

Ombudsman's Determination

Applicant	Mr T
Scheme	Smart Pensions (the Scheme)
Respondent	Daisy Chain Dairy (the Employer)

Outcome

1. Mr T'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 T £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

2. Mr T has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Scheme.
3. Mr T has said that the missing contributions amounted to £1,614.50.

Background information, including submissions from the parties

4. In April 2021, Mr T began his employment with the Employer. He said that, although contributions were taken from his pay, the Employer failed to pay them into the Scheme.
5. On 26 April 2022, Mr T brought his complaint regarding the unpaid contributions to The Pensions Ombudsman (**TPO**).
6. Mr T provided copies of the payslips that he held for the period from May 2021 to February 2022, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These deductions amounted to £1,614.50. A breakdown of the deductions has been included in the Appendix.
7. On 25 July 2022, TPO asked the Employer for its response to Mr T's complaint.
8. On 4 August 2022, the Employer responded stating that it was aware of the issues relating to Mr T's complaint. The Employer stated that the business was no longer trading.

9. On 8 August 2022, TPO responded to the Employer and said that, according to Companies House, the Employer was still Active. TPO asked for a timeline of when the pension contributions would be paid.
10. On 22 August 2022, TPO chased the Employer again. But the Employer failed to respond by the deadline.

Caseworker's Opinion

11. Mr T'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 on the facts of the complaint, including the dates and amounts of contributions involved. She said that, as the Employer had not responded to any of TPO's communications, she had to base her Opinion solely on the information provided by Mr T.
 - The Caseworker said that she had no reason to doubt the information provided by Mr T. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr T's salary, that 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 T was not in the financial position he ought to be in.
 - In the Caseworker's view, Mr T had suffered serious distress and inconvenience due to the Employer's maladministration. The Caseworker was of the view 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 T has complained that the Employer has not paid all the contributions due to his Scheme account.
14. 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 T. It has also failed to respond to the Caseworker's Opinion.
15. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mr T to suffer a financial loss. The Employer shall take remedial action to put this right.

16. Mr T 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 T's complaint.

Directions

17. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mr T £1,000 for the serious distress and inconvenience he has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr T'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 T.
18. The Employer shall, within 14 days of receiving a request by Mr T, 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 T that he agrees with the information on the Schedule, the Employer shall:
- (i) pay the missing contributions to the Scheme;
 - (ii) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Mr T's Scheme account than he 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.
20. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Mr T's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter

Pensions Ombudsman
21 November 2022

Appendix

Date	Employee contributions	Employer contributions
May 2021	£72.26	£43.36
June 2021	£80.80	£48.48
July 2021	£114.00	£68.40
August 2021	£58.00	£34.80
September 2021	£119.60	£71.76
October 2021	£114.00	£61.68
November 2021	£119.60	£71.76
December 2021	£102.80	£61.68
January 2022	£119.60	£71.76
February 2022	£108.40	£65.04
Total	£1,009.06	£605.44
Total: £1,614.50		