

Ombudsman's Determination

Applicant	Mr Y
Scheme	Smart Pension Master Trust (the Trust)
Respondent	Chablais Sport GB Limited (the Employer)

Outcome

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

Complaint summary

2. Mr Y has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Trust.
3. Mr Y has said that the missing contributions amounted to £3,334.40.

Background information, including submissions from the parties

4. In September 2019, Mr Y began his employment with the Employer.
5. In November 2019, Mr Y was enrolled into the Trust.
6. Contributions were deducted from Mr Y's wages; however, nothing was paid into the Trust.
7. On 17 June 2021, Mr Y brought his complaint to The Pensions Ombudsman (**TPO**).
8. Mr Y provided copies of the payslips he held covering the period from 1 December 2019 to 31 July 2021 which detailed the pension contributions deducted from his pay and the corresponding employer contributions. Mr Y said that the contributions, which were never paid into his pension, amounted to £3,334.40. A breakdown of the contributions has been included in the Appendix.
9. On 9 May 2022, TPO asked the Employer for its response to Mr Y's complaint.

10. On 23 May 2022, the Employer responded and said that it would make monthly contributions to ensure that Mr Y's contributions were brought up to date. It said that Mr Y was not contractually entitled to a pension until he had achieved a sales turnover of over £500,000. It said that Mr Y did not achieve this during his employment. However, it acknowledged that deductions were made, but not remitted to the Trust. So, it accepted that money was owed. It said that it would contact the Trust administrator (**Smart Pension**).
11. On 8 June 2022, TPO chased the Employer for an update regarding its contact with Smart Pension. TPO offered to provide copies of Mr Y's payslips which would have confirmed the arrears, but the Employer failed to respond.
12. On 29 June 2022, Smart Pension advised Mr Y that the Employer had not made any contact with it.
13. On 30 June 2022, TPO chased the Employer again but, the Employer again failed to respond by the deadline.

Caseworker's Opinion

14. Mr Y'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 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. She said that, as the Employer had not confirmed the amount of contributions that were outstanding, she had to base her Opinion solely on the information provided by Mr Y.
 - The Caseworker said that she had no reason to doubt the information provided by Mr Y. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr Y's salary, that 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 Y was not in the financial position he ought to be in.
 - In the Caseworker's view, Mr Y had suffered significant distress and inconvenience due to the Employer's maladministration. The Caseworker was of the opinion that an award of £500 for non-financial injustice was appropriate in the circumstances.
15. The Employer did not accept the Caseworker's Opinion and the complaint was passed to me to consider.
16. The Employer provided further comments in response to the Opinion. In summary, it said:-

- It will make a payment to the Trust in August 2022. It said that it will make further payments each month until the unpaid contributions are brought up to date.
 - The £500 award for distress and inconvenience payment was “inappropriate”.
 - That there were several employment issues that were more costly than the unpaid pension contributions. It argued that TPO should investigate these further in order to get a fuller picture of what happened during the course of Mr Y’s employment.
17. In response, Mr Y has said that the Employer’s claims regarding the employment issues were false.
18. Following the Employer’s response to the Opinion, the Caseworker contacted Smart Pension to see if the Employer had made any payments into Mr Y’s Trust account. On 5 October 2022, Smart Pension confirmed that no payments had been made since the Opinion was issued.
19. On 22 November 2022, Smart Pension contacted Mr Y and said that contributions from 1 December 2019 to 31 July 2021 were still outstanding. It confirmed that there had been some recent contact with the Employer, but was unable to provide any further information due to data protection. It also confirmed that it had reported the Employer to the Pensions Regulator.
20. I have considered the additional points raised by the Employer and Mr Y. These additional points do not change the outcome. However, I disagree with the level of award for maladministration.

Ombudsman’s decision

21. Mr Y has complained that the Employer has not paid all the contributions due into his Trust account.
22. The Employer argued that there were issues relating to Mr Y’s employment that were more consequential than the unpaid contributions. However, employment matters fall outside of my jurisdiction. So, I have only considered the complaint concerning the unpaid contributions.
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 in a meaningful way with either my Office or Mr Y. The Employer has disagreed with the Caseworker’s Opinion sending a number of documents in response to this.
24. As part of its response, the Employer committed to making its first payment to the Trust in August 2022. It also promised to make monthly payments following this. However, on 5 October 2022, Smart Pension confirmed to TPO that no payments had been made.

25. The Employer's failure to pay employee and employer contributions into the Trust amounts to unjust enrichment and has caused Mr Y to suffer a financial loss. The Employer shall take remedial action to put this right.
26. The Employer has argued that it should not be required to make a payment in recognition of the distress and inconvenience it has caused Mr Y. It argued that it is not proportionate to the distress and inconvenience caused.
27. Mr Y 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 the Employer's continuing failure to pay the outstanding contributions during my Office's investigation into Mr Y's complaint in spite of saying it would do so.

Directions

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

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31. Within 14 days of receiving confirmation from Smart Pension of any shortfall in Mr Y's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter

Pensions Ombudsman
8 December 2022

Appendix

Date	Employee contributions	Employer contributions
1 December 2019 to 31 December 2019	£104.20	£62.52
1 January 2020 to 31 January 2020	£104.20	£62.52
1 February 2020 to 29 February 2020	£104.20	£62.52
1 March 2020 to 31 March 2020	£104.20	£62.52
1 April 2020 to 30 April 2020	£104.20	£62.52
1 May 2020 to 31 May 2020	£104.20	£62.52
1 June 2020 to 30 June 2020	£104.20	£62.52
1 July 2020 to 31 July 2020	£104.20	£62.52
1 August 2020 to 31 August 2020	£104.20	£62.52
1 September 2020 to 30 September 2020	£104.20	£62.52
1 October 2020 to 31 October 2020	£104.20	£62.52
1 November 2020 to 30 November 2020	£104.20	£62.52
1 December 2020 to 31 December 2020	£104.20	£62.52
1 January 2021 to 31 January 2021	£104.20	£62.52
1 February 2021 to 29 February 2021	£104.20	£62.52
1 March 2021 to 31 March 2021	£104.20	£62.52
1 April 2021 to 30 April 2021	£104.20	£62.52
1 May 2021 to 31 May 2021	£104.20	£62.52
1 June 2021 to 30 June 2021	£104.20	£62.52
1 July 2021 to 31 July 2021	£104.20	£62.52
Total employee contributions payable	<u>£2,084.00</u>	
Total employer contributions payable		<u>£1,250.40</u>