

## Ombudsman's Determination

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| Applicant  | Mrs E  |
| Scheme     | Royal London Pension Plan ( <b>the Plan</b> )      |
| Respondent | M & G Olympic Products Ltd ( <b>the Employer</b> ) |

## Outcome

1. Mrs E'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 Mrs E £1,000 for the serious distress and inconvenience it has caused her.

## Complaint summary

2. Mrs E has complained that the Employer, despite deducting contributions from her pay, has failed to pay them into the Plan.
3. Mrs E has said that the missing contributions amounted to £2,051.43.

## Background information, including submissions from the parties

4. On 1 November 2020, the Employer stopped paying pension contributions into the Plan.
5. On 12 February 2021, the Employer made a payment into the Plan. This meant that contributions up to 31 October 2020 had been paid into the Plan.
6. In March 2021, Mrs E left her employment with the Employer.
7. On 1 April 2021, Mrs E first became aware of the issue of unpaid pension contributions and raised this with the Employer by email.
8. On 8 April 2021, Mrs E chased the Employer for a response.
9. On 13 April 2021, Mrs E received a letter from Royal London which said that the Employer had failed to pay all pension contributions.
10. On 19 April 2021, Mrs E received a further letter from Royal London. The letter said that, as of 13 April 2021, the Employer had not made contributions for the period

between 1 December 2020 and 31 March 2021. The amount unpaid was over £2,500 and included Additional Voluntary Contributions (**AVCs**).

11. On 27 April 2021, Mrs E called Royal London and said she would be writing to the Employer to find out what had happened to the unpaid contributions. Royal London explained that the Employer had not informed it that Mrs E had left employment.
12. On 6 May 2021, Mrs E chased the Employer as she had not yet received a response to her previous emails. She said she reported the Employer to both The Pensions Regulator (**TPR**) and Royal London.
13. On 7 May 2021, the Employer responded and said all outstanding contributions would be paid in the next few weeks.
14. On 16 June 2021, Mrs E brought her complaint to The Pensions Ombudsman (**TPO**).
15. On 23 July 2021, the Employer made a payment for £494.15 to the Plan for contributions up to 1 December 2020. Mrs E says this reduced the total outstanding contributions to £2,051.43.
16. Although the above payment was made, Mrs E said no employer contributions were made for November 2020. So, although the employee contributions were paid up to 1 December 2020, the employer contributions for November 2020 were still outstanding.
17. On 9 May 2022, Mrs E received an email from Royal London that said there was nothing further it could do to assist her.
18. On 25 June 2022, Mrs E sent an email to TPO that said no further payments had been made to the Plan since 23 July 2021.
19. On 28 July 2022, Mrs E received an email from Royal London. This provided a full payment history of contributions to the Plan.
20. Mrs E provided copies of the payslips that she held for the period from November 2020 to March 2021, which detailed the pension contributions deducted from her pay and the corresponding employer contributions. These deductions amounted to £1,954.94. A breakdown of the deductions has been included in the Appendix.
21. On 13 September 2022, TPO wrote to the Employer to ask for further information in response to Mrs E's complaint. This request was repeated on 27 September 2022. Neither of these requests received a response.

## **Caseworker's Opinion**

22. Mrs E'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 Plan. The Caseworker's findings are summarised below:-

- The Caseworker stated 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. He said that, as the Employer had not responded to any of TPO's communications, he had to base his Opinion solely on the information provided by Mrs E.
  - The Caseworker said that he had no reason to doubt the information provided by Mrs E. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mrs E's salary, but had not been paid into the Plan. 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 E was not in the financial position she ought to be in.
  - In the Caseworker's view, Mrs E had suffered serious distress and inconvenience due to the Employer's maladministration. In the opinion of the Caseworker an award of £1,000 for non-financial injustice was appropriate in the circumstances.
23. Following the Caseworker's Opinion, TPO received an email from the Company Director of the Employer (**the Director**). He said that he had recently purchased the Employer but had not been provided with any information in relation to the Plan. He said that he was currently in the process of evaluating the Employer. However, it was likely the Employer would be, "placed in the hands of an Insolvency Practitioner".
24. Although the Director told TPO that the Employer is likely to go insolvent, he has not materially responded to the Opinion and the complaint was passed to me to consider. I agree with the Caseworker's Opinion.

### **Ombudsman's decision**

25. Mrs E has complained that the Employer has not paid all the contributions due to her Plan account.
26. The Director has said that he was not provided with any information relating to the Plan when he purchased the Employer. Regardless of whether the previous director provided the Director with necessary information about the Plan, the responsibility for paying the unpaid contributions remains with the Employer.
27. I find that employee contributions were deducted but held back by the Employer and not paid into the Plan. The Employer failed to rectify this and did not engage with either my Office or Mrs E. It has also failed to respond to the Caseworker's Opinion.
28. The Employer's failure to pay employee and employer contributions into the Plan amounts to unjust enrichment and has caused Mrs E to suffer a financial loss. The Employer shall take remedial action to put this right.

29. Mrs E is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which she has suffered. This was exacerbated by its failure to respond during my Office's investigation into Mrs E's complaint.

### **Directions**

30. To put matters right, the Employer shall, within 28 days of the date of this Determination:
- (i) pay Mrs E £1,000 for the serious distress and inconvenience she has experienced;
  - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mrs E's pay in respect of the period of her employment. The Schedule shall also include the corresponding employer contributions that were due to the Plan; and
  - (iii) forward the Schedule to Mrs E.
31. The Employer shall, within 14 days of receiving a request by Mrs E, provide her with any reasonable additional information, in order for her to be able to check the details in the Schedule.
32. Within 14 days of receiving confirmation from Mrs E that she agrees with the information on the Schedule, the Employer shall:
- (i) pay the missing contributions to the Plan;
  - (ii) establish with the Plan whether the late payment of contributions has meant that fewer units were purchased in Mrs E's Plan account than she would have otherwise secured, had the contributions been paid on time; and
  - (iii) pay any reasonable administration fee should the Plan administrator charge a fee for carrying out the above calculation.

Within 14 days of receiving confirmation from Royal London of any shortfall in Mrs E's units, pay the cost of purchasing any additional units required to make up the shortfall.

**Anthony Arter**

Pensions Ombudsman  
9 December 2022

**Appendix**

| Date  | Employee contributions | Employer contributions |
|---|------------------------|------------------------|
| 05/11/2020                                  | £98.83*                | £14.12                 |
| 12/11/2020                                  | £98.83*                | £14.12                 |
| 19/11/2020                                  | £98.83*                | £14.12                 |
| 26/11/2020                                  | £98.83 *               | £14.12                 |
| 03/12/2020                                  | £98.83*                | £14.12                 |
| 10/12/2020                                  | £98.83                 | £14.12                 |
| 17/12/2020                                  | £98.82                 | £14.12                 |
| 24/12/2020                                  | £98.83                 | £14.12                 |
| 31/12/2020                                  | £98.83                 | £14.12                 |
| 07/01/2021                                  | £98.83                 | £14.12                 |
| 14/01/2021                                  | £98.93                 | £14.12                 |
| 21/01/2021                                  | £113.68                | £25.26                 |
| 28/01/2021                                  | £98.83                 | £14.12                 |
| 04/02/2021                                  | £98.83                 | £14.12                 |
| 11/02/2021                                  | £98.83                 | £14.12                 |
| 18/02/2021                                  | £98.83                 | £14.12                 |
| 25/02/2021                                  | £98.83                 | £14.12                 |
| 04/03/2021                                  | £98.83                 | £14.12                 |
| 11/03/2021                                  | £98.83                 | £14.12                 |
| 18/03/2021                                  | £103.80                | £17.85                 |
| 25/03/2021                                  | £98.83                 | £14.12                 |
| 01/04/2021                                  | £113.68                | £25.26                 |
| <b>Unpaid contributions</b>                 | <b>£1714.87</b>        | <b>£336.35</b>         |
| <b>Total Unpaid Contributions: £2051.52</b> |                        |                        |

\*Paid 23 July 2021