

## Ombudsman's Determination

Applicant	Mrs S
Scheme	Smart Pension Scheme ( <b>the Scheme</b> )
Respondent	The Magnificent Science Company Limited ( <b>the Employer</b> )

## Outcome

1. Mrs S' complaint is upheld and, to put matters right, the Employer shall pay £106.08 into the Scheme. The Employer shall ensure that Mrs 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 Mrs S £500 for the significant distress and inconvenience it has caused her.

## Complaint summary

3. Mrs S has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
4. The available evidence shows that the outstanding contributions amounted to £106.08

## 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 2017, Mrs S began her employment with the Employer.
7. Between March 2019 and September 2019, the Employer failed to pay pension contributions into the Scheme.
8. On 3 March 2020, Mrs S brought her complaint to The Pensions Ombudsman (**TPO**).
9. Mrs S provided copies of the payslips that she held for the period from March 2019 to September 2019, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. A breakdown of the deductions has been included in the Appendix.

10. Mrs S was not able to provide payslips for August 2019 and September 2019. But she has provided copies of her bank statements which showed that the Employer paid her a net salary of £1,060.53 in both months.
11. On 31 July 2020, the Employer made a payment to the Scheme. It covered the employee pension contributions and the corresponding employer contributions for the period March 2019 to July 2019. Despite these payments, contributions for August and September 2019 remained outstanding.
12. On 20 January 2022, TPO asked the Employer for its formal response to Mrs S' complaint. This request was repeated on 30 June 2022. Neither of these requests received a response.
13. In June and July 2022, TPO chased the Employer again. No response was received.

### **Adjudicator's Opinion**

14. Mrs 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 for cases like this would be to seek agreement from all parties as to the dates and amounts of contributions involved. However, the Employer had not engaged with TPO's requests for it to provide a response. So, the contribution schedule in the Appendix had been produced based solely on the evidence provided by Mrs S.
  - The Appendix provided a summary of the monthly contributions that the Employer deducted from Mrs S' salary during the period from March 2019 to September 2019. The Employer paid a lump sum into her Scheme account in July 2020. This covered the employee pension contributions and the corresponding employer contributions for the period March 2019 to July 2019. Mrs S has said that pension contributions for August and September 2019 remained outstanding.
  - The Adjudicator said that he had no reason to doubt the information provided by Mrs S. So, in the Adjudicator's Opinion, on the balance of probabilities, contributions had been deducted from Mrs S' salary which 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, Mrs S was not in the financial position she ought to be in.
  - Mrs S was unable to provide payslips for August and September 2019. However, she had provided her bank statements for these months and they show a net pay of £1,060.53. Mrs S also provided a copy of her July 2019 payslip which showed the same net pay of £1,060.53 with an employee pension contribution of £33.15 and an Employer pension contribution of £19.89. It was the Adjudicator's view that on a balance of probabilities, given that Mrs S' net pay was the same in August

2019 and September 2019, it was likely that Mrs S' employee and employer contributions were the same in these months. This meant a total of £66.30 in employee contributions and £39.78 in employer contributions, a total of £106.08, was due the Scheme for these months.

- It was the Adjudicator's opinion that the complaint should be upheld because the Employer made deductions from Mrs S' salary which it did not pay into the Scheme.
  - In the Adjudicator's view, Mrs S had suffered significant distress and inconvenience due to the Employer's maladministration. The Adjudicator was of the opinion that an award of £500 for non-financial injustice was appropriate in the circumstances.
15. 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**

16. Mrs S has complained that the Employer has not paid all the contributions due to her Scheme account.
17. 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 engage with TPO or Mrs S. It has also failed to respond to the Adjudicator's Opinion.
18. The Employer's failure to pay employee and employer contributions into the Scheme amounts to unjust enrichment and has caused Mrs S to suffer a financial loss. The Employer shall take remedial action to put this right.
19. Mrs 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 the Employer's failure to respond during TPO's investigation into Mrs S' complaint.

### **Directions**

20. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mrs S £500 for the significant distress and inconvenience she has experienced;
  - (ii) pay £106.08 into Mrs S' Scheme account. This figure represents the amount that, according to the figures provided by Mrs S, have been deducted from her pay, but not paid into the Scheme account. It also includes the employer contributions for the relevant period which should have also been paid but have not been to date;

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(iii) establish with the Scheme administrator whether the late payment of contributions has meant that fewer units were purchased in Mrs 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.

21. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Mrs S' units, pay the cost of purchasing any additional units required to make up the shortfall.

**Dominic Harris**

Pensions Ombudsman

18 December 2024

**Appendix**

Date	Employee contributions	Employer contributions
March 2019	£35.25	£23.50
April 2019	£33.15	£19.89
May 2019	£35.25	£23.50
June 2019	£33.15	£19.89
July 2019	£33.15	£19.89
August 2019	Missing payslip	Missing payslip
September 2019	Missing payslip	Missing payslip
Total	£169.95	£106.67