

## Ombudsman's Determination

Applicant	Miss N
Scheme	The Smart Pension Master Trust ( <b>the Scheme</b> )
Respondent	Made In London Clothing Ltd ( <b>the Employer</b> )

## Outcome

1. Miss N'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 N £1,000 for the serious distress and inconvenience it has caused her.

## Complaint summary

2. Miss N has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
3. Miss N has said that the missing contributions amounted to £824.02.

## Background information, including submissions from the parties

4. In July 2020, Miss N began her employment with the Employer.
5. In December 2020, the Employer stopped paying pensions contributions into the Scheme.
6. On 15 June 2021, Miss N received an email from the Scheme administrator which said contributions had not been paid and it had reported the Employer to The Pensions Regulator (**TPR**).
7. In June 2021, Miss N emailed the Employer and raised the issue of the outstanding pension contributions.
8. Later that day, she spoke to the Employer who said all contributions would be paid by November 2021 at the latest. This was the last Miss N heard from the Employer.
9. From 14 July 2021 to 12 October 2021, Miss N received emails from the Scheme administrator which advised her of further unpaid contributions.

10. In October 2021, Miss N left employment with the Employer.
11. On 15 December 2021, Miss N emailed the Employer about the unpaid pension contributions.
12. On 16 December 2021, Miss N submitted an application to The Pensions Ombudsman (**TPO**).
13. Miss N provided copies of payslips from March 2021 and October 2021, which detailed the pension contributions deducted from her pay and the corresponding year to date employer contributions. She also provided a screenshot showing contributions owed to the Scheme. A breakdown of the deductions has been included in the Appendix.
14. Miss N was unable to provide payslips that covered the entirety of the period where contributions were not remitted to the Scheme.
15. On 17 August 2022, TPO wrote to the Employer to ask for more information in response to Miss N's complaint. This request was repeated on 1 September 2022. Neither of these requests received a response.

### **Caseworker's Opinion**

16. Miss N'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. 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 Miss N.
  - The Caseworker said that he had no reason to doubt the information provided by Miss N. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Miss N'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 N was not in the financial position she ought to be in.
  - In the Caseworker's view, Miss N had suffered serious distress and inconvenience due to the Employer's maladministration. The Caseworker was of the opinion that an award of £1,000 for non-financial injustice was appropriate in the circumstances.
17. 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**

18. Miss N has complained that the Employer has not paid all the contributions due to her Scheme account.
19. 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 N. It has also failed to respond to the Caseworker's Opinion.
20. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Miss N to suffer a financial loss. The Employer shall take remedial action to put this right.
21. Miss N 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 my Office's investigation into Miss N's complaint.

## **Directions**

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

**Anthony Arter**

Pensions Ombudsman  
15 November 2022

**Appendix**

Date	Employee contributions	Employer contributions
31 March 2021	£56.95	
	£444.10 (Year to date)	£266.48 (Year to date)
21 October 2021	£4.24	
	£361.91 (Year to date)	£217.17 (Year to date)