

Ombudsman's Determination

Applicant	Mr R
Scheme	Royal London Group Personal Pension Plan – Big Marcel Ltd (the Plan)
Respondents	Clearcom Analytics Limited (Clearcom) DTC Clear Ltd (DTC)

Outcome

1. Mr R's complaint is upheld and to put matters right Clearcom shall pay into the Plan the cost of securing the additional units that would have been purchased for Mr R if employer and employee contributions had been paid on the relevant due dates.
2. Clearcom shall also pay Mr R £2,000 for the severe distress and inconvenience caused by its maladministration.

Complaint summary

3. Mr R's complaint is that monthly employer and employee pension contributions have not been paid into the Plan since April 2018.

Background information, including submissions from the parties

4. In August 2004, Mr R joined the company currently known as DTC. He was subsequently enrolled in the Plan.
5. From April 2018, the Plan ceased to receive employer and employee contributions due from DTC.
6. Effective from 1 February 2019, Mr R's employment was transferred from DTC, at the time trading as Big Marcel Limited, to Clearcom under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**the 2006 Regulations**). Mr R signed the Transfer of Undertaking of Staff agreement on 25 February 2019. This included the statement:

"We confirm that your employment will transfer to Clearcom Analytics Limited on the above date. The transfer of your employment is governed by the

Transfer of Undertaking[s] (Protection of Employment) Regulations 2006 under which your continuous employment and contractual rights are transferred automatically. Clearcom Analytics Limited will honour your current employment terms.”

7. The 2006 Regulations state:

“...on the completion of a relevant transfer—

- a) All the transferor’s rights, powers, duties and liabilities under or in connection with any such contract shall be transferred by virtue of this regulation to the transferee; and

Any act or omission before the transfer is completed, of or in relation to the transferor in respect of that contract or a person assigned to that organised grouping of resources or employees, shall be deemed to have been an act or omission of or in relation to the transferee.”

8. Around this time, Mr R was signed off work due to the stress of unpaid salary and pension contributions.
9. According to payslips provided by Mr R, between April 2018 and September 2019, monthly employee and employer contributions were deducted from his pay, but Royal London’s records show that no contributions were received by the Plan.
10. Over this period Mr R raised concerns about the situation on a number of occasions and received repeated reassurances that the contribution issue would be corrected.
11. On 3 June 2019, the complaint was accepted by my Office for investigation. Clearcom and DTC were invited to comment on the complaint, but my Office has received no response despite a number of requests.
12. On 17 September 2019, DTC entered creditors’ voluntary liquidation.
13. In September 2019, Mr R notionally returned to work, but no further contributions were received.
14. On 3 June 2020, an Employment Tribunal made Mr R’s employment with Clearcom redundant as of 24 January 2020.

Adjudicator’s Opinion

15. Mr R’s complaint was considered by one of our Adjudicators who concluded that further action was required by the Respondents. The Adjudicator’s findings are summarised below:-
 - The Respondents did not dispute Mr R’s complaint and the payslips show pension deductions which were not duly paid into the Plan.

- By failing to pay the contributions the Respondents had breached the regulatory requirements under the Personal Pension Schemes (Payments by Employers) Regulations 2000. This was maladministration.
 - Having considered the Transfer of Undertaking of Staff and the 2006 Regulations, the Adjudicator's view was that Clearcom was responsible for the outstanding contributions.
 - This matter had remained unresolved for an extended period despite Mr R allowing reasonable opportunity to resolve it. The matter has caused Mr R to be signed off work for a considerable period.
 - Additionally, compounding the matter, the Respondents did not respond to The Pensions Ombudsman's Office requests for information.
 - In these circumstances a severe distress and inconvenience payment of £2,000 was appropriate.
16. Clearcom did not respond to the Adjudicator's Opinion. Liquidators acting for DTC responded confirming that Mr R would be added as a creditor and that it was looking into the outstanding pension contributions.
17. In the absence of any additional response to the Opinion, the complaint was passed to me to Determine.

Ombudsman's decision

18. Having considered the evidence available and the Adjudicator's opinion I agree with their conclusions. I find that Clearcom, through the Transfer of Undertaking of Staff agreement, took responsibility for the arrears that had accrued under DTC and was responsible for the arrears that continued to accrue after that date.
19. In failing to address this issue, Clearcom has acted in breach of the 2000 Regulations and caused Mr R a severe level of distress and inconvenience.
20. Therefore, I uphold Mr R's complaint.

Directions

21. Within 14 days of this Determination, Clearcom shall:-
- Pay Mr R £2,000 for the severe distress and inconvenience caused by its maladministration.
 - Request Mr R's authority to contact Royal London.
22. Within 7 days of receiving Mr R's authority, Clearcom shall ask Royal London to calculate:-

- The number of additional units the Plan would have purchased for Mr R assuming all employer and employee contributions had been paid on the relevant due dates.
 - The cost of securing these units.
23. Within 14 days of receipt of this information from Royal London, Clearcom shall pay into the plan sufficient funds to purchase the additional units calculated in paragraph 22 above.
24. If Royal London charges an administrative fee for the calculation, this shall be paid for by Clearcom.

Anthony Arter

Pensions Ombudsman
21 October 2020