

Ombudsman's Determination

Applicant	Ms L
Scheme	Smart Pensions (the Scheme)
Respondent	Lakeside Events Nottingham Limited (the Employer)

Outcome

1. Ms L'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 Ms L £500 for the significant distress and inconvenience it has caused her.

Complaint summary

2. Ms L has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
3. Ms L has said that the missing employee contributions amounted to £325.02. Ms L is unsure of what employer contributions are outstanding, as these contributions were not listed on her payslips.

Background information, including submissions from the parties

4. In November 2020, Ms L began her employment with the Employer.
5. Between November 2021 and January 2022, the Employer failed to pay pension contributions into the Scheme.
6. On 21 March 2022, Ms L put in a request to take her benefits and was told that she could not do this while pension contributions were outstanding.
7. On 4 April 2022, Ms L complained to the Employer but was unable to reach a resolution.
8. On 21 June 2022, Ms L brought her complaint to The Pensions Ombudsman (**TPO**).
9. Ms L provided copies of some of the payslips that she held for the period from November 2021 to January 2022. These payslips detailed the pension contributions deducted from her pay. The payslips did not show the corresponding employer

contributions. The employee deductions amounted to approximately £325.02. A breakdown of the deductions has been included in the Appendix.

10. On 7 February 2023, TPO asked the Employer for its response to Ms L's complaint.
11. On 8 February 2023, the Employer responded and stated that the business had closed due to it not having enough money to cover its running costs or debts. On the same day, TPO responded and requested proof of the company's status. The Employer replied and said it was unsure how it could prove the status of the business.
12. On 9 February 2023, TPO emailed the Employer and outlined the documents that would be accepted as proof that the business is currently insolvent. On the same day, the Employer responded and said it could not provide any of the requested documents.
13. On 9 February 2023, TPO responded to the Employer and informed it that, as there was insufficient evidence to show that it was no longer trading, the investigation into the complaint would continue.

Caseworker's Opinion

14. Ms L'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. She said that, as the Employer had not responded adequately to any of TPO's communications, she had to base her Opinion solely on the information provided by Ms L.
 - The Caseworker said that she had no reason to doubt the information provided by Ms L. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Ms L's salary but 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, Ms L was not in the financial position she ought to be in.
 - The Caseworker noted that the Employer argued that it was no longer trading and was unable to pay the contributions. However, the Employer failed to provide evidence that it was no longer trading, so TPO continued the investigation.
 - In the Caseworker's view, Ms L 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 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

16. Ms L has complained that the Employer has not paid all the contributions due to her Scheme account.
17. Although the Employer has argued that it is no longer trading, it has not provided evidence to support this claim. So, I agree with the Caseworker's decision to continue the investigation into Ms L's complaint.
18. 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 fully engage with either my Office or Ms L. It has also failed to respond to the Caseworker's Opinion.
19. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Ms L to suffer a financial loss. The Employer shall take remedial action to put this right.
20. Ms L is entitled to a distress and inconvenience award in respect of the significant ongoing non-financial injustice which she has suffered. In my view, Ms L's distress and inconvenience was exacerbated by the Employer's failure to provide the necessary information during my Office's investigation into Ms L's complaint.

Directions

21. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Ms L £500 for the significant distress and inconvenience she has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Ms L'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 Ms L.
22. The Employer shall, within 14 days of receiving a request by Ms L, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.
23. Within 14 days of receiving confirmation from Ms L that she agrees with the information on the Schedule, the Employer shall:
 - (i) pay the missing contributions to the Scheme;

CAS-89578-K2W7

(ii) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Ms L'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.

24. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Ms L's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman
22 March 2023

Appendix

Date	Employee contributions	Employer contributions
November 2021	£108.34	Employer amount unknown
December 2021	£108.34	Employer amount unknown
January 2022	£108.34	Employer amount unknown