

Ombudsman's Determination

Applicant	Mrs O
Scheme	Now Pensions (the Scheme)
Respondent	Smart Dough Limited (the Employer)

Outcome

1. Mrs O's complaint is upheld and, to put matters right, the Employer shall pay the missing contributions in respect of her pension and make good any shortfall in units. In addition, the Employer shall pay Mrs O £1,000 for the serious distress and inconvenience it has caused her.

Complaint summary

2. Mrs O has complained that the Employer, despite deducting contributions from her pay, has failed to pay contributions into the Scheme.
3. Mrs O has said that the missing contributions amounted to £1,277.27.

Background information, including submissions from the parties

4. In February 2015, Mrs O began her employment with the Employer.
5. On 4 May 2021, Mrs O brought a complaint to The Pensions Ombudsman (**TPO**). Mrs O said that pension contributions had been deducted from her pay but were not paid into the Scheme. She said that this happened between 25 August 2017 to 28 March 2020. As part of her complaint, she provided a breakdown of the contributions that were due, this has been replicated in the Appendix.
6. On 5 July 2022, TPO asked the Employer for its response to Mrs O's complaint.
7. On 20 July 2022, TPO chased the Employer again. But the Employer failed to respond by the deadline.

Caseworker's Opinion

8. Mrs O'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 Scheme. 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. She said that, as the Employer had not responded to any of TPO's communications, she had to base her Opinion solely on the information provided by Mrs O.
 - The Caseworker said that she had no reason to doubt the information provided by Mrs O. So, in the Caseworker's Opinion, on the balance of probabilities, there were contributions that had been deducted from Mrs O's salary, that had not been paid into the Scheme. 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, Mrs O was not in the financial position she ought to be in.
 - In the Caseworker's view, Mrs O 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.
9. 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

10. Mrs O has complained that the Employer has not paid all the contributions due to her Scheme account.
11. I find that employee contributions were deducted but held back by the Employer and not paid into the Scheme. The Employer failed to rectify this and did not engage with either my Office or Mrs O. It has also failed to respond to the Caseworker's Opinion.
12. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mrs O to suffer a financial loss. The Employer shall take remedial action to put this right.
13. Mrs O is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which she has suffered. This was exacerbated by its failure to respond during my Office's investigation into Mrs O's complaint.

Directions

14. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Mrs O £1,000 for the serious distress and inconvenience she has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mrs O's pay in respect of the period of her employment. The Schedule shall also include the corresponding employer contributions that were due to the Scheme; and
 - (iii) forward the Schedule to Mrs O.
15. The Employer shall, within 14 days of receiving a request by Mrs O, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.
16. Within 14 days of receiving confirmation from Mrs O that she agrees with the information on the Schedule, the Employer shall:
 - (i) pay the missing contributions to the Scheme;
 - (ii) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Mrs O's Scheme account than she would have otherwise secured, had the contributions been paid on time; and
 - (iii) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.
17. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Mrs O's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter

Pensions Ombudsman
9 December 2022

Appendix

Date	Employee contribution	Employer contribution
25/8/2017	£1.12	£1.12
01/9/2017	£1.12	£1.12
08/9/2017	£1.72	£1.72
15/9/2017	£1.12	£1.12
22/9/2017	£1.12	£1.12
29/9/2017	£1.12	£1.12
6/10/2017	£1.12	£1.12
13/10/2017	£1.12	£1.12
20/10/2017	£1.12	£1.12
27/10/2017	£1.12	£1.12
3/11/2017	£1.12	£1.12
10/11/2017	£1.12	£1.12
17/11/2017	£1.12	£1.12
24/11/2017	£1.12	£1.12
1/12/2017	£1.12	£1.12
8/12/2017	£1.12	£1.12
15/12/2017	£1.12	£1.12
22/12/2017	£1.12	£1.12
29/12/2017	£1.12	£1.12
5/1/2018	£1.12	£1.12
12/1/2018	£1.12	£1.12
19/1/2018	£1.12	£1.12

26/1/2018	£1.12	£1.12
1/2/2018	£1.12	£1.12
9/2/2018	£1.12	£1.12
16/2/2018	£1.12	£1.12
23/2/2018	£1.12	£1.12
2/3/2018	£1.12	£1.12
9/3/2018	£1.12	£1.12
16/3/2018	£1.12	£1.12
23/3/2018	£1.12	£1.12
30/3/3018	£1.12	£1.12
6/4/2018	£2.38	£3.57
13/4/2018	£2.38	£3.57
20/4/2018	£2.38	£3.57
27/4/2018	£2.38	£3.57
4/5/2018	£2.38	£3.57
11/5/2018	£2.38	£3.57
18/5/2018	£2.38	£3.57
25/5/2018	£2.38	£3.57
1/6/2018	£2.38	£3.57
8/6/2018	£2.38	£3.57
15/6/2018	£2.38	£3.57
22/6/2018	£2.38	£3.57
29/6/2018	£2.38	£3.57
6/7/2018	£2.38	£3.57

13/7/2018	£2.38	£3.57
20/7/2018	£2.38	£3.57
27/7/2018	£2.38	£3.57
3/8/2018	£2.38	£3.57
10/8/2018	£2.38	£3.57
17/8/2018	£2.38	£3.57
24/8/2018	£2.38	£3.57
31/8/2018	£2.38	£3.57
7/9/2018	£2.38	£3.57
14/9/2018	£2.38	£3.57
21/9/2018	£2.38	£3.57
28/9/2018	£2.38	£3.57
5/10/2018	£2.38	£3.57
12/10/2018	£2.38	£3.57
19/10/2018	£2.38	£3.57
26/10/2018	£2.38	£3.57
2/11/2018	£2.38	£3.57
9/11/2018	£2.38	£3.57
16/11/2018	£2.38	£3.57
23/11/2018	£2.38	£3.57
30/11/2018	£2.38	£3.57
7/12/2018	£2.38	£3.57
14/12/2018	£2.38	£3.57
21/12/2018	£2.38	£3.57

28/12/2018	£2.38	£3.57
5/1/2019	£2.38	£3.57
12/1/2019	£2.38	£3.57
19/1/2019	£2.38	£3.57
26/1/2019	£2.38	£3.57
2/2/2019	£2.38	£3.57
9/2/2019	£2.38	£3.57
16/2/2019	£2.38	£3.57
23/2/2019	£2.38	£3.57
1/3/2019	£2.38	£3.57
8/3/2019	£2.38	£3.57
15/3/2019	£2.38	£3.57
22/3/2019	£2.38	£3.57
29/3/2019	£2.38	£3.57
5/4/2019	£7.39	£9.89
12/4/2019	£7.39	£9.89
19/4/2019	£7.39	£9.89
26/4/2019	£7.39	£9.89
3/5/2019	£7.39	£9.89
10/5/2019	£7.39	£9.89
17/5/2019	£7.39	£9.89
24/5/2019	£7.39	£9.89
31/5/2019	£7.39	£9.89
7/6/2019	£7.39	£9.89

14/6/2019	£7.39	£9.89
20/6/2019	£7.39	£9.89
27/6/2019	£7.39	£9.89
5/7/2019	£7.39	£9.89
12/7/2019	£7.39	£9.89
19/7/2019	£7.39	£9.89
26/7/2019	£7.39	£9.89
2/8/2019	£7.39	£9.89
9/8/2019	£7.39	£9.89
16/8/2019	£7.39	£9.89
23/8/2019	£7.39	£9.89
30/8/2019	£7.39	£9.89
6/9/2019	£7.39	£9.89
13/9/2019	£7.39	£9.89
20/9/2019	£7.39	£9.89
27/9/2019	£7.39	£9.89
4/10/2019	£7.39	£9.89
11/10/2019	£7.39	£9.89
18/10/2019	£7.39	£9.89
25/10/2019	£7.39	£9.89
1/11/2019	£7.39	£9.89
8/11/2019	£7.39	£9.89
15/11/2019	£7.39	£9.89
22/11/2019	£7.39	£9.89

29/11/2019	£7.39	£9.89
6/12/2019	£7.39	£9.89
13/12/2019	£7.39	£9.89
20/12/2019	£7.39	£9.89
27/12/2019	£7.39	£9.89
3/1/2020	£7.39	£9.89
10/1/2020	£7.39	£9.89
17/1/2020	£7.39	£9.89
24/1/2020	£7.39	£9.89
31/1/2020	£7.39	£9.89
7/2/2020	£7.39	£9.89
14/2/2020	£7.39	£9.89
21/2/2020	£7.39	£9.89
28/2/2020	£7.39	£9.89
7/3/2020	£7.39	£9.89
14/3/2020	£7.39	£9.89
21/3/2020	£7.39	£9.89
28/3/2020	£7.39	£9.86
Total	£544.48	£732.79
Total: £1,277.27		