

Ombudsman's Determination

Applicant	Ms H
Scheme	The Smart Pension Master Trust (the Trust)
Respondent	Elevate Ward Design Ltd (the Employer)

Outcome

1. Ms H's complaint is upheld and, to put matters right, the Employer shall pay £2,024.00 into the Trust. The Employer shall ensure that Ms H is not financially disadvantaged by its maladministration. So, it shall arrange for any investment loss to be calculated and paid into the Trust.
2. In addition, the Employer shall pay Ms H £1,000 for the serious distress and inconvenience it has caused her.

Complaint summary

3. Ms H has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Trust.
4. The available evidence shows that the missing contributions amounted to £2,024.00.

Background information, including submissions from the parties

5. The sequence of events is not in dispute, so I have only set out the salient points.
6. On 5 October 2020, Ms H began working for the Employer.
7. On 29 January 2021, pensions contributions started being deducted from Ms H's pay.
8. Between January 2021 and November 2021, the Employer failed to pay pension contributions into the Trust.
9. On 12 August 2021, Ms H was enrolled into the Trust. She accessed the online portal and discovered that no pension contributions had been paid into the Trust.
10. On 20 September 2021, Ms H emailed the Employer about her unpaid pension contributions as she was unable to see them in her Trust account. She said that she

had contributions deducted from her pay since January 2021 but had only been enrolled into the Trust on 12 August 2021.

11. On 12 October 2021, Ms H requested an update from the Employer. On the same day, the Employer emailed Ms H and said it had every intention of paying the contributions as soon as it was affordable for the business.
12. On 30 November 2021, Ms H ceased employment with the Employer. She said upon leaving her employment, it was verbally agreed with the Employer that the outstanding contributions would be paid back at the end of the 2021/2022 financial year.
13. On 29 February 2022, Ms H complained to The Pensions Ombudsman (**TPO**).
14. Ms H provided copies of the payslips that she held for the period between January 2021 and November 2021, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. These contributions amounted to £1,955.00. The payslip that Ms H provided from January 2021 did not show employer contributions.
15. Ms H also provided a copy of the record of contributions from the Trust administrator which shows that no contributions were paid into the Trust by the Employer.
16. The payslips provided by Ms H, except for January 2021, show employer contributions of £69.00 for each month for the period between February 2021 and November 2021.
17. On 17 July 2024, TPO asked the Employer for its formal response to Ms H's complaint. This request was repeated on 31 July 2024. None of these requests received a response.

Adjudicator's Opinion

18. Ms H'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 all 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 Ms H.
 - The Adjudicator said that he had no reason to doubt the information provided by Ms H. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Ms H's salary but 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.

- The Adjudicator said that although Ms H's payslip for January 2021 did not show any employer contributions, her salary met the pension qualifying threshold. Therefore, pension contributions should have been paid into the Trust and calculated by reference to the statutory minimum automatic enrolment contribution rate of 5% in employee and 3% in employer contributions. In his view on a balance of probabilities, £69.00 in employer contributions were also due to the Trust for January 2021. As a result of the Employer's maladministration, Ms H was not in the financial position she ought to be in.
- In the Adjudicator's view, Ms H had suffered serious distress and inconvenience due to the Employer's maladministration. The Adjudicator was of the opinion that an award of £1,000 for non-financial injustice was appropriate in the circumstances.

19. 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.

Ombudsman's decision

20. Ms H has complained that the Employer has not paid all the contributions due to her Trust account.
21. Under the rules of the Trust (**the Trust Rules**), the Employer was obliged to pay to the Trust, at least 3% of Ms H's qualifying earnings in the relevant pay reference period, and the employer and employee contributions must amount to at least 8% of Ms H's qualifying earnings in the relevant pay reference period. The relevant provisions of the Trust Rules are outlined in Appendix Two.
22. The Employer belatedly enrolled Ms H into the Trust in August 2021 but failed to make any pension contributions. Based on the payslips provided by Ms H and details from her Trust account, I find that the amount of £2,024.00 has not been remitted to the Trust.
23. There is no dispute that pension contributions were deducted from Ms H's wages between January 2021 and July 2021, despite her not being enrolled into the Scheme. I find that the Employer's action to deduct contributions during this period indicates its intention to comply with the Trust Rules and pay pension contributions into the Trust. Given that Ms H was subsequently enrolled into the Trust on 12 August 2021, I find that the contributions deducted between January 2021 and July 2021 should be remitted to the Scheme accordingly, even though they were deducted at a time when she was not enrolled into the Trust.
24. I find that the Employer has acted in breach of the Trust Rules by not paying all the contributions due between January 2021 and November 2021. Whilst the Employer

did verbally agree to pay the outstanding pension contributions at the end of the 2021/22 financial year, it failed to make any payments into the Trust.

25. The Employer's failure to pay employee and employer contributions into the Trust amounts to unjust enrichment and has caused Ms H to suffer a financial loss. The Employer shall take remedial action to put this right.
26. Ms H is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which she has suffered. This was exacerbated by its failure to respond during TPO's investigation into Ms H's complaint.

Directions

27. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Ms H £1,000 for the serious distress and inconvenience she has experienced;
 - (ii) pay £2,024.00 into Ms H's Trust account. This figure represents the amount that, according to the figures provided by Ms H, have been deducted from her pay, but not paid into the Trust account. It also includes the employer contributions for the relevant period which should have also been paid but have not been to date;
 - (iii) establish with the Trust administrator whether the late payment of contributions has meant that fewer units were purchased in Ms H's Trust account than she would have otherwise secured, had the contributions been paid on time; and
 - (iv) pay any reasonable administration fee should the Trust administrator charge a fee for carrying out the above calculation.

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

Camilla Barry

Deputy Pensions Ombudsman

26 August 2025

Appendix One

Date	Employee contributions	Employer contributions	Gross Salary
29/01/2021	£115.00		£2,300
28/02/2021	£115.00	£69.00	£2,300
31/03/2021	£115.00	£69.00	£2,300
30/04/2021	£115.00	£69.00	£2,300
31/05/2021	£115.00	£69.00	£2,300
30/06/2021	£115.00	£69.00	£2,300
31/07/2021	£115.00	£69.00	£2,300
31/08/2021	£115.00	£69.00	£2,300
30/09/2021	£115.00	£69.00	£2,300
31/10/2021	£115.00	£69.00	£2,300
30/11/2021	£115.00	£69.00	£2,300
	£1,265.00	£690.00	
Total Unpaid Contributions	<u>£1,955.00</u>		

Appendix Two

Smart Pension Master Trust Rules

11. MEMBER AND EMPLOYER CONTRIBUTIONS

11.1 Members' contributions

11.1.1 An Employed Active Member must contribute to the Scheme at such rate (if any) as the Employer shall decide from time to time and notify to the Active Member in writing. Such rate shall not take effect until it has been confirmed to the Trustee in a written form acceptable to the Trustee (such confirmation to be provided in reasonable time in advance of any change) and is subject to any terms, conditions and restrictions as the Trustee may determine from time to time. Unless the Trustee agrees, Employed Active Member contributions payable under this Rule 11.1 shall satisfy the Quality Requirement (taking account of contributions payable under Rule 11.2).

11.1.2 An Independent Active Member must contribute to the Scheme at such rate as the Founder permits and is agreed with the Trustee.

11.1.3 An Active Member may make further contributions above any minimum level required.

11.2 Employers' contributions

11.2.1 In relation to an Employed Active Member, each Employer must contribute to the Scheme at such rate as the Employer shall decide from time to time and notify to the Employed Active Member in writing. Such rate shall not take effect until it has been confirmed to the Trustee in a written form acceptable to the Trustee (such confirmation to be provided in reasonable time in advance of any change) and is subject to any terms, conditions and restrictions as the Trustee may determine from time to time.

11.2.2 Unless the Trustee agrees, Employer contributions payable under this Rule 11.2 shall be required, as a minimum, to satisfy the minimum contributions required of employers under the Quality Requirement.

Appendix Three

Section 20 Pensions Act 2008

20 Quality requirement: UK money purchase schemes

(1) A money purchase scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if under the scheme—

- (a) the jobholder's employer must pay contributions in respect of the jobholder;
- (b) the employer's contribution, however calculated, must be equal to or more than 3% of the amount of the jobholder's qualifying earnings in the relevant pay reference period;
- (c) the total amount of contributions paid by the jobholder and the employer, however calculated, must be equal to or more than 8% of the amount of the jobholder's qualifying earnings in the relevant pay reference period.