

Ombudsman's Determination

Applicant	Miss S
Scheme	Smart Pension (the Scheme)
Respondent	Marchwood Engineering Limited (the Employer)

Outcome

1. Miss S' complaint is upheld and, to put matters right, the Employer shall pay the missing contributions in respect of her pension and make good any shortfall in units. In addition, the Employer shall pay Miss S £500 for the significant distress and inconvenience it has caused her.

Complaint summary

2. Miss S has complained that the Employer, despite deducting contributions from her pay, has failed to pay into the Scheme.
3. Miss S has said that the missing contributions amounted to £266.56

Background information, including submissions from the parties

4. In August 2019, Miss S received an email from the Scheme to notify her that the Employer had failed to remit pension contributions to the Scheme since March 2019.
5. On 20 December 2019, Miss S stopped working for the Employer.
6. In October and December 2019, the Employer paid the contributions that were due from March 2019 to July 2019.
7. Despite these payments, contributions for August and September 2019 remain unpaid.
8. On 3 October 2019, Miss S brought a complaint about the unpaid contributions to The Pensions Ombudsman (**TPO**).
9. Miss S provided copies of the payslips that she held for the period of August and September 2019 which detailed the pension contributions deducted from her pay and

the corresponding employer contributions. These deductions amounted to £266.56. A breakdown of the deductions has been included in the Appendix.

10. On 7 June 2021, TPO asked the Employer for its formal response to Miss S' complaint. This request was repeated on 23 June 2021 and 5 August 2021. None of these requests received a response.
11. On 27 June 2022, TPO repeated its request for a response to Miss S' complaint. TPO sent a further reminder on 13 July 2022. Neither of these requests received a response.

Caseworker's Opinion

12. Miss 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 Miss S.
 - The Caseworker said that she had no reason to doubt the information provided by Miss S. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Miss 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, Miss S was not in the financial position she ought to be in.
13. 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

14. Miss S has complained that the Employer has not paid all the contributions due to her Scheme account.
15. 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 Miss S. It has also failed to respond to the Caseworker's Opinion.
16. 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. The Employer shall take remedial action to put this right.

17. 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 respond during my Office's investigation into Miss S' complaint
18. Therefore, I uphold Miss S' complaint.

Directions

19. 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) produce a schedule (**the Schedule**) showing the employee contributions deducted from Miss S' pay in respect of the period of her employment. The Schedule shall also include the corresponding employer contributions that were due to the Scheme; and
 - (iii) forward the Schedule to Miss S.
20. The Employer shall, within 14 days of receiving a request by Miss S, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.
21. Within 14 days of receiving confirmation from Miss S that she 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 Miss S' Scheme account than she 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.

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22. 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.

Anthony Arter

Pensions Ombudsman
7 November 2022

Appendix

Date	Employee contributions	Employer contributions
30 August 2019	£76.82	£46.09
30 September 2019	£89.78	£53.87