

## Ombudsman's Determination

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| Applicant  | Mrs R  |
| Scheme     | The Smart Pension Master Trust ( <b>the Trust</b> )                    |
| Respondent | Stellar Tax and Business Advisory Services Ltd ( <b>the Employer</b> ) |

## 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 £180 in recognition of the serious distress and inconvenience it has caused her. This is in addition to the £820 it has already paid Mrs R.

## Complaint summary

2. Mrs R has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Trust.
3. Mrs R has said that the missing contributions amounted to £666.71.

## Background information, including submissions from the parties

4. Between December 2017 and March 2020, the Employer failed to pay pension contributions into the Trust.
5. In November 2019, Mrs R first became aware that pensions contributions had stopped being paid into the Trust.
6. On 30 April 2021, Mrs R contacted the Employer and requested to become a deferred member of the Trust. She said that her deductions were not being remitted to the Trust, so she did not want to continue to pay contributions.
7. On 27 August 2021, the Trust reported the Employer to The Pensions regulator (TPR).
8. On 13 September 2021, Mrs R received an email from the Trust that confirmed that the Employer was failing to pay contributions into the Trust.

9. On 24 September 2021, Mrs R formally raised the issue of the outstanding pensions contributions with the Employer.
10. On 30 September 2021, Mrs R left her employment with the Employer.
11. On 19 October 2021, Mrs R again raised the issue of the unpaid pension contributions with the Employer.
12. On 8 November 2021, Mrs R brought her complaint to The Pensions Ombudsman (TPO).
13. Mrs R provided copies of the payslips that she held for the period from January 2018 to March 2020 which detailed the pension contributions deducted from her pay and the corresponding employer contributions. A breakdown of the deductions from the payslips has been included in the Appendix.
14. On 18 May 2022, TPO wrote to the Employer to ask for more information in response to Mrs R's complaint. This request was repeated on 13 June 2022.
15. On 1 July 2022, the Employer responded and said that it wished to resolve the issue.
16. On 7 July 2022, the Employer said it did not dispute the complaint and it was willing to pay the outstanding contributions.
17. On 8 July 2022, TPO wrote to the Employer and instructed it to pay the outstanding contributions. TPO said that the Employer should ask Smart Pensions, the Trust administrator, to calculate the investment loss and pay this into the Trust. It also said that the Employer should pay any reasonable administration fee associated with this calculation. TPO said that this should be done within 28 days.
18. On 4 August 2022, Mrs R said the contributions had still not been paid.
19. On 5 August 2022, TPO contacted the Employer regarding the unpaid contributions. The Employer responded and said that it had been unable to transfer the funds. TPO gave the Employer until 12 August 2022 to transfer the funds.
20. On 16 August 2022, Mrs R confirmed no payment had been received.
21. On 17 August 2022, TPO contacted the Employer by email and confirmed the payment needed to be made directly to the Trust. TPO said the Employer needed to make the payment before close of business.
22. On 27 September 2022, Mrs R said she had still not received the payment.
23. On 28 September 2022, TPO emailed the Employer and explained that, if the Employer did not make the payment, it would begin a formal investigation into the complaint. It also explained that it was likely that an Ombudsman would make an award for the distress and inconvenience Mrs R has suffered.

24. On 29 September 2022, TPO sent its final chaser to the Employer. The Employer responded and said that it had IT issues. The Employer did not make any payments into the Trust and made no further contact with TPO.

### **Caseworker's Opinion**

25. 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 Trust. 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, although the Employer provided a response and engaged in an initial informal resolution, having reviewed the available evidence, it was his opinion that not all contributions had been paid. He had to base his Opinion solely on the evidence provided by Mrs R.
  - The Caseworker said that he had no reason to doubt the information provided by Mrs R. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mrs R's salary, but 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, Mrs R was not in the financial position she ought to be in.
  - In the Caseworker's view, Mrs R 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.
26. Following the Caseworker's Opinion, the Employer paid £820 directly to Mrs R. TPO contacted the Employer and asked for clarification on what the payment related to. It asked whether this meant that the Employer had accepted the Opinion. However, the Employer did not respond to TPO's request.
27. As the Employer did not respond to the Caseworker's Opinion, the complaint was passed to me to consider. I agree with the Caseworker's Opinion.

### **Ombudsman's decision**

28. Mrs R has complained that the Employer has not paid all the contributions due to her Scheme account.
29. 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 either my Office or Mrs R. It has also failed to respond to the Caseworker's Opinion.

30. The Employer's failure to pay employee and employer contributions into the Trust amounts to unjust enrichment and has caused Mrs R to suffer a financial loss. The Employer shall take remedial action to put this right.
31. Mrs R 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 R's complaint.

## **Directions**

32. To put matters right, the Employer shall, within 28 days of the date of this Determination:
  - (i) pay Mrs R an additional £180 for the serious distress and inconvenience she has experienced. This will bring the total amount paid to £1,000;
  - (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 Trust; and
  - (iii) forward the Schedule to Mrs R.
33. 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.
34. 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 Trust;
  - (ii) establish with the Trust 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 Smart Pensions charge a fee for carrying out the above calculation.
35. 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  
30 January 2023

**Appendix**

| Date       | Pension contributions |
|------------|-----------------------|
| 31/01/2018 | £2.96                 |
| 28/02/2018 | £3.52                 |
| 31/03/2018 | £5.74                 |
| 29/04/2018 | £13.05                |
| 31/05/2018 | £13.05                |
| 30/06/2018 | £10.97                |
| 29/07/2018 | £12.21                |
| 31/08/2019 | £14.65                |
| 30/09/2018 | £14.34                |
| 31/10/2018 | £15.99                |
| 30/11/2018 | £15.20                |
| 31/12/2018 | £13.63                |
| 31/10/2019 | £41.25                |
| 30/11/2019 | £39.33                |
| 31/12/2019 | £44.55                |
| 31/01/2020 | £44.55                |
| 28/02/2020 | £45.10                |
| 31/03/2020 | £45.10                |