

Ombudsman's Determination

Applicant	Mrs R
Scheme	Smart Pensions (the Scheme)
Respondent	Craig Boyd Hairdressing (the Employer)

Outcome

1. Mrs R'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 R £500 for the significant distress and inconvenience it has caused her.

Complaint summary

2. Mrs R has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
3. Mrs R has said that the missing contributions amounted to £1,900.39.

Background information, including submissions from the parties

4. In June 2018, Mrs R began her employment with the Employer.
5. Between July 2018 and July 2021, the Employer failed to pay pension contributions into the Scheme.
6. On 28 June 2021, Mrs R brought her complaint to The Pensions Ombudsman (**TPO**).
7. Mrs R provided copies of a selection of payslips that she held which detailed the pension contributions deducted from her pay and the corresponding employer contributions. A breakdown of the deductions has been included in the Appendix.
8. On 15 November 2022, the Employer emailed TPO and said that it had tried to make a weekly contribution repayment arrangement with the Scheme administrator, SMART Pensions.

9. On 2 December 2022, the Employer told TPO that it was talking to its accountant about an arrangement to make a weekly payment of £100 until the outstanding contributions are paid.
10. On 7 December 2022, the Employer advised TPO that it had spoken to its accountant and it was waiting to hear from SMART Pensions.
11. On 20 December 2022, TPO asked the Employer for an update.
12. On 20 December 2022, the Employer advised TPO that it was having trouble contacting SMART Pensions, but it would try again.
13. On 12 January 2023, the Employer informed TPO that it had spoken to SMART Pensions about a £400 monthly arrangement to pay the outstanding contributions.
14. On 13 January 2023, TPO asked the Employer to provide a confirmation of what contributions were outstanding.
15. On 16 January 2023, TPO told the Employer that it would formally investigate the complaint unless the Employer confirmed the outstanding contributions and made an offer to repay them.
16. On 16 February 2023, TPO informed the Employer that it would investigate the complaint unless it heard from it by 20 February 2023.
17. On 16 February 2023, the Employer sent TPO an email chain between its accountant and SMART. This showed that it was making an effort to create a payment plan.
18. On 17 February 2023, the Employer made an offer to repay the outstanding contributions over twelve months. This offer was put to Mrs R.
19. On 20 February 2023, Mrs R advised TPO that she did not accept the Employer's offer.

Caseworker's Opinion

20. Mrs R'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 said 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 the Employer had engaged with TPO and acknowledged that contributions had not been paid. So, it was clear an error had occurred and the Employer was responsible.

- The Appendix provides examples of the weekly contributions that were due. Mrs R said despite these contributions being deducted from her salary each week, none of these contributions were actually paid to SMART Pensions.
 - The Employer has failed to provide a schedule of the contributions deducted from Mrs R's pay. So, the contribution schedule in the Appendix has been produced based solely on the evidence produced by Mrs R.
 - The caseworker had no reason to doubt the information provided by Mrs R and she has provided payslips to show what was due to the Scheme. Given that the Employer accepted that the contributions had not been paid, it is clear that maladministration has occurred.
 - It was the caseworker's opinion that the complaint should be upheld because the Employer made deductions from Mrs R's salary, which it did not pay in the Scheme.
 - In the caseworker's opinion, Mrs R has suffered significant distress and inconvenience as a result of this maladministration from the Employer. The Caseworker was of the opinion that an award of £500 for non-financial injustice was appropriate in the circumstances.
21. The Employer accepted that contributions were outstanding. However, it said that it was suffering from financial difficulties so it could not pay what was owed. I agree with the Caseworker's Opinion.

Ombudsman's decision

22. Mrs R has complained that the Employer has not paid all the contributions due to her Scheme account.
23. I find that employee contributions were deducted but held back by the Employer and not paid into the Scheme.
24. I acknowledge that the Employer has asked to pay the contributions over a period of a year. However, Mrs R did not find this offer to resolve the issue satisfactory.
25. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mrs R to suffer a financial loss. The Employer shall take remedial action to put this right.
26. Mrs R is entitled to a distress and inconvenience award in respect of the significant ongoing non-financial injustice which she has suffered.

Directions

27. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mrs R £500 for the significant distress and inconvenience she has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mrs R'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 R.
28. The Employer shall, within 14 days of receiving a request by Mrs R, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.
29. Within 14 days of receiving confirmation from Mrs R 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 R'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.
30. Within 14 days of receiving confirmation from SMART Pensions of any shortfall in Mrs R's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman
02 May 2023

Appendix

Date-Week Ending	Employee contributions	Employer contributions
20 July 2018	£6.15	Not shown
28 September 2018	£5.57	Not shown
5 October 2018	£6.34	Not shown
12 October 2018	£6.34	Not shown
23 July 2021	£7.60	Not shown
30 July 2021	£62.70	Not shown