

Ombudsman's Determination

Applicant	Mrs S
Scheme	James Hay Partnership SIPP (the SIPP)
Respondent	Gower Consultants Ltd. (GCL)

Outcome

1. Mrs S' complaint is upheld and, to put matters right, GCL shall follow the directions as set out in paragraph 26 below.

Complaint summary

2. Mrs S has complained about missing pension contributions. She has asked GCL to pay these into the SIPP on a number of occasions, but they remain outstanding. As a result, she would like GCL to pay the outstanding contributions, with interest, into the SIPP.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge that there were other exchanges of information between all the parties. As GCL has not submitted the information requested from it during my Office's investigation, the information below is based on the information provided by Mrs S and her representative.
4. Mrs S was employed by GCL up to April 2018. During her employment, GCL deducted pension contributions from Mrs S' salary. A number of these appear to have been paid into the SIPP.
5. At some point in 2014, GCL recognised that it had not paid the correct amount of contributions towards Mrs S' pension. It contacted her on 4 December 2014 as it had carried out a reconciliation of the contributions and asked whether she wanted the underpayments to be paid alongside her salary.
6. On 13 February 2015, Mrs S' independent financial adviser (**IFA**) emailed GCL, in relation to the missing contributions. It said that Mrs S wanted the outstanding contributions paid into the SIPP and, by its calculations, there was an outstanding

amount of £1,447. It asked GCL to treat this as a single contribution payable by cheque. At the same time, it requested GCL to start paying regular employer contributions into the SIPP from April 2015. The IFA attached an application form and direct debit forms for GCL to complete, to enable it to do so.

7. On the same day, GCL emailed the IFA to say that it would check the figures and send the cheque as requested. It said it would notify the IFA when this was done.
8. On 7 April 2015, the IFA contacted GCL and quoted an outstanding payment of £1,586.45, taking into account the monthly pension contribution due for April 2015. It said it needed the signed application and direct debit forms from GCL to process the payment and set up regular contributions from May 2015.
9. On 26 May 2015, the IFA contacted GCL again as it had not received a response. It noted the following underpayments:-
 - Tax year 2010/11: £55.32.
 - Tax year 2011/12: £118.32.
 - Tax year 2012/13: £118.32.
 - Underpayment for April 2014 to July 2014: £39.22.
 - Missing contributions from August 2014 to May 2015: £1,394.50.
 - Total: £1,725.90.
10. GCL replied the same day and said that it would “get this sorted.”
11. Shortly after this, it appears that GCL completed the direct debit forms. However, the IFA did not process this correctly. As a result, the monthly pension contributions were not paid into the SIPP as intended.
12. On 3 August 2016, the IFA wrote to GCL concerning the monthly pension contributions. It apologised for the error with the direct debit instruction and explained that this had only been identified following Mrs S’ financial review. It confirmed that monthly pension contributions of £139.45 should have commenced in April 2015 and that a single contribution of £1,447 remained outstanding. As a result, the total amount of missing pension contributions was £3,678.20.
13. The IFA contacted GCL again on 6 September 2016, as it had not received a reply. It asked GCL to make a payment of £3,817.65 to bring all payments up to date. It also asked GCL to sign a new direct debit mandate so that James Hay, the administrator of the SIPP, could collect the regular payments into the SIPP with effect from October 2016.
14. On 15 November 2016, the IFA wrote to GCL as it had not received a response. It confirmed that the outstanding payment was now £4,096.55. Following this, it does

not appear that there was any further correspondence until 2018, after Mrs S ceased employment with GCL on 30 April 2018.

15. On 8 May 2018, the IFA wrote to GCL. It said that Mrs S had not received the pension contributions that should have been paid between April 2015 and April 2018, nor had she received the single contribution of £1,447. It quoted a total of £6,606.65 as outstanding and provided details of where this could be paid.
16. On 8 June 2018, the IFA wrote to GCL, as James Hay had received the single pension contribution of £1,447, but it had not received the outstanding contributions from April 2015 to April 2018. It said these payments were significantly overdue, given that pension contributions should be made within 19 days following deduction from salary.

Mrs S' position

17. Mrs S is unhappy that there are missing pension contributions that have still not been paid. She would like these paid, with applicable interest, to the SIPP.

GCL's position

18. It has said it could see two payments that had not been credited to the SIPP, which were a payment of £1,100 on 13 August 2018 and a further payment of £1,100 on 4 April 2019.
19. As GCL had been taken over by a new company, "there should be no issue with payment".

Adjudicator's Opinion

20. Mrs S' complaint was considered by one of our Adjudicators who concluded that further action was required by GCL. The Adjudicator's findings are summarised below:-
 - GCL's correspondence in 2014 indicated that, at that point, there were already outstanding pension contributions for Mrs S. It appeared that GCL had attempted to pay some of the outstanding amounts in 2018 and 2019 but not all of these were successfully credited to the SIPP. As a result, Mrs S' contributions had been deducted from her salary but not paid to the SIPP, and there had been unjust enrichment on the part of GCL.
 - GCL's actions demonstrated that it had accepted that it had an obligation to pay pension contributions into the SIPP and that not all of these had been paid. The fact that GCL did not respond to requests as early as February 2015 to resolve this situation, and had not done so by the time Mrs S left employment in April 2018, was unreasonable. GCL's actions were sufficiently serious to damage the employer/employee relationship with Mrs S. So, it was the Adjudicator's opinion

that this was a breach of GCL's implied duty of trust and confidence towards Mrs S.

- GCL's acts and/or omissions amounted to maladministration and Mrs S had experienced a financial loss, from both missing contributions and the potential loss of investment as a result of this.
- GCL had several years to reconcile Mrs S' pension contributions and, in the Adjudicator's opinion, it had hindered my Office's investigation. So, the Adjudicator's view was that the level of distress and inconvenience Mrs S had suffered was serious.

21. As GCL did not respond to the Adjudicator's Opinion, the complaint was passed to me to consider, with no further submissions.

Ombudsman's decision

22. Having reviewed the information submitted to my Office, I agree with the Adjudicator's findings. GCL has confirmed that there are outstanding payments of at least £2,200 due to the SIPP. So, there has been unjust enrichment on the part of GCL and, as a result of the time taken to resolve this, there has been a breach of GCL's implied duty of trust and confidence towards Mrs S.

23. Based on the available evidence, I find that there was maladministration and, that as a result, Mrs S has experienced financial and non-financial injustice. Notably:

- contributions have been significantly delayed or missed entirely, which is very likely to have affected the SIPP's value;
- GCL has impeded a number of reconciliation attempts for Mrs S, despite having been given multiple opportunities to rectify this issue; and
- Mrs S has suffered a serious level of distress and inconvenience as a result of GCL's errors and inaction.

24. The errors need to be corrected and the injustice addressed, so that Mrs S' SIPP has the correct funding; in accordance with what it would have been had all employee and employer contributions been made at the correct levels and at the correct times.

25. I uphold Mrs S' complaint.

Directions

26. Within 28 days of the date of this Determination, GCL shall:-

- Pay £1,000 to Mrs S in recognition of the serious distress and inconvenience she has suffered.
- Produce a report (**the Report**) confirming the following:

- the value of the employee and employer contributions that should have been paid, for each month, from April 2010 to April 2018;
 - when each of these contributions should have been paid;
 - whether the contributions have already been paid; and if they have been paid
 - the date on which they were paid.
- Compare what GCL has paid in respect of the employee/employer contributions to the SIPP with what it ought to have paid. GCL shall then establish with the SIPP administrator whether the late payment of contributions has meant fewer units were purchased than would have been bought if the contributions had been paid on time.
- Send a copy of the Report, and the results provided by the SIPP administrator, to Mrs S and her IFA.
- Within 14 days of completing the Report, pay into the SIPP, the contributions due and the sum necessary to correct the unit shortfall, if one is identified.
- Should the above payment result in additional charges and/or sanctions, GCL shall pay the additional costs.

Anthony Arter

Pensions Ombudsman
29 September 2021