

Ombudsman's Determination

Applicant	Mr Y
Scheme	Smart Pension (the Scheme)
Respondent	Harcourt Garage Ltd (the Employer)

Outcome

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

Complaint summary

2. Mr Y has complained that the Employer, despite deducting contributions from his pay, has failed to pay contributions into the Scheme.
3. Mr Y has said that the missing contributions amounted to £4,233.

Background information, including submissions from the parties

4. Mr Y says he was originally enrolled into a workplace pension with Smart Pension. Despite pension contributions being deducted from his pay between April 2019 and December 2020, none of these were actually paid into the Scheme. The Employer also failed to pay its own due contributions into the Scheme.
5. On 4 September 2019, the Scheme contacted Mr Y and informed him that payments from the Employer had been unpaid for over 90 days.
6. On 6 September 2019, Mr Y contacted the Employer and asked it to investigate the issue. The Employer confirmed there had been a misunderstanding between Quickbooks and the Scheme administrator but it was being "sorted."
7. On 22 January 2021, the Employer apologised to Mr Y for the delay and stated that it had been in talks with its accountant to assist with putting the matter right.
8. Mr Y chased the Employer for a response in January, February and March 2021 but received no further reply.

9. Mr Y referred the case to The Pensions Ombudsman (**TPO**) on 26 March 2021. During the investigation, he provided copies of some payslips from June to September 2019, which detailed some of the pension contributions deducted from his pay. Mr Y has said that he has been unable to get the Employer to send all of his payslips as it has ignored numerous requests. So, he was unable to confirm the exact contributions that had not been paid into the Scheme.
10. The most recent payslip available is dated 7 September 2019. This shows that the employer contributions up to that point in the financial year amounted to £358.57. The employee contributions amounted to £597.54.
11. On 29 April 2022, TPO contacted the Employer and requested that the missing payments be made.
12. On 16 May 2022, TPO chased the Employer for a response and set a final deadline of 30 May 2022. TPO received no response.

Caseworker's Opinion

13. Mr Y'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 stated that TPO's normal approach, in cases such as these, was to seek agreement from all parties as to the facts of the case, including the dates and amounts of contributions involved. He said that the Employer had not provided a response to the complaint brought by Mr Y and had not responded to any of TPO's communications. Mr Y has said that the missing contributions are estimated to be £4,233. Although limited in number, Mr Y has provided several payslips and they show that, for the period between April and September 2019, the average monthly pension contribution should have been around £190.
 - The Caseworker said that he had no reason to doubt the information provided by Mr Y. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr Y's salary, and 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, Mr Y was not in the financial position he ought to be in.
 - In the Caseworker's view, Mr Y had suffered significant distress and inconvenience due to the Employer's maladministration. The Caseworker was of the view that an award of £500 for non-financial injustice was appropriate in the circumstances.
14. 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, except the level of award for maladministration.

Ombudsman's decision

15. Mr Y has complained that the Employer has not paid all the contributions due to his Scheme account.
16. The available evidence supports the view 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 engage with either my Office or Mr Y. It has also failed to respond to the Caseworker's Opinion.
17. The Employer's failure to pay employee and employer contributions into to the Scheme amounts to unjust enrichment and has caused Mr Y to suffer a financial loss. The Employer shall take remedial action to put this right.
18. Mr Y is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice the Employer has caused him to suffer. This was made worse by its failure to respond during my Office's investigation into Mr Y's complaint.

Directions

19. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Mr Y £1,000 for the serious distress and inconvenience he has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr Y's pay in respect of the period of his employment. The Schedule shall also include the corresponding employer contributions that were due to the Scheme; and
 - (iii) forward the Schedule to Mr Y.
20. The Employer shall, within 28 days of receiving a request by Mr Y, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.
21. Within 14 days of receiving confirmation from Mr Y that he agrees with the information on the Schedule, the Employer shall:
 - (i) pay the missing contributions to the Scheme;
 - (ii) establish with Smart Pension whether the late payment of contributions has meant that fewer units were purchased in Mr Y's Scheme account than he would have otherwise secured, had the contributions been paid on time; and
 - (iii) pay any reasonable administration fee should Smart Pension charge a fee for carrying out the above calculation.

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22. Within 14 days of receiving confirmation from Smart Pension of any shortfall in Mr Y's units, pay the cost of purchasing any additional units required to make up that shortfall.

Anthony Arter

Pensions Ombudsman
12 September 2022