

Ombudsman's Determination

Applicant	Miss K
Scheme	Smart Pension (the Scheme)
Respondent	Heart Medical (the Employer)

Outcome

1. Miss Ks' complaint is upheld and, to put matters right, the Employer shall pay the missing contributions and make good any shortfall in units. In addition, the Employer shall pay Miss K £1,000 for the severe distress and inconvenience it has caused her.

Complaint summary

2. Miss K has complained that the Employer, despite deducting contributions from her pay, has failed to pay into the Scheme.
3. Miss K has said that the missing contributions amounted to £1,906.12.

Background information, including submissions from the parties

4. In July 2017, Miss K began her employment with the Employer.
5. In September 2018, Miss K was enrolled into the Scheme.
6. Miss K provided copies of the payslips that she held for the period from May 2019 to June 2022, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. These deductions amounted to £1,906.12. A breakdown of the deductions has been included in the Appendix.
7. In June 2021, the Employer told Miss K that the contributions would be paid by August 2021. Miss K was advised that a refund of income tax was expected from HM Revenue & Customs tax that would enable payment of contributions due since May 2019 to date to be paid into the Scheme.
8. In September 2021, Miss K chased the Employer as the contributions had not been paid to the Scheme. The Employer did not provide a response.
9. On 30 December 2021, Miss K chased the Employer again.

10. On 12 January 2022, the Employer responded as below:

“Thank you for your email re Pension contributions. Firstly may I apologise for this whole situation and any stress or unease caused. We have a slight issue in that the pensions portal and SAGE are not talking so what should be a simple process will require manual input, that’s our issue though and we will get this sorted as a priority for you. I hope this brings you comfort that we are working on this to bring things up to date. If you want to discuss any further then please let me know.”

11. On 26 April 2022, having contacted The Pensions Ombudsman (**TPO**) Miss K advised that the outstanding contributions still had not been paid into the Scheme.
12. On 6 May 2022, TPO asked the Employer for its response to Miss K’s complaint, but, the Employer failed to respond by the deadline.
13. On 23 May 2022, TPO chased the Employer for a response.
14. On 9 June 2022, the Employer responded and apologised for the late response. It said that it wanted to resolve the issue but had been struggling to do so for a number of reasons including financial pressures related to the covid-19 pandemic. It also said that it hoped to be able to pay the unpaid contributions in full “no later than September”.

Caseworker’s Opinion

15. Miss K’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 provided a detailed response to TPO’s communications, she had to base her Opinion solely on the information provided by Miss K.
 - The Caseworker said that she had no reason to doubt the information provided by Miss K. So, in the Caseworker’s Opinion, on the balance of probabilities, contributions had been deducted from Miss K’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 K was not in the financial position she ought to be in.
 - In the Caseworker’s view, Miss K had suffered significant distress and inconvenience due to the Employer’s maladministration. The Caseworker was of the view that an award of £500 for non-financial injustice was appropriate in the circumstances.
16. The Employer responded to the Caseworker’s Opinion and said it would like to resolve the issue prior to going to Determination. In response, the Caseworker gave it

14 days to make the payment, which it failed to do, so the case was passed to me to consider. I agree with the Caseworker's Opinion, except the level of award for maladministration.

Ombudsman's decision

17. Miss K has complained that the Employer has not paid all the contributions due to her Scheme account.
18. The available evidence supports the view that employee contributions were deducted but held back by the Employer and not paid into the Scheme.
19. During my Office's investigation into the complaint, the Employer has given several reasons why the payments have not been made.
20. Although the Employer responded it never actually actioned any of its promises to either Miss K or my Office. This would have caused additional distress and inconvenience to Miss K.
21. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Miss K to suffer a financial loss. The Employer shall take remedial action to put this right.
22. Miss K is entitled to a distress and inconvenience award in respect of the significant ongoing non-financial injustice she has suffered. This was exacerbated by its failure to respond during my Office's investigation into Miss Ks' complaint.

Directions

23. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Miss K £1,000 for the serious distress and inconvenience she has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Miss K'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 K.
24. The Employer shall, within 14 days of receiving a request by Miss K, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.
25. Within 14 days of receiving confirmation from Miss K that she agrees with the information on the Schedule, the Employer shall:

CAS-73469-C5L6

- (i) pay the missing contributions to the Scheme;
 - (ii) establish with the Scheme administrator, Smart Pension, whether the late payment of contributions has meant that fewer units were purchased in Miss K's Scheme account than she 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.
26. Within 14 days of receiving confirmation from Smart Pension of any shortfall in Miss K's units, pay the cost of purchasing any additional units required to make up that shortfall.

Anthony Arter

Pensions Ombudsman
28 September 2022

Appendix

Date	Employee contributions	Employer contributions
1 May 2019 to 31 May 2019	£37.85	£28.39
1 June 2019 to 30 June 2019	£24.56	£18.42
1 July 2019 to 31 July 2019	£37.85	£28.39
1 August 2019 to 31 August 2019	£14.54	£10.90
1 September 2019 to 30 September 2019	£33.89	£25.42
1 October 2019 to 31 October 2019	£9.64	£7.23
1 November 2019 to 30 November 2019	£7.56	£5.67
1 December 2019 to 31 December 2019	£5.01	£3.76
1 January 2020 to 31 January 2020	£5.86	£4.39
1 February 2020 to 29 February 2020	£5.86	£4.39
1 March 2020 to 31 March 2021	£4.16	£3.12
1 April 2020 to 30 April 2020	£5.68	£4.26
1 May 2020 to 31 May 2020	£0.80	£0.60
1 June 2020 to 30 June 2020	£25.87	£19.40
1 July 2020 to 31 July 2020	£25.87	£19.40
1 August 2020 to 31 August 2020	£25.87	£19.40
1 September 2020 to 30 September 2020	£25.87	£19.40
1 October 2020 to 31 October 2020	£37.53	£28.15
1 November 2020 to 30 November 2020	£37.53	£28.15
1 December 2020 to 31 December 2020	£37.53	£28.15
1 January 2021 to 31 January 2021	£37.53	£28.15
1 February 2021 to 29 February 2021	£37.53	£28.15
1 March 2021 to 31 March 2021	£37.53	£28.15
1 April 2021 to 30 April 2021	£37.53	£28.15

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1 August 2021 to 31 August 2021	£37.53	£28.15
1 September 2021 to 30 September 2021	£37.53	£28.15
1 October 2021 to 31 October 2021	£37.53	£28.15
1 November 2021 to 30 November 2021	£41.85	£31.39
1 December 2021 to 31 December 2021	£37.53	£28.15
1 January 2022 to 31 January 2022	£37.53	£28.15
1 February 2022 to 29 February 2022	£37.53	£28.15
1 March 2022 to 31 March 2022	£37.53	£28.15
1 April 2022 to 30 April 2022	£37.53	£28.15
1 May 2022 to 31 May 2022	£37.53	£28.15
1 June 2022 to 30 June 2022	£37.53	£28.15
Total unpaid employee contributions	<u>£1,089.19</u>	
Total unpaid employer contributions		<u>£816.93</u>