

Ombudsman's Determination

Applicant	Mr I
Scheme	Smart Pension Master Trust (the Scheme)
Respondent	Smart Pension Limited (Smart Pension)

Outcome

1. I do not uphold Mr I's complaint and no further action is required by Smart Pension.

Complaint summary

2. Mr I has complained that Smart Pension:
 - 2.1. Initially refused to lodge his complaint.
 - 2.2. Failed to investigate his complaint
 - 2.3. Provided poor service.
3. Mr I would like his unpaid pension contributions returned to him and to be awarded £24,000 in compensation.

Background information, including submissions from the parties

4. Mr I began employment with Ardu Prime Investment Service Ltd (the **Employer**) in July 2022.
5. Mr I was not enrolled in the Scheme by the Employer until 23 February 2023.
6. As a result of not being enrolled in the Scheme the Employer failed to pay contributions into Mr I's pension between July 2022 and November 2022. The unpaid contributions for this period amounted to £1,378.64.
7. In March 2023, the Employer contacted Smart Pension to make a Bankers Automated Clearing System (**BACS**) payment for Mr I's unpaid contributions. The necessary paperwork was sent to the Employer to arrange payment. The paperwork was completed and returned in June 2023. Smart Pension has confirmed that the payment was never received.

8. Smart Pension reported the Employer to The Pensions Regulator (**TPR**) in April 2023 for late payment of contributions into the Scheme.
9. On 15 September 2023, Mr I raised a formal complaint with Smart Pension.
10. On 23 October 2023, Smart Pension sent its complaint response to Mr I advising that whilst it facilitates his pension, the Employer is responsible for deducting employee contributions and remitting those payments to the Scheme alongside any relevant employer contributions.
11. In October 2023, Smart Pension contacted the Employer to confirm whether it had ceased trading. The Employer said that Smart Pension should contact a specific individual within its organisation for further information and provided their contact details.
12. On 3 November 2023, Mr I contacted the Smart Pension and stated that his complaint was specifically regarding its failure to notify TPR in good time about late Employer contributions and he was seeking redress via the 'compensation fund for dissolved companies'. Mr I was informed that he could escalate his complaint to the Scheme's Internal Dispute Resolution Procedure (**IDRP**).
13. In December 2023, Smart Pension used the contact information provided by the Employer in October 2023 to request information regarding its trading status but received no response.
14. On 8 December 2023, Mr I confirmed via e-mail that he wished to escalate his complaint.
15. Smart Pension issued its IDRP response, in which it did not uphold Mr I's complaint. Its reasons were that it made attempts to contact the Employer on numerous occasions and reported the Employer to TPR within a reasonable timeframe. It also confirmed that the Employer had ceased trading as of 30 May 2023 and an insolvency practitioner would not be appointed to retrieve any outstanding contributions.
16. On 1 December 2023, Mr I brought his complaint to The Pensions Ombudsman (**TPO**).
17. On 15 August 2024, TPO e-mailed Mr I and asked for some further context regarding his complaint and why he felt Smart Pension was at fault. This e-mail was chased up on both the 22 and 29 August 2024.
18. On 4 September 2024, Mr I responded and stated that Smart Pension had been negligent in setting up the pension and did not advise him in good time of the issues relating to the Employer. TPO also asked Mr I to elaborate on the £24,000 compensation he requested from Smart Pension, and he explained that he did not receive his pension payments which amounted to this figure.

19. On 4 September 2024, TPO requested further clarity from Mr I regarding why he felt Smart Pension had been negligent in setting up his pension. TPO explained that as the Employer had never sent the money to the Scheme, we would not expect Smart Pension to reimburse him for the unpaid contributions but that if he could provide evidence of any maladministration we would look into this.
20. On the same day, Mr I responded and stated that there were extensive delays in setting up his pension and he was not kept up to date on the progress. Mr I stated that he was not told until nine months after the issue arose with the Employer not paying contributions. Mr I stated that his payslips showed payments to the Scheme and due to its maladministration, it cannot locate his pension.

Adjudicator's View

21. Mr I's complaint was considered by one of our Adjudicators who concluded that no further action was required by Smart Pension. The Adjudicator's findings are summarised below:-
 - Whilst the Adjudicator appreciated there was a delay in setting up Mr I's pension, there was no evidence to suggest this was as a result of maladministration by the Smart Pension or that there was any negligence in this regard.
 - They understood Mr I's frustration that he was not informed until nine months after the issue first arose regarding his unpaid contributions. However, as the Employer did not set up Mr I's pension until 23 February 2023, it had already been seven months before Smart Pension became involved. The Adjudicator confirmed that Smart Pension spoke with the Employer in March 2023 and reported them to the TPR in April 2023 - which Mr I would also have been notified of.
 - Section 88(1) Pensions Act 1995 provides that where there is a failure to pay contributions by their due date and the trustees believe the failure is likely to be of 'material significance' to TPR, they must inform TPR within a reasonable period (Appendix). Material significance has not been defined in legislation, however TPR's Code of Practice considers that payment failure is likely to be of material significance. These circumstances include, amongst others, 'any event where contributions have been outstanding for 90 days since the due date'.
 - The Adjudicator concluded that as Smart Pension reported the issue within two months of the due date to pay the contributions once Mr I had enrolled, Smart Pensions had acted within its duty to notify TPR (noting that it was within the 90-day 'grace period' for late contributions to be considered materially significant included in the relevant Code of Practice). Additionally, TPR considers 30 days to be a reasonable period of time for reporting to members following a report being made to TPR. Based on the available information Mr I would have been informed within this time period.

- Regarding Smart Pension not being able to locate Mr I's pension, the Adjudicator stated that there was nothing to suggest they could not locate the account, the issue was that there were unpaid contributions from the Employer that were never sent. The Adjudicator stated that it was the Employer's responsibility to make sure it paid pension contributions in line with its duties therefore Smart Pension could not be held accountable for the Employer's shortcomings.
- With regards to Mr I's request for £24,000 in compensation on top of the unpaid contributions, the Adjudicator stated that the pension contributions were never sent to the Scheme so it would not be appropriate for Smart Pension to reimburse Mr I. Furthermore, the Adjudicator could see no reason why Smart Pension should pay compensation in this instance as no maladministration had been identified on its part. Mr I had not provided any further justification for his claim of £24,000 in compensation.

22. Mr I did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr I did not provide any further comments. I agree with the Adjudicator's Opinion.

Ombudsman's decision

23. Mr I has complained that Smart Pension initially refused to lodge and investigate his complaint. Having reviewed the available information, I have not seen any evidence to support this assertion. I also note that when asked to substantiate this element of his complaint Mr I was unable to provide any further information to support his allegation. From what I have seen, Mr I complained to Smart Pension on 15 September 2023, and this was acknowledged on 18 September 2023. A formal response was sent on 23 October 2023 which I consider to be reasonable.
24. Mr I then returned to Smart Pension with additional complaint points on 3 November 2023. Smart Pension acknowledged his complaint on the same day and explained he could escalate his complaint via the IDRP. Smart Pension again responded within a reasonable timeframe and covered all of Mr I's complaint points. I appreciate Mr I may not agree with its findings, but I have not seen any evidence that it refused to lodge and investigate his complaint.
25. Further to the above, I have not seen any evidence that Smart Pension provided Mr I with a poor service in relation to the operation of his pension or dealing with his complaint when the Employer ceased trading.
26. Mr I stated that Smart Pension did not seek compensation for his losses when the Employer became insolvent. However, it would not have been Smart Pension's responsibility to seek compensation on Mr I's behalf. Once the Employer had ceased trading, Mr I would either have to contact the Employer directly or go through the relevant insolvency practitioner. I therefore cannot agree that Smart Pension acted incorrectly in this regard.

27. When TPO contacted Mr I for more context around his complaint on 4 September 2024 he provided specific points regarding why he felt Smart Pension had been negligent in dealing with his pension.
28. Mr I stated that there were extensive delays in opening his pension and suggested this was the fault of Smart Pension. Having reviewed all the available information on file, there is nothing to suggest that the delay in setting up the pension was as a result of negligence on Smart Pension's behalf. Rather, it would have been the Employer's responsibility to provide the required details to set up the pension in Mr I's name and, whilst I appreciate there were delays in doing this, nothing suggests this was the result of maladministration by Smart Pension.
29. Mr I stated that he was not advised by Smart Pension that there were issues with his pension contributions until nine months after the issue arose. In this regard, it appears that Mr I is under the assumption that Smart Pension were involved in the administration of his pension from the point he began working for the Employer and therefore should have been aware much sooner that there were issues with his pension contributions. However, as the pension was not set up until February 2023, seven months after Mr I began employment, this would have been Smart Pension's first point of involvement. Soon after that, I note that in April 2023 Smart Pension reported the Employer to TPR for failure to remit contributions and then notify Mr I - which, as my Adjudicator sets out above, was in accordance with its duties.
30. Mr I stated that Smart Pension was unable to locate his pension. Mr I did not provide context around this point but I have not seen any evidence to suggest that Smart Pension could not locate his pension account, rather the issue appears to be related to pension contributions not being paid.
31. In conclusion, based on the evidence available, I find that Smart Pension is not responsible for any maladministration. Whilst it is unfortunate that the Employer was late to enrol Mr I and subsequently failed to pay in some of his pension contributions before it ceased trading, Smart Pension followed its own processes and handled Mr I's complaint in a timely manner.
32. Therefore, I do not uphold Mr I's complaint.

Dominic Harris

Pensions Ombudsman

11 July 2025

Appendix

Section 88 (1) Pensions Act 1995

- (1) Where, in the case of an occupational pension scheme to which section 87 applies
- a) there is a failure to pay on or before the due date any amounts payable in accordance with the payment schedule, and
 - b) the trustees or managers have reasonable cause to believe that the failure is likely to be of material significance in the exercise by the Authority of any of their functions,

they must, except in prescribed circumstances, give notice of the failure to the Authority and to the members of the scheme within a reasonable period after the due date.