

## Ombudsman's Determination

Applicant	Mr L
Scheme	The Smart Pension Master Trust ( <b>the Trust</b> )
Respondent	Integral Law Ltd ( <b>the Employer</b> )

## Outcome

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

## Complaint summary

2. Mr L has complained that the Employer, despite deducting contributions from his pay, has failed to pay the contributions into the Trust.
3. Mr L has said that the missing contributions amounted to £2,388.38.

## Background information, including submissions from the parties

4. In April 2019, Mr L began his employment with the Employer. In May 2019, Mr L was enrolled into the Trust and salary deductions began.
5. In October 2020, Mr L left his employment with the Employer.
6. On 3 July 2020, Mr L sought to consolidate his pension funds into his current workplace pension scheme. Mr L logged into his account with the Trust and found there was a zero balance with £1,965.04 processing. Mr L queried this with the Trust administrator.
7. On 8 July 2021, Mr L called the Trust administrator and was told the Employer had failed to make any payments into the Trust and was being chased.
8. On 15 July 2021, Mr L received an email from the Trust administrator confirming the Employer had not paid into the Trust and it had reported the Employer to the Pensions Regulator (**TPR**).

9. Later that day, Mr L spoke to TPR and was advised to raise a formal complaint with The Pensions Ombudsman (**TPO**). Mr L contacted TPO and was informed that he should first make a formal complaint with the Employer which Mr L did that same day.
10. Mr L chased the Employer for a response to his complaint by email on 23 July 2021 and 16 August 2021. Mr L did not receive any response.
11. On 17 August 2021, Mr L submitted an application to TPO.
12. Mr L provided copies of the payslips that he held for the period from May 2019 to October 2020, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These deductions amounted to £2,388.38. A breakdown of the deductions has been included in the Appendix.
13. On 24 May 2022, TPO wrote to the Employer to ask for more information in response to Mr L's complaint. This request was repeated on 7 June 2022. Neither of these requests received a response.

## **Adjudicator's Opinion**

14. Mr L's complaint was considered by one of our Adjudicators 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 Adjudicator's findings are summarised below:-
  - The Adjudicator 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. He said that, as the Employer had not responded to any of TPO's communications, he had to base his Opinion solely on the information provided by Mr L.
  - The Adjudicator said that he had no reason to doubt the information provided by Mr L. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Mr L's salary, that 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 L was not in the financial position he ought to be in.
  - In the Adjudicator's view, Mr L had suffered significant distress and inconvenience due to the Employer's maladministration. The Adjudicator was of the view that an award of £500 for non-financial injustice was appropriate in the circumstances.
15. The Employer did not respond to the Adjudicator's Opinion and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion, except the level of award for maladministration.

### **Ombudsman's decision**

16. Mr L has complained that the Employer has not paid all the contributions due to his Trust account.
17. The available evidence supports the view 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 Mr L. It has also failed to respond to the Adjudicator's Opinion.
18. The Employer's failure to pay employee and employer contributions into the Trust amounts to unjust enrichment and has caused Mr L to suffer a financial loss. The Employer shall take remedial action to put this right.
19. Mr L 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 L's complaint.

### **Directions**

20. To put matters right, the Employer shall, within 28 days of the date of this Determination:
  - (i) pay Mr L £1,000 for the significant distress and inconvenience he has experienced;
  - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr L's pay in respect of the period of his employment. The Schedule shall also include the corresponding employer contributions that were due to the Trust; and
  - (iii) forward the Schedule to Mr L.
21. The Employer shall, within 14 days of receiving a request by Mr L, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.
22. Within 14 days of receiving confirmation from Mr L that he agrees with the information on the Schedule, the Employer shall:
  - (i) pay the missing contributions to the Trust;
  - (ii) establish with Smart Pension, whether the late payment of contributions has meant that fewer units were purchased in Mr L's Trust 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.

CAS-76801-H9Y9

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

**Anthony Arter**

Pensions Ombudsman  
15 September 2022

**Appendix**

Date	Employee contributions	Employer contributions
30/04/2019	Not yet enrolled	Not yet enrolled
31/05/2019	£93.15	£55.89
30/06/2019	£93.15	£55.89
31/07/2019	£93.15	£55.89
31/08/2019	£93.15	£55.89
30/09/2019	£93.15	£55.89
31/10/2019	£93.15	£55.89
30/11/2019	£93.15	£55.89
31/12/2019	£93.15	£55.89
31/01/2020	£93.15	£55.89
29/02/2020	£93.15	£55.89
31/03/2020	£78.24	£46.94
30/04/2020	£69.00	£41.40
31/05/2020	£69.00	£41.40
30/06/2020	£69.00	£41.40
31/07/2020	£69.00	£41.40
31/08/2020	£69.00	£41.40
30/09/2020	£69.00	£41.40
31/10/2020	£69.00	£41.40
Total unpaid employee contributions	<b><u>£1,492.74</u></b>	
Total unpaid employer contributions		<b><u>£895.64</u></b>