

## Ombudsman's Determination

Applicant	Mr S
Scheme	James Hay Partnership – Self Invested Personal Pension ( <b>the SIPP</b> )
Respondents	James Hay Partnership ( <b>James Hay</b> ); Wandahome (Knottingley) Limited ( <b>the Employer</b> )

## Outcome

1. Mr S' complaint against the Employer is partly upheld. I do not uphold Mr S' complaint against James Hay. To put matters right for the part that should be upheld the Employer should make an award to remedy any financial loss it has caused Mr S.

## Complaint summary

2. Mr S has complained that the Employer incorrectly reclaimed pension contributions to the amount of £812.12 from the SIPP. He has also claimed that James Hay is at fault for accepting the refund request from the Employer without his consent.
3. He would like his pension contributions to be reinstated and to be compensated for the distress and inconvenience he has suffered.

## Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the salient points.
5. Mr S and the Employer had agreed a salary sacrifice arrangement, under which Mr S had agreed a reduction to his gross salary in exchange for employer pension contributions being made to his pension account.
6. The Employer was initially making pension contributions to Aviva for Mr S.
7. On 12 December 2013, Aviva wrote to the Employer confirming that it was refunding pension contributions belonging to Mr S, that were received from the Employer on 28 November 2013.
8. On 7 January 2014, the Employer discussed the refunded contribution in an internal email. The email stated:-

"I can confirm that we have received the cheque issued by Aviva on 12th December.

I can also confirm that we wish to add the November contributions to each members Aviva account."

9. In May 2021, the Employer decided to change its pension provider for Mr S to James Hay.
10. On 25 May 2021, James Hay wrote to the Employer to confirm the setup of a new Direct Debit (**DD**) for the payment of employer contributions for Mr S. The letter stated:-

"We will collect £406.06 from account number XXXX0825 on or just after 08 June 2021. The breakdown of this amount is as follows:

31 May 2021 payment £406.06

Future payments of £406.06 will be collected every month, on or just after the 31st of the month commencing 01 July 2021."
11. On 24 June 2022, Mr S left employment with the Employer.
12. On 1 July 2022, the Employer paid £406.06 in employer pension contributions to the SIPP by DD.
13. On 7 July 2022, Mr S was paid his final salary for his last month of employment.
14. On 1 August 2022, the Employer paid £406.06 in employer pension contributions to the SIPP by DD.
15. On 15 August 2022, the Employer contacted Mr S via text message. It informed Mr S that the DD for his pension contributions had not been cancelled, and that two months of contributions had been paid in error. It also asked if Mr S wanted to pay back the employer contributions that had been paid to his SIPP in error or if he wanted the contributions to be reclaimed from the SIPP through the Employer's bank.
16. On 18 August 2022, the Employer requested the cancellation of the DD in relation to Mr S' SIPP.
17. On 22 August 2022, James Hay sent a letter to the Employer confirming that the DD had been cancelled.
18. On 23 August 2022, James Hay received a DD Indemnity Claim notification from its bank that the Employer was reclaiming two pension contribution payments for July 2022 of £406.06 (**the July Contribution**) and August 2022 of £406.06 (**the August Contribution**).
19. James Hay contacted the Employer and requested a written clarification of whether and why it wished to cease these employer contributions.

20. On 1 September 2022, the Employer wrote to James Hay confirming that Mr S had left employment. It also said that it had tried to contact Mr S without response regarding the July and August 2022 employer contributions which had been made in error. It also confirmed that it had reclaimed the employer contributions via its bank.
21. On 12 September 2022, James Hay received a refund request via its banking system, and it returned the requested funds of £812.12. A schedule of the employer contribution amounts received and refunded by James Hay is included in the Appendix.
22. On 15 June 2023, Mr S' Independent Financial Adviser (**the IFA**) raised a formal complaint with James Hay. Mr S was unhappy that James Hay had allowed the Employer to reclaim his pension contributions without his consent.
23. On 29 June 2023, James Hay issued its complaint response to Mr S. It did not uphold his complaint. It did not consider that it needed to inform Mr S before refunding contributions as it was requested through its banking system.
24. On 25 July 2023, James Hay wrote to Mr S again upholding the outcome in the complaint response letter of 29 June 2023.
25. On 14 November 2023, Mr S raised a formal complaint with the Employer. He considered that at least one, and possibly two months of pension contributions that he was legally entitled to had been reclaimed by the Employer.
26. On 11 January 2024, the Employer responded to Mr S' complaint. It said that it was likely that the contribution in July 2022 that was reclaimed related to his final salary period. It offered to pay back to Mr S £332.23, calculated on the basis that Mr S had 18 working days in his final month of employment.
27. Mr S disagreed with the offer and asked for a formal investigation by The Pensions Ombudsman (**TPO**).
28. Following the complaint being referred to TPO, Mr S, James Hay and the Employer have made submissions which are summarised below.

**Summary of Mr S' position:-**

- The Employer incorrectly reclaimed pension contributions that were paid to the SIPP in July 2022 and August 2022 through its banking system.
- He considers that he is entitled to at least one of the contributions that were reclaimed of £406.06. However, he has said that it could be that he was due both pension contributions totalling £812.12.
- The Employer only contacted him via text message regarding the matter and requested the refund without his consent.

- The Employer has acted without knowing the true position regarding which month the pension contributions related to. He has spent many hours dealing with this matter, and it has caused him a great deal of distress and inconvenience.
- James Hay is at fault for accepting a request via the banking system without consulting with him. He believed that it, in effect, facilitated the Employer stealing from his pension.

**Summary of James Hay's position:-**

- It issued the refund to the Employer because it received a DD Indemnity Claim through its banking system. It followed standard practices under the BACS service regulations. The refund request was received through BACS and from the Employer's bank.
- The DD mandate for the pension contributions is set up between James Hay and the Employer under the DD Guarantee Scheme, and as such it was obliged to carry out the refund when it was informed that it was paid in error after Mr S had left employment.
- It does not have any contractual obligation to inform Mr S when returning funds that are formally requested via the banking system, only to clarify with the Employer why contributions have ceased, and to flag this where an error may have been made so contributions can be reinstated.
- It is not party to the employment contract and if Mr S believed that the contributions made by the Employer were incorrect, it is a matter that Mr S needed to resolve directly with the Employer.

**Summary of the Employer's position:-**

- Pension contributions were paid by fixed DD, and there was a delay in arranging to cancel this when Mr S left his employment. The contributions for July 2022 and August 2022 were therefore reclaimed.
- The payment of the pension contributions was entirely separate to the processing of payroll. A fixed DD amount of £406.06 was paid every month and it did not fluctuate with pay increase. The contributions were paid monthly as due, irrespective of when Mr S' salary was paid.
- Mr S received his final salary on 24 June 2022, and the pension contribution due for June 2022 was paid by DD on 1 June 2022. His contributions were not paid in arrears, and Mr S has not provided any evidence to the contrary of this, or where any missing payments have occurred during his employment period causing arrears of pension contributions.
- It has provided evidence to support its claim that pension contributions were normally paid the same month that they were due and not in arrears. The letter provided by Aviva on 12 December 2013 and the subsequent discussion

regarding refunded contributions on 7 January 2014 shows that the November 2013 contribution was paid in November 2013.

- It has fulfilled its obligations in respect of Mr S' contract of employment, and all monies due in regards of salary and pension contributions. The recall of Direct Debit payments for contributions due in July 2022 and August 2022 are clearly subsequent to the end of his contract of employment.

## **Adjudicator's Opinion**

29. Mr S' complaint was considered by one of our Adjudicators who concluded that further action was required by the Employer. The Adjudicator's findings are summarised below:-

- The Adjudicator was of the view that the letter of 25 May 2021 which James Hay sent to the Employer suggested that the normal procedure was to pay employer pension contributions in arrears to Mr S' SIPP by DD, as a contribution for the month of May 2021 had been deducted in June 2021.
- It was the Adjudicator's opinion that on the balance of probabilities, the July Contribution related to the June 2022 pay period, and so the July Contribution was incorrectly reclaimed by the Employer, which amounted to maladministration.
- Consequently, it was also the Adjudicator's view that on balance of probabilities, the August Contribution was not due to Mr S. It was correctly reclaimed by the Employer, as it related to the July 2022 pay period, and Mr S had left his employment with the Employer on 24 June 2022.
- The Adjudicator did not consider that the letter from Aviva of 12 December 2013 to the Employer and the subsequent internal correspondence about the matter supported its claim that its standard procedure was to pay employer contributions the same month they were due. In the Adjudicator's view, the letter from Aviva suggested that the Employer had paid the November 2013 Contribution towards the end of the month and so in arrears.
- It was therefore the Adjudicator's opinion that the Employer should reinstate the pension contribution that Mr S was due for the June 2022 pay period. As Mr S had 18 working days in his final month of employment, on the balance of probabilities £336.05 in employer contributions should be remitted to the SIPP by the Employer.
- The Adjudicator did not agree that James Hay was at fault for refunding £812.12 to the Employer following the receipt of a DD Indemnity Claim notification through its banking system from the Employer's bank. It followed its standard procedure and carried out the necessary steps in relation to its obligations under the BACS service regulations. The DD mandate for the pension contributions was set up between James Hay and the Employer under the DD Guarantee Scheme. It was

therefore not required to inform or request consent from Mr S when returning the funds. It was therefore the Adjudicator's view that the complaint should not be upheld against James Hay.

- The Adjudicator was of the view that the degree of non-financial injustice which Mr S had suffered due to maladministration by the Employer was nominal. She considered that Mr S would have suffered some distress and inconvenience at the thought of his pension contributions being lost. She also considered that the Employer made a fair offer to resolve the matter prior to the formal investigation by TPO.

30. James Hay and the Employer accepted the Adjudicator's Opinion.

31. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S provided his further comments to the Opinion. In summary:-

- He believes that the Employer reclaimed his pension contributions without his consent and without any understanding of the pension arrangements in place, which amounts to a deliberate and negligent act of theft and fraud. This caused him significant distress and inconvenience.
- James Hay is at fault. It did not check if what the Employer was claiming was correct and refunded the contributions without consulting him.

32. I have considered Mr S' comments but they do not change the outcome. I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

33. Mr S is unhappy that the Employer incorrectly reclaimed his pension contributions to the amount of £812.12 from the SIPP.

34. I agree with the Adjudicator that the available evidence suggests that it was the Employer's normal procedure to pay employer pension contribution to the SIPP in arrears, and the contributions due for one monthly pay period were paid at the beginning of the next month. So, on the balance of probabilities, the July Contribution was paid in relation to the June 2022 pay period. As Mr S' final month of employment with the Employer was June 2022, I find that the July Contribution was reclaimed incorrectly by the Employer. This amounts to maladministration.

35. I find that on the balance of probabilities the August Contribution related to the July 2022 pay period. It was reclaimed correctly by the Employer, as Mr S left his employment before this pay period.

36. I recognise that Mr S left his employment with the Employer on 24 June 2022, and so he is not entitled to the full contribution amount of £406.06. Mr S had 18 working days in his final month of employment. I agree with the Adjudicator that on the balance of

probabilities, £336.05 in employer contributions have not been remitted to the SIPP by the Employer. It shall take remedial action to put this right.

37. Mr S has also alleged that the Employer committed a deliberate and negligent act of theft when it reclaimed his pension contributions, but I have seen no evidence of this. It is unfortunate that the Employer reclaimed the July Contribution without investigating the matter further, and that record keeping has been poor.
38. However, the Employer did contact Mr S once it discovered that there was a delay in cancelling the DD payments to the SIPP. I have not been presented with any evidence which suggests that Mr S engaged with the Employer at this point. It seems that the Employer acted based on the information it had at the time. Once it received further information from Mr S in his complaint of 14 November 2023, it did amend its position and made a fair offer to remedy Mr S.
39. I recognise that Mr S considers that he suffered significant distress and inconvenience as a result of his pension being incorrectly reclaimed. I find that the degree of non-financial injustice which Mr S has suffered due to maladministration by the Employer is nominal, and therefore it does not reach the threshold for the minimum award. In making this decision, I considered that the Employer did make efforts to resolve the matter prior to TPO's formal investigation of Mr S' complaint.
40. I do not find that James Hay is at fault for refunding the contributions following the receipt of an Indemnity Claim notification from the Employer's bank. The DD mandate for the pension contributions was set up between James Hay and the Employer under the DD Guarantee Scheme. It was not required to investigate the refund request further by consulting Mr S on the matter.
41. James Hay was only obliged to ask for clarification from the Employer when the pension contributions ceased, as it responsible for monitoring payments of employment contributions and report employers that do not adhere to the pension payment agreement. It did ask for this clarification and received a response from the Employer on 1 September 2022.
42. Therefore, I uphold Mr S' complaint against the Employer in part. I do not uphold his complaint against James Hay.

## **Directions**

43. To put matters right, the Employer shall, within 28 days of the date of the Determination:-
  - (i) pay £336.05 into Mr S' SIPP account. This figure represents the employer contributions for the relevant period which should have also been paid but was incorrectly reclaimed by the Employer.

(ii) establish with James Hay whether the late payment of contributions has meant that fewer units were purchased in Mr S' SIPP account than he would have otherwise secured, had the contribution been paid on time and not reclaimed; and

(iii) pay any reasonable administration fee should James Hay charge a fee for carrying out the above calculation.

44. Within 14 days of receiving confirmation from James Hay of any shortfall in Mr S' units under (ii) above, pay the cost of purchasing any additional units required to make up the shortfall into Mr S' SIPP account.

Camilla Barry  
Deputy Pensions Ombudsman  
2 October 2025



**Appendix****James Hay – SIPP Contributions**

<b>Date of payment</b>	<b>Employer contributions (£)</b>
12/09/2022	- 812.12
01/08/2022	406.06
01/07/2022	406.06
31/05/2022	406.06
...	
01/07/2021	406.06
08/06/2021	406.06