

Ombudsman's Determination

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| Applicant | Mr L |
| Scheme | DHL Group Retirement Plan (the Plan) |
| Respondents | Williams Lea Limited (Williams Lea) |

Outcome

1. I do not uphold Mr L's complaint and no further action is required by Williams Lea.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr L's complaint is that Williams Lea did not have the authority to deduct its 1% employer's contribution from an unconnected element of his salary because he was using his full 15% allowance towards his pension contributions to the Plan.

Background information, including submissions from the parties

4. Mr L is a former employee of the Royal Bank of Scotland Group. When he joined, he received a basic salary and additional payments which included a 15% monthly allowance towards pension provision, although it did not have to be used in that way. A TUPE transfer took place in August 2010, and Mr L's new employer became Williams Lea. From this point onwards, Mr L's monthly pension allowance (as it was now formally called in contractual paperwork) was paid to him by Williams Lea, then deducted via a salary sacrifice arrangement and paid into the Plan.
5. As a result of auto-enrolment, Williams Lea had to make a compulsory employer contribution of 1%. In a letter to Mr L dated 24 September 2013, Williams Lea said:

"As you are currently a member of a Williams Lea pension scheme and you make employee contributions, you will not be auto-enrolled from 1st October. However, in order for your membership of the scheme to meet the mandatory and statutory minimum, your contributions need to show an additional 1% employer contribution. Therefore, from 1st November, assuming you have decided to remain in the Pension plan, a 1% reduction will be applied to your benefit/pension allowance in respect of the 1% employer contribution..."

6. Mr L said he along with others, argued strongly in November 2013, that Williams Lea could not deduct its mandatory 1% contribution from his pension allowance as he was already using his full 15% as his employee contribution so it had no leeway to do so. However, Mr L says this fact was ignored and not thoroughly investigated.
7. The Ombudsman determined a complaint by Mr L's colleague in February 2016. Mr L highlights this case because he says it confirms that Williams Lea's auto-enrolment process was flawed. However, he believes the facts of his case are materially different from the previous case because he had chosen to use his full 15% pension allowance as his pension contribution. In the circumstances, he does not accept that Williams Lea had the legal justification to assume that it was meeting its auto-enrolment obligations by deducting a further 1% from his salary. In the previous determination, the applicant was not using the full 15% allowance as a pension contribution into the Plan.
8. Mr L complained to Williams Lea in May 2016, making the points above. He also said this had been a significant and constant source of frustration and worry to him since its inception in 2013. As a result, he asked for financial redress to compensate for the anxiety caused by Williams Lea's failure to address his specific circumstances.
9. Williams Lea sent its response on 20 June 2016. It said Mr L's request for compensation was the first time he had raised the issue regarding the way he had been auto-enrolled. He was given the opportunity to have his auto-enrolled contributions returned to him, less tax and National Insurance deductions. It said the contributions deducted amounted to £619.89 and that this could be returned to him. Further, it said the Ombudsman awarded compensation in the previous case in recognition of the time and inconvenience caused in pursuing the complaint. It did not agree that this applied to Mr L as he had not taken his case through the complaint process.
10. Mr L complained formally on 14 June 2016, under the internal dispute resolution procedure. DHL Pensions, the Plan's administrator, wrote to Mr L on 14 July 2016, on behalf of Williams Lea. It said the whole of the 15% is an employer pension allowance in the form of a flexible benefit. It was accepted by Mr L, and paid into the Plan at a time when it was not a statutory requirement for an employer to contribute directly to the Plan. Now that there is a statutory requirement that an employer pay a minimum of 1% into an employee's pension plan, this minimum can legitimately be paid from the pension allowance because it is an employer benefit whose primary purpose is to provide for employee pension contributions. It said the Ombudsman agreed with Williams Lea that the mandatory 1% employer contribution could be subtracted from the 15% pension allowance. Further, Williams Lea did not have to pay additional contributions when it had contractually agreed to pay 15%. In this regard, Mr L's circumstances are covered by conclusions in the earlier case. It informed Mr L that he could choose to opt out of the Plan and receive a refund of the auto-enrolled contributions.

11. After further exchanges of correspondence, Mr L brought his complaint to our service. He provided a copy of his June 2016 payslip which showed the following:

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| Basic Pay | £1590.11 |
| Pension allowance | £222.61 |
| Penwise (salary sacrifice) | £238.52 – |
| Employer contribution | £15.90 |

Mr L asserts that this information shows that Williams Lea reduced his pension allowance to 14% (£222.61) whilst he was still paying the full 15% (£238.52). He says that this proves beyond doubt that Williams were taking the mandatory employer contribution from his basic salary.

12. Mr L would like Williams Lea to acknowledge that it did not address his specific concerns and reimburse the money taken. He would also like to receive compensation for the significant anxiety and distress this issue has caused him.
13. Since bringing his complaint to us, Mr L has confirmed that his employment with Williams ended at the end of September 2016.

Adjudicator's Opinion

14. Mr L's complaint was considered by one of our Adjudicators who concluded that no further action was required by Williams Lea. The Adjudicator's findings are summarised briefly below:
- The Ombudsman's determination in the previous case found that although the auto-enrolment process was not sufficiently explained to the applicant, Williams Lea was entitled to deduct the 1% from the pension allowance it pays him.
 - Mr L's circumstances are different from the previous applicant. In that case, the applicant received his pension allowance as cash and deductions were made from his 15% allowance without informing him and giving him the option to opt out of the Plan.
 - At the start of auto-enrolment, Mr L was using his entire 15% pension allowance as an employee contribution into the Plan. He therefore believes that he has had to pay an additional £619.89 from his salary, in order to meet Williams Lea's compulsory employer contribution. He does not accept that it has authority to do this.
 - Mr L's payslip shows that he received a pension allowance payment of 14% of his basic pay. However, 15% of his basic pay had been deducted via the salary sacrifice arrangement.
 - The starting point is that Williams Lea contracted to pay Mr L a pension allowance of 15% of his salary. Mr L agreed to sacrifice 15% of his total salary towards his

pension (benefitting from reduced National Insurance contributions in the process). As a result of auto-enrolment, the statutory minimum Williams Lea is required to pay is 1%. There is no requirement for it to pay this in addition to the 15%. Williams Lea explained what would happen in its September 2013 letter to Mr L. In choosing to deduct its employer contribution from the 15% pension allowance, it has not breached any laws and the Adjudicator did not find that there had been maladministration.

- As the pension allowance and the salary sacrifice arrangement were apparently separate arrangements, we would not have expected to see the latter amended without the prior consent of Mr L. The reduction of the pension allowance to 14% and continued deduction of the salary sacrifice (of 15%), do not amount to maladministration. However, Williams Lea should have made it clear to Mr L that due to the requirements of auto-enrolment; it would not be paying a **16%** pension allowance as he was already receiving far in excess of the statutory minimum. Consequently, it should have explained the effect of Mr L's salary sacrifice arrangement and informed him that he may want to reduce his contribution to 14%, in line with the reduction of the pension allowance. As this did not happen, the effect was that a total contribution of 16% was paid into the Plan jointly from Mr L and Williams Lea.
 - When Mr L raised the issue with Williams Lea, it offered him a refund of the additional 1% that he had contributed. Should Mr L choose to accept the refund, he would be in the same position he was in prior to the auto-enrolment. If Mr L does not want to receive a refund, he will benefit from increased benefits as a result of the higher contributions, when he becomes entitled to his pension. Accordingly, Mr L has not suffered an actual loss. Mr L should notify Williams Lea whether he wants to amend his salary sacrifice arrangement to reduce it to 14%.
 - Mr L should have been aware from November 2013, that his salary had reduced slightly following the start of auto-enrolment. He did not appear to have queried matters sooner. Once he did, he was offered a refund, with consideration given to the Ombudsman's findings in the previous case. Whilst this matter may have caused Mr L some distress, it does not meet the Ombudsman's threshold for compensatory awards (i.e. significant non-financial injustice). Accordingly, compensation was not warranted in the circumstances.
15. Mr L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr L provided his further comments which were not new. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr L for completeness.

Ombudsman's decision

16. In his response to the Adjudicator's Opinion, Mr L confirmed that he did not have any further information to provide which would counter the Adjudicator's findings. Mr L

however wanted his complaint considered by an Ombudsman, as he “still [did] not fully agree that Williams Lea were within their rights to utilise an additional 1% contribution from a fund that was not available for their use as the full 15% was already being used at [his] choice and decision”. Mr L also wanted reference to be made to the previous case of his colleague (PO-3830).

17. Mr L is correct that I upheld the complaint in the previous case concerning his colleague. However, my findings in that case do not mean that Mr L’s complaint should also be upheld. Although that complaint was upheld, I found that Williams Lea should not be expected to pay additional sums towards the applicant’s pension, when it had contractually agreed to pay him a 15% pension allowance, subject to any part of the allowance that he wanted to pay into his pension.
18. This finding is equally applicable to Mr L’s complaint. This is despite the fact that he was already using the full 15% allowance as his pension contribution and the applicant in the previous case was not.
19. Williams Lea is entitled to treat 1% of the contractual 15% as its mandatory employer contribution. This was reflected in the reduced amount that was shown on Mr L’s payslip. However, as Mr L’s salary sacrifice agreement was not amended following the start of auto-enrolment, it gave the impression that he was paying more into the Plan than he was receiving. However, this was not the case. What was actually happening was that Mr L’s total contributions into the Plan exceeded what he had agreed to pay in, by 1% every month.
20. As the Adjudicator found, the effect of the additional contributions would increase the benefits available to Mr L when he draws his pension.
21. Although Williams Lea did not expressly inform Mr L that he could choose to amend his salary sacrifice agreement, the effect of the reduction to the pension allowance should have been evident from the first deduction in November 2013. Consequently, Mr L could have queried this then and sought clarification about his salary sacrifice agreement. Having now left the employment of Williams Lea, it is ultimately Mr L’s choice whether he accepts the refund or leaves the additional contributions in the Plan thereby benefiting from the increased pension contributions.
22. In the circumstances, I do not find that there has been maladministration so I will not make any directions for compensation.
23. Therefore, I do not uphold Mr L’s complaint.

Anthony Arter

Pensions Ombudsman

27 October 2016