

Ombudsman's Determination

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| Applicant | Ms Y |
| Scheme | Smart Pension (the Scheme) |
| Respondents | Ms Nicola Lovell (Ms Lovell) trading as Lovells Housekeeping (the Employer) |

Outcome

1. Ms Y's complaint is upheld and to put matters right Ms Lovell shall ensure that all unpaid contributions are paid into the Scheme. Ms Lovell shall make sure that Ms Y is not financially disadvantaged by her maladministration. So, she shall arrange for any investment loss to be calculated and paid into the Scheme.
2. Ms Lovell shall also pay Ms Y £500 for the significant distress and inconvenience caused to her.

Complaint summary

3. Ms Y has complained that Ms Lovell, despite deducting contributions from her pay, has failed to pay these into the Scheme.

Background information, including submissions from the parties

4. On 19 April 2021, Ms Y began her employment with the Employer.
5. On 25 March 2022, after not receiving consistent payslips throughout her employment, Ms Y received a payslip which detailed the end of tax year Employee and Employer pension contributions totalling £974.58.
6. On 14 April 2022, Ms Y received her final payslip which detailed Employee and Employer pension contributions of £42.74.
7. Although Ms Y did not receive all of her payslips, from the ones she did receive the total Employee and Employer pension contributions for the entirety of her employment amounted to £1,017.32 (**See Appendix**).
8. On 29 April 2022, Ms Y's employment with Ms Lovell ended.

9. On 12 May 2022, after reviewing her pension and realising the pension contributions had not been paid into the Scheme as they should have been, Ms Y complained to the Employer.
10. Following the complaint being referred to The Pensions Ombudsman (**TPO**), TPO contacted the Employer regarding the unpaid contributions and how the Employer intended to resolve the matter.
11. On 26 July 2023, the Employer responded to TPO and stated that it was aware there had been an issue with Smart Pension and as it was in the process of moving providers it would reimburse Ms Y for the pension contributions that had been deducted from her salary. Ms Y was informed of this and stated that she was happy to proceed with this offer as she wanted the matter settled. Ms Y provided TPO with the bank details she wanted the reimbursement paid into.
12. On 27 July 2023, TPO provided Ms Y's bank details to the Employer and asked that it confirm when the payment had been completed.
13. On 17 August 2023, TPO sent a chaser to the Employer as no payment confirmation had been provided.
14. On 18 August 2023, the Employer responded to TPO and stated that it would cross check the amount owed to confirm the payment amount by 6 September 2023.
15. On 7 September 2023, TPO sent the Employer a chaser as no correspondence had been received.
16. On 11 September 2023, The Employer responded and confirmed that the amount owed was £1,017.32 which included the amount that had been deducted from Ms Y's salary along with the corresponding Employer contributions. It stated that it would reimburse this amount to her on 28 September 2023.
17. On 16 October 2023, TPO contacted the Employer following advice from Ms Y that the payment had not yet been received. TPO stated that the payment should be made as a matter of urgency and no later than 30 October 2023.
18. On the same day, Ms Lovell responded and stated that the Employer was closing down. TPO responded and stated that the unpaid contributions were still owed to Ms Y. TPO advised that it could not see the business listed on the Companies House register and so could not confirm its status and required further proof that the company was closing.
19. On 23 October 2023, Ms Lovell responded and stated that the Employer was not listed on Companies House as it was not a listed company. Ms Lovell stated that she could provide a letter from her accountant regarding the status of the business.
20. On 31 October 2023, TPO stated that it would await evidence of the company's status for review and reiterated that the unpaid contributions were still due to Ms Y.

21. On 27 November 2023, Ms Lovell asked what evidence TPO wanted from her as she did not have anything official due to the business having been a small domestic company. Ms Lovell said that she was a sole trader and had started full time employment due to the closure of the business. Ms Lovell again stated that she could provide a letter from her accountant confirming the closure of the company. Ms Lovell also offered to provide a copy of her employment contract to show she had started full time employment.
22. On 29 November 2023, TPO responded and asked Ms Lovell to provide a letter from her accountant and any other evidence she thought would be relevant.
23. On 30 November 2023, Ms Lovell sent TPO copies of her payslips showing that she was in full time employment. Ms Lovell stated that she would obtain a letter from her accountant.
24. On 17 January 2024, having received no further correspondence from the Employer TPO informed Ms Lovell that, as the Employer was not a limited company, and she was the sole trader the debts and liabilities were considered the sole trader's personal liability. TPO stated that it considered her personally liable for the amount owed to Ms Y and asked if she had any indemnity insurance for the business. TPO asked how Ms Lovell wished to settle the debt as she was considered personally liable.
25. On 2 February 2024, TPO informed Ms Lovell that as no response had been received regarding repaying the pension contributions it would be processing the complaint formally. TPO stated that Ms Lovell would be listed as a direct respondent with personal liability.
26. On the same day, Ms Lovell responded and stated that she had no insurance for the business and if she had to pay the amounts owed personally, she would have to pay small monthly contributions.
27. On 16 February 2024, TPO responded and stated that it had passed the offer of monthly payments onto Ms Y for consideration and was awaiting her response.
28. On 1 March 2024, TPO informed Ms Lovell that Ms Y did not wish to proceed with a monthly payment plan and requested that the full amount be paid in one payment.
29. On 15 March 2024, Ms Lovell responded to TPO and stated that she was not in a financial position to make the full payment immediately and asked if payment could be made by the end of April 2024.
30. TPO communicated this to Ms Y who stated that she would be happy to proceed informally if the full payment was made by the end of April 2024.
31. On 21 March 2024, TPO communicated to Ms Lovell that Ms Y has agreed to having the full payment made by the end of April 2024. TPO requested that the full amount be paid by 26 April 2024. TPO advised Ms Lovell that she would then need to

correspond with the Scheme to work out any investment loss as a result of the late payment of contributions.

32. On 1 May 2024, Ms Y informed TPO that no payment had been made.
33. On 2 May 2024, TPO contacted Ms Lovell and stated that as no payment was made it would be issuing a formal decision on the matter in due course.
34. On the same day, Ms Lovell responded and stated that she was not in a financial position to pay. Ms Lovell apologised.

Adjudicator's Opinion

35. Ms Y's complaint was considered by one of our Adjudicators who concluded that further action was required by Ms Lovell. The Adjudicator's findings are summarised below:-
 - There is no dispute that Ms Lovell deducted Employee contributions from Ms Y's salary or that Employee and Employer contributions were not paid to the Scheme as they should have been.
 - There is no dispute that the amounts owed total £1,017.32.
 - Lovells Housekeeping is not a limited company and Ms Lovell is therefore considered a sole trader. Generally, the debts and liabilities of a business that is conducted by a sole trader are regarded as the debts and liabilities of the sole trader personally. This means that the sole trader can be pursued personally for those debts and liabilities. Ms Lovell should be held personally liable for the Employee and Employer contributions owed to the Scheme on behalf of Ms Y.
 - Ms Lovell's failure to pay the Employee and Employer contributions into the Scheme amounts to maladministration and will have caused Ms Y significant distress and inconvenience for which an award for £500 compensation is appropriate.
 - Ms Y's complaint should be upheld on the basis that Ms Lovell deducted contributions from Ms Y's salary and did not subsequently pay the deductions into the Scheme.
36. Ms Lovell did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
37. I agree with the Adjudicator's Opinion.

Ombudsman's decision

38. Ms Y has complained that Ms Lovell has not paid all the contributions due to her Scheme account.

39. I find that Employee contributions were deducted but held back by Ms Lovell and not paid into the Scheme. The Employer failed to rectify this and resolve Ms Y's complaint following the Adjudicator's Opinion.
40. Ms Lovell's failure to pay Employee and Employer contributions into the Scheme amounts to unjust enrichment and has caused Ms Y to suffer a financial loss. Ms Lovell shall take remedial action to put this right.
41. Ms Y is entitled to a distress and inconvenience award in respect of the ongoing non-financial injustice she has suffered. This was exacerbated by Ms Lovell's failure to resolve the dispute during TPO's investigation.
42. I uphold Ms Y's complaint.

Directions

43. To put matters right, Ms Lovell shall, within 28 days of the date of this Determination:
 - (i) pay Ms Y £500 for the significant distress and inconvenience she has experienced;
 - (ii) pay £1,017.32 into Ms Y's Scheme account. This figure represents the amount that, according to both parties, has been deducted from Ms Y's pay but not paid into the Scheme account. It also includes the Employer contributions for the relevant period which should also have been paid but have not been paid to date;
 - (iii) establish with the Scheme whether the late payment of contributions has meant that fewer units were purchased in Ms Y'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.
44. Within 14 days of receiving confirmation from the Scheme administrator of any shortfall in Ms Y's units, pay the cost of purchasing any additional units required to make up the shortfall.

Dominic Harris

Pensions Ombudsman

21 June 2024

Appendix

| Date | Employee Contributions | Employer Contributions | Year to Date |
|--|------------------------|------------------------|--|
| 7 May 2021 | £8.74 | £5.24 | Employer = £12.14 Employee = £20.24 |
| 18 June 2021 | £14.49 | £8.69 | Employer = £61.67 Employee = £102.81 |
| 2 July 2021 | £14.49 | £8.69 | Employer = £77.67 Employee = £129.49 |
| 16 July 2021 | £5.06 | £3.04 | Employer = £86.23 Employee = £143.75 |
| 25 March 2022 (End of tax year) | £12.11 | £7.27 | Employer = £365.46 Employee = £609.12 |
| 8 April 2022 | £13.06 | £7.84 | Employer = £7.84 Employee = £13.06 |
| 14 April 2022 (last payslip) | £13.65 | £8.19 | Employer = £16.03 Employee = £26.71 |