

Ombudsman's Determination

Applicant	Mr P
Scheme	Royal London Pension Plan (the Plan)
Respondent	M & G Olympic Products Ltd (the Employer)

Outcome

1. Mr P's complaint is upheld and, to put matters right, the Employer shall pay the missing contributions in respect of his pension and make good any shortfall in units. In addition, the Employer shall pay Mr P £1,000 for the serious distress and inconvenience it has caused him.

Complaint summary

2. Mr P has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Plan.
3. Mr P has said that the missing contributions amounted to £2,246.80.

Background information, including submissions from the parties

4. In December 2020, Mr P was employed by the Employer. The employee contributions, for December 2020, were paid into the Plan. However, the employer contributions were not paid into the Plan.
5. Following this, contributions continued to be deducted from Mr P's wages, however nothing further was paid into the Plan.
6. On 23 July 2021, the last payment was made into the Plan. This was for the employer contributions that related to December 2020.
7. On 13 September 2021, Mr P's representative wrote to the Employer and said that the Employer had previously said, to all employees, that the pension would be fully paid up by the end of July 2021. Mr P says that, despite this assurance by the Employer, the contributions remain unpaid.
8. On 14 September 2021, the Employer responded by email saying the business had suffered from poor management of client accounts and cash flow and had taken

steps to limit the impact on the business. He said the choice was between paying wages and pension or making people redundant.

9. On 30 January 2022, Mr P submitted an application to The Pensions Ombudsman (TPO).
10. On 4 February 2022, Mr P opted out of the Plan in order to prevent any further contributions from being deducted from his salary.
11. On 29 April 2022, Mr P was made redundant.
12. On 24 June 2022, Mr P received a statement from Royal London, the Plan administrator. This listed the payments that had been made into the Plan for the period that Mr P has complained about. The payments amount to £1,381.90 and have been listed in Appendix One.
13. Mr P provided TPO with copies of the payslips that he held for the period from 3 December 2020 to 4 February 2022, which detailed the pension contributions deducted from his pay and the corresponding employer contributions. These contributions amounted to £3,628.70. A breakdown of the contributions has been included in Appendix Two.
14. On 14 July 2022, TPO wrote to the Employer to ask for more information in response to Mr P's complaint. This request was repeated on 28 July 2022. Neither of these requests received a response.

Caseworker's Opinion

15. Mr P'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 Mr P.
 - The Caseworker said that he had no reason to doubt the information provided by Mr P. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr P's salary, that 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, Mr P was not in the financial position he ought to be in.
 - In the Caseworker's view, Mr P 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.

16. 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".
17. As the Employer did not accept the Caseworker's Opinion, the complaint was passed to me to consider. I agree with the Caseworker's Opinion.

Ombudsman's decision

18. Mr P has complained that the Employer has not paid all the contributions due to his Plan account.
19. 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.
20. 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 Mr P. It has also failed to respond to the Caseworker's Opinion.
21. The Employer's failure to pay employee and employer contributions into the Plan amounts to unjust enrichment and has caused Mr P to suffer a financial loss. The Employer shall take remedial action to put this right.
22. Mr P is entitled to a distress and inconvenience award in respect of the serious ongoing non-financial injustice which he has suffered. This was exacerbated by its failure to respond during my Office's investigation into Mr P's complaint.

Directions

23. To put matters right, the Employer shall, within 28 days of the date of this Determination:
 - (i) pay Mr P £1,000 for the serious distress and inconvenience he has experienced;
 - (ii) produce a schedule (**the Schedule**) showing the employee contributions deducted from Mr P's pay in respect of the period of his employment. The Schedule shall also include the corresponding employer contributions that were due to the Plan; and
 - (iii) forward the Schedule to Mr P.
24. The Employer shall, within 14 days of receiving a request by Mr P, provide him with any reasonable additional information, in order for him to be able to check the details in the Schedule.

25. Within 14 days of receiving confirmation from Mr P that he 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 Mr P's Plan account than he 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.
26. Within 14 days of receiving confirmation from Royal London of any shortfall in Mr P's units, pay the cost of purchasing any additional units required to make up the shortfall.

Anthony Arter

Pensions Ombudsman
1 December 2022

Appendix One**Payments into Mr P's Plan account**

Payment Date	Employee Payment	Employer Payment
1 May 2020	£53.34	£40
5 June 2020	£104.20	£78.16
2 July 2020	£73.95	£55.48
18 September 2020	£73.95	£55.48
25 September 2020	£103.98	£77.98
18 December 2020	£89.34	£67.01
23 December 2020	£104.25	£78.19
12 February 2021	£126.47	£94.85
23 July 2021	£105.27	0
Total payments: £1,381.90		

Appendix Two**Contributions as shown on payslips**

Date	Employee contributions	Employer contributions
01 April 2021	£1193.29 (Year To Date Figure)	£895.04 (YTD) (Year To Date Figure)
28 January 2022	£880.19 (Year To Date Figure)	£660.18 (Year To Date Figure)
Total contributions: £3,628.70		