105.93	£0.00	£176.55	invested	08 April, 2019 12:40	17 July 2019	20 July 2019
Eligible Jobholders	Monthly	01 December, 2018	31 December, 2018	£63.48	£95.22	£0.00	£158.70	invested	08 April, 2019 12:36	17 July 2019	20 July 2019
Eligible Jobholders	Monthly	01 November, 2018	30 November, 2018	£69.30	£103.95	£0.00	£173.25	invested	08 April, 2019 12:33	17 July 2019	20 July 2019

Deductions	Amount
PAYE Tax	169.60
National Insurance	204.84
Ee Pension	121.25
Pension increase deduction	172.85

Payroll month	Contribution	Date Received	Unit Price	Units Purchased	Date it should have been received	Unit Price	Units that should have been purchased	Difference in units
November 2018	£173.25	19 July 2019	£1.16788	148.346	24 December 2018	£1.00739	171.979	23.633
December 2018	£158.70	19 July 2019	£1.16788	135.887	22 January 2019	£1.04155	152.369	16.482
January 2019	£176.55	19 July 2019	£1.16788	151.171	22 February 2019	£1.08132	163.273	12.102
February 2019	£164.85	19 July 2019	£1.16788	141.153	22 March 2019	£1.10447	149.257	8.104
March 2019	£150.45	2 September 2019	£1.17570	127.966	22 April 2019	£1.12533	133.694	5.728
April 2019	£227.89	2 September 2019	£1.17570	193.833	22 May 2019	£1.12544	202.490	8.657
May 2019	£227.52	2 September 2019	£1.17570	193.519	24 June 2019	£1.14625	198.491	4.972
June 2019	£194.00	?						
Total				1091.875			1171.553	79.678