

Ombudsman's Determination

Applicant	Mr E
Scheme	Smart Pension Master Trust (the Trust)
Respondent	Terra-Vac Limited (the Employer)

Outcome

1. Mr E'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 E £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

2. Mr E has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Trust.

Background information, including submissions from the parties

3. From May 2020, the Employer failed to pay pension contributions into the Trust.
4. On 18 August 2020, the Trust administrator wrote to Mr E and told him that the Employer had not paid any contributions into the Trust.
5. On 17 January 2022, Mr E complained to the Employer, but did not receive a response.
6. On 28 March 2022, Mr E brought his complaint to The Pensions Ombudsman (**TPO**).
7. Mr E provided a copy of the payslip that he held for the month of October 2022, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These deductions amounted to £29.41. Mr E has been unable to provide further payslips. The payslip also contained information on the year-to-date pension contributions. The year-to-date pension contributions amounted to £794.07.
8. On 4 August 2022, TPO's Office wrote to the Employer to ask for more information in response to Mr E's complaint. This request was repeated on 22 August 2022. The

Employer responded and said it had been experiencing some difficulties and it hoped to have this concluded shortly.

9. On 12 September 2022, TPO chased the Employer again. But the Employer failed to respond by the deadline.
10. In October 2022, Mr E told TPO that pension contributions were still being taken from his salary.

Caseworker's Opinion

11. Mr E'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 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 TPO's communications, she had to base her Opinion solely on the information provided by Mr E.
 - The Caseworker said that she had no reason to doubt the information provided by Mr E. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr E'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, Mr E was not in the financial position he ought to be in.
 - In the Caseworker's view, Mr E 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.
12. 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

13. Mr E has complained that the Employer has not paid all the contributions due to his Trust account.
14. 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 also failed to respond to the Caseworker's Opinion.
15. The Employer's failure to pay employee and employer contributions into the Trust amounts to unjust enrichment and has caused Mr E to suffer a financial loss. The Employer shall take remedial action to put this right.

16. Mr E 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 its failure to respond during my Office's investigation into Mr E's complaint.

Directions

17. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mr E £1,000 for the serious distress and inconvenience he has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr E'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 Mr E.
18. The Employer shall, within 14 days of receiving a request by Mr E, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.
19. Within 14 days of receiving confirmation from Mr E that he 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 Mr E's Trust account than he would have otherwise secured, had the contributions been paid on time; and
 - (iii) pay any reasonable administration fee should the Trust administrator charge a fee for carrying out the above calculation.
20. Within 14 days of receiving confirmation from the Trust administrator of any shortfall in Mr E's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman
26 January 2023