

## Ombudsman's Determination

Applicant	Miss S
Scheme	Smart Pensions ( <b>the Scheme</b> )
Respondent	Mr M G T/A Confidential.com ( <b>the Employer</b> )

## Outcome

1. Miss S' complaint is upheld and, to put matters right, the Employer shall pay £3,000.06 into the Scheme. The Employer shall ensure that Miss S is not financially disadvantaged by its maladministration. So, it shall arrange for any investment loss to be calculated and paid into the Scheme.
2. In addition, the Employer shall pay Miss S £500 for the significant distress and inconvenience it has caused her.

## Complaint summary

3. Miss S has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
4. Miss S has said that the missing contributions amounted to £3,000.06. This figure represents £1,875.06 in employee contributions and £1,125 in employer contributions.

## 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. In April 2021, Miss S began her employment with the Employer. The Employer operates their business as a Sole Trader.
7. Miss S was enrolled into the Scheme on 6 July 2021.
8. Between July 2021 and December 2022, the Employer failed to pay pension contributions into the Scheme.
9. On 13 August 2023, Miss S brought her complaint to The Pensions Ombudsman (TPO).

10. Miss S provided copies of the payslips that she held for the period of July 2021 to December 2022, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. These deductions amounted to £3,000.06. A breakdown of the deductions has been included in the Appendix.
11. On 30 July 2024, TPO requested the Employer's formal response to Miss S' complaint.
12. On 9 September 2024, the Employer told TPO that it was in talks with The Pensions Regulator (**TPR**) regarding an arrangement to pay the unpaid contributions.
13. On 11 September 2024, TPO asked for a copy of the agreement, or evidence of the Employer's correspondence with TPR. The Employer was unable to provide this.
14. On 26 September 2024, TPO informed the Employer that the investigation into Miss S' complaint would continue and repeated its request for a formal response. The Employer failed to respond to Miss S' complaint.

## **Adjudicator's Opinion**

15. Miss 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 Scheme. 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. She said that, as the Employer had not provided a sufficient response to any of TPO's communications, she had to base her Opinion solely on the information provided by Miss S.
  - The Adjudicator said that she had no reason to doubt the information provided by Miss S. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Miss S' salary but 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, Miss S was not in the financial position she ought to be in.
  - In the Adjudicator's view, Miss S had suffered significant distress and inconvenience due to the Employer's maladministration. The Adjudicator's was of the opinion that an award of £500 for non-financial injustice was appropriate in the circumstances.
16. The Employer responded to the Adjudicator's Opinion and said that although it agreed with the outstanding contributions, the £500 non-financial injustice award was unreasonable. The complaint was passed to me to consider. I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

17. Miss S has complained that the Employer has not paid all the contributions due to her Scheme account.
18. I find 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 adequately engage with TPO or Miss S.
19. Under the rules of the Scheme (**The Scheme Rules**) the Employer was obliged to pay to the Scheme, at least 3% of Miss S' qualifying earnings in the relevant pay reference period, and the employer and employee contributions must amount to at least 8% of Miss S' qualifying earnings in the relevant pay reference period. The relevant provisions of the Scheme Rules are outlined in the Appendix.
20. I find that the Employer has acted in breach of the Scheme Rules by not paying the contributions due for the period July 2021 to December 2022. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Miss S to suffer a financial loss. This amounts to maladministration. The Employer shall take remedial action to put this right.
21. Miss S is entitled to a distress and inconvenience award in respect of the significant ongoing non-financial injustice which she has suffered. This was exacerbated by its failure to adequately respond during TPO's investigation into Miss S' complaint.

### **Directions**

22. To put matters right, the Employer shall, within 28 days of the date of this Determination:
  - (i) pay Miss S £500 for the significant distress and inconvenience she has experienced;
  - (ii) pay £3,000.06 into Miss S' Scheme account. This figure represents the employee contributions of £1,875.06 and employer contributions of £1,125.
  - (iii) establish with the Scheme administrator whether the late payment of contributions has meant that fewer units were purchased in Miss S' Scheme account than she would have otherwise secured, had the contributions been paid on time; and
  - (iv) pay any reasonable administration fee should the Scheme administrator charge a fee for carrying out the above calculation.
23. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Miss S' units, pay the cost of purchasing any additional units required to make up the shortfall.

CAS-109231-Q6Q9

**Camilla Barry**

Deputy Pensions Ombudsman

21 January 2025

**Appendix One**

<b>Date</b>	<b>Employee contributions</b>	<b>Employer contributions</b>
July 2021	104.17	62.50
August 2021	104.17	62.50
September 2021	104.17	62.50
October 2021	104.17	62.50
November 2021	104.17	62.50
December 2021	104.17	62.50
January 2022	104.17	62.50
February 2022	104.17	62.50
March 2022	104.17	62.50
April 2022	104.17	62.50
May 2022	104.17	62.50
June 2022	104.17	62.50
July 2022	104.17	62.50
August 2022	104.17	62.50
September 2022	104.17	62.50
October 2022	104.17	62.50
November 2022	104.17	62.50
December 2022	104.17	62.50

## **Appendix Two**

### **Smart Pensions Scheme Rules**

#### **11. 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.

### **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;

CAS-109231-Q6Q9

(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.