

Ombudsman's Determination

Applicant	Miss Y
Scheme	Scottish Widows (the Scheme)
Respondent	Find Invest Grow Limited (the Employer)

Outcome

1. Miss Y'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 Y £2,000 for the severe distress and inconvenience it has caused her.

Complaint summary

2. Miss Y has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Scheme.
3. Miss Y has said that the missing contributions amounted to £24,600.

Background information, including submissions from the parties

4. In June 2018, Miss Y began her employment with the Employer.
5. Between June 2018 and October 2022, the Employer failed to pay most of the contributions that were owed to the Scheme. The Scheme was paid via salary sacrifice, so all contributions were classed as employer contributions.
6. On 21 September 2022, the Employer accepted Miss Y's resignation and said it would pay the missing pension contributions, which it calculated to be £22,200, "with a backstop of 31 March 2023 for this be fully up to date".
7. On 22 September 2022, Miss Y wrote to her Employer about the missing contributions. She said that Scottish Widows had told her that the Scheme had been terminated on 26 June 2020.
8. On 23 September 2022, the Employer again informed Miss Y that it intended to catch up with the missed payments and the Scheme "still very much exists it just needs topping up".

9. On 26 September 2022, Miss Y brought her complaint to The Pensions Ombudsman (TPO).
10. On 6 October 2022, the Employer emailed Miss Y and reiterated that it had calculated the pension arrears as £22,200. The Employer repeated its commitment to settling the outstanding amounts by the end of March 2023.
11. On 28 October 2022, the Employer emailed Miss Y and said that as soon as it was able to it would pay the outstanding contributions. It said that it “should” be able to do this in November 2022.
12. Miss Y provided copies of the payslips that she held for the period from June 2018 to March 2021 which detailed the pension contributions deducted from her pay and the corresponding employer contributions. Initially the deductions amounted to £450 a month but in April 2019 they increased to £650. A breakdown of the deductions, as evidenced by the payslips provided by Miss Y, has been included in the Appendix.
13. On 1 June 2023, TPO wrote to the Employer to ask for more information in response to Miss Y’s complaint. This request was repeated on 13 June 2023 and the Employer was informed that a formal investigation would proceed in the absence of a response. Neither of these requests received a response.

Caseworker’s Opinion

14. Miss Y’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 said 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 Y.
 - The Caseworker said that she had no reason to doubt the information provided by Miss Y. So, in the Caseworker’s Opinion, on the balance of probabilities, contributions had been deducted from Miss Y’s salary but 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 Y was not in the financial position she ought to be in.
 - In the Caseworker’s view, Miss Y had suffered severe distress and inconvenience due to the Employer’s maladministration. The Caseworker was of the opinion that an award of £2,000 for non-financial injustice was appropriate given the amount of contributions that had not been paid. The Caseworker also noted that the Employer had failed to deliver on its commitment to pay the contributions by 31 March 2023. In addition, the Employer had not made any attempt to engage with TPO.

15. The Employer asked for an extension, until 22 September 2023, to respond to the Caseworker's Opinion. The Caseworker agreed but the Employer failed to reply. On 25 September 2023, the Caseworker advised the case was proceeding to a Determination. In reply, the Employer requested an out of time extension until 26 September 2023.
16. On 26 of September 2023, the Employer said that it was aware that the pension money was owed. The Employer said it was hoping to secure funding before being wound up by HMRC on 11 October 2023. The Caseworker informed the Employer that the case had been passed to me to consider. I agree with the Caseworker's Opinion.

Ombudsman's decision

17. Miss Y has complained that the Employer has not paid all the contributions due to her Scheme account.
18. I find that pension 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 The Pensions Ombudsman (**TPO**) during the investigations. It has also failed to respond to the Caseworker's Opinion by the agreed extension.
19. The Employer's failure to pay pension contributions into the Scheme amounts to unjust enrichment and has caused Miss Y to suffer a financial loss. The Employer shall take remedial action to put this right.
20. Miss Y is entitled to a distress and inconvenience award in respect of the severe ongoing non-financial injustice which she has suffered. This was exacerbated by its failure to respond during TPO's investigation into Miss Y's complaint and further by the promises it made to pay the monies owing.

Directions

21. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Miss Y £2,000 for the severe distress and inconvenience she has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Miss Y'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 Y.

22. The Employer shall, within 14 days of receiving a request by Miss Y, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.
23. Within 14 days of receiving confirmation from Miss Y 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 Y'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.
24. Within 14 days of receiving confirmation from Scottish Widows of any shortfall in Miss Y's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter CBE

Deputy Pensions Ombudsman
12 October 2023

Appendix

Pension Contributions as evidenced by Miss Y's payslips.

Pay Period	Pension Contributions
June 2018	
July 2018	
August 2018	
28 September 2018	£450
31 October 2018	£450
30 November 2018	£450
31 December 2018	£450
31 January 2019	£450
28 February 2019	£450.
29 March 2019	£450
30 April 2019	£600
31 May 2019	£600
28 June 2019	£600
31 July 2019	£600
30 August 2019	£600
30 September 2019	£600
31 October 2019	£600
29 November 2019	£600
31 December 2019	£600
31 January 2020	£600
28 February 2020	£600
31 March 2020	£600
30 April 2020	£600
29 May 2020	£600

30 June 2020	£600
31 July 2020	£600
28 August 2020	£600
30 September 2020	£600
30 October 2020	£600
30 November 2020	£600
18 December 2020	£600
29 January 2021	£600
28 February 2021	£600
28 March 2021	£600