

## Ombudsman's Determination

Applicant	Mr Y
Plan	Royal London Pension Plan ( <b>the Plan</b> )
Respondent	M & G Olympic Products Limited ( <b>the Employer</b> )

## Outcome

1. Mr Y'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 Y £1,000 for the serious distress and inconvenience it has caused him.

## Complaint summary

2. Mr Y has complained that the Employer, despite deducting contributions from his pay, has failed to pay them into the Plan.
3. Mr Y has said that the missing contributions amounted to £1,433.25.

## Background information, including submissions from the parties

4. On 8 May 2012, Mr Y commenced employment with the Employer.
5. On 1 January 2019, Mr Y became a member of the Plan. At first, contributions were paid into the Plan on time.
6. From July 2020, contributions began to be paid late.
7. In December 2020, the November 2020 employee contribution was paid into the Plan, but the corresponding employer contribution was not paid.
8. From December 2020, contributions were deducted from Mr Y's wages, however nothing further was paid into the Plan.
9. In May 2021, the Employer verbally advised its employees, at a staff meeting, that contributions will be bought up to date by the end of July 2021.

10. On 23 July 2021, a contribution was remitted into the Plan. This was the employer contribution that was shown on the November 2020 payslip.
11. On 13 September 2021, the Employer was chased for an update on the outstanding contributions.
12. The next day, the Employer responded and stated that the business had suffered from poor management of client accounts and cash flow and it had taken steps to limit the impact on the business. It said the choice was between paying wages and pension contributions or making people redundant. The Employer also stated that the outstanding contributions were the highest priority and that a payment plan was being worked on with the pension authorities. Mr Y says that, despite this assurance by the Employer, the outstanding contributions remained unpaid.
13. On 4 February 2022, Mr Y left the Plan in order to stop further pensions contributions being deducted from his wages.
14. On 1 March 2022, Mr Y submitted a complaint to The Pensions Ombudsman (**TPO**).
15. Mr Y provided copies of some payslips he held which detailed the pension contributions deducted from his pay and the corresponding employer contributions and pay information for the period from 1 December 2020 to 4 February 2022. The contributions amounted to £1,433.25. A breakdown of the deductions has been included in the Appendix.
16. On 29 April 2022, Mr Y was made redundant.
17. On 21 June 2022, the Employer advised TPO that it is in the process of evaluating the company in order to ascertain the best steps to take going forward. It stated that it is unlikely the business will be able to continue trading.
18. On 24 June 2022, Mr Y received a statement from Royal London, the Plan administrator. This confirmed the last payment made into the Plan was on 23 July 2021 for £58.05. This was the employee contribution for November 2020.
19. On 3 August 2022, Royal London provided TPO with a breakdown of all the payments it has received from the Employer in relation to My Y's Plan account.
20. On 7 September 2022, TPO wrote to the Employer for its response to Mr Y's complaint. This request was repeated on 21 September 2022.

## **Caseworker's Opinion**

21. Mr 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 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. She said that, as the Employer had not confirmed the amount of contributions that were outstanding, she had to base her Opinion solely on the information provided by Mr Y.
- The Caseworker said that she had no reason to doubt the information provided by Mr Y. So, in the Caseworker's Opinion, on the balance of probabilities, contributions had been deducted from Mr Y'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 Y was not in the financial position he ought to be in.
- In the Caseworker's view, Mr Y had suffered serious distress and inconvenience due to the Employer's maladministration. In the Caseworker's opinion an award of £1,000 for non-financial injustice was appropriate in the circumstances.

22. 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 is "unlikely the business will be able to continue trading".

23. 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**

24. Mr Y has complained that the Employer has not paid all the contributions due to his Plan account.

25. The Director has said that he was not provided with any information relating to the Plan when he bought the Employer. Regardless of whether the previous directors provided the Director with necessary information on the Plan, the responsibility for paying the unpaid contributions remains with the Employer.

26. 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 in a meaningful way with either my Office or Mr Y.

27. The Employer's failure to pay employee and employer contributions into the Plan amounts to unjust enrichment and has caused Mr Y to suffer a financial loss. The Employer shall take remedial action to put this right.
28. Mr Y 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 properly engage with my Office during our investigation into Mr Y's complaint.

### **Directions**

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

CAS-84901-D5F7

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

**Anthony Arter**

Pensions Ombudsman  
30 November 2022



## Appendix

Date	Employee contributions	Employer contributions	Paid	Date paid
1 April 2020 to 30 April 2020	£71.49	£53.60	Yes	1 May 2020
1 May 2020 to 31 May 2020	£56.12	£42.08	Yes	5 June 2020
1 June 2020 to 30 June 2020	£57.57	£43.17	Yes	2 July 2020
1 July 2020 to 31 July 2020	£70.15	£52.60	Paid late	18 September 2020
1 August 2020 to 31 August 2020	£56.12	£42.08	Paid late	25 September 2020
1 September 2020 to 30 September 2020	£72.32	£54.24	Paid late	18 December 2020
1 October 2020 to 31 October 2020	£59.74	£44.80	Paid late	23 December 2020
1 November 2020 to 30 November 2020	£58.05	£43.54	Employer contributions not paid	23 July 2021
<b>Contributions due for 2020/21</b>	<b>£724.20</b>	<b>£543.15</b>	<b>Based on payslips and P60</b>	
<b>Contributions paid for 2020/21</b>	£501.56	£332.57	Yes	
<b>Contributions not paid for 2020/21</b>	<b><u>£222.64</u></b>	<b><u>£210.58</u></b>	<b>No</b>	
<b>Contributions due for 2021/22</b>	£571.43	£428.60	No	
<b>Contributions not paid for 2021/22</b>	<b><u>£571.43</u></b>	<b><u>£428.60</u></b>	<b>March 2021 payslip year to date</b>	
<b>Total unpaid contributions</b>	<b><u>£794.07</u></b>	<b><u>£639.18</u></b>		