

Ombudsman's Determination

Applicant	Mr S
Scheme	Legal & General Stakeholder Pension Plan (the Plan)
Respondent	Legal and General (L&G)

Outcome

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

Complaint summary

3. Mr S' complaint against L&G is that it has refunded pension contributions overpaid by Frances King/Quest, his employer, without seeking his permission to do so. He would also like an explanation for the overpayment made in error.

Background information, including submissions from the parties

4. On 22 July 2015, L&G sent a letter to Mr S informing him that:

“We've been advised by Frances King/Quest that they have overpaid their Employer pensions contributions for the months May 2014 to December 2014. Any Employee contributions you have contributed have been unaffected. Frances King/Quest has asked us to refund these overpayments back to them. If we refund this money your plan will reduce to the level it would have been had the original contributions been correct at the time. If we don't hear from you we will assume that you agree to this refund.”
5. Mr S sent a response to L&G saying that he does not agree to the refund and would like an explanation for the cause of overpayment and the amount involved. Notwithstanding Mr S' response, L&G went ahead with the refund and did not supply Mr S with the requested information.
6. In August 2015, Mr S was made redundant by Frances King/Quest and ceased to be a member of the Plan.

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7. In July 2016, Mr S contacted the Pensions Advisory Service (**TPAS**) for assistance. Following TPAS' intervention, L&G provided an explanation in September 2016 about the overpayment that said:

“I've spoken to the team about the letters you received relating to a refund of an overpayment. I can see you returned this letter to us on three occasions to confirm you didn't agree with the overpayment and would like additional information. The team confirmed that a response was sent each time you contacted us but I haven't been able to find evidence of this. However, your employer sent an email to all members of the scheme on 5 June 2015 to confirm the payment was made in error and this belonged to the company and to direct any queries to Barbara Walton Gould at your company. You will need to contact your employer if you have any more concerns about this...I'm sorry we haven't responded to you in a timely manner on several occasions. This is not the level of service we aim to provide and feedback will be given to the area concerned. In light of the poor service you've received I've arranged for a payment of £100 to be sent to say sorry for any trouble and upset we've caused.”

8. On 22 May 2017, L&G sent Mr S a letter in response to a call he had made to them on 9 May 2017. The letter explained that:

“Although I understand your frustration, I'd like to explain why I don't believe we've done anything wrong...There are no legal implications to Legal & General for returning the money to the employer, despite you asking us not to. It is important to understand that you weren't entitled to this payment. The company made a mistake and paid too much and then asked for this back. As this was a mistake and the money was theirs we needed to return it to them.”

9. On 8 June 2017, Mr S advised TPAS that he had finally been able to speak to someone at L&G about the overpayment issue however L&G kept insisting that Mr S contact his employer. L&G subsequently sent Mr S a unit statement showing the current value of the fund along with a history of the transactions that had taken place since the last anniversary of the Plan excluding the overpayment.

10. On 13 June 2017, L&G sent Mr S a letter in response to his further concerns. The letter said that:

“You've asked us specifically for the amounts involved and an explanation for the refund. As detailed above, this was an overpayment from your employer. The amount we refunded was £654.00 and this was returned to the bank that it came from originally...”

11. In September 2017, Mr S brought his complaint to this Office.
12. On 5 December 2017, L&G sent this Office a formal response that maintained its previous stance.

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13. L&G has explained that it is “unable to produce a statement showing the incorrect contributions on the pension. This is because when we returned the contributions to the employer we ‘wound back’ our systems to remove the money. We have to remove the contributions as at the date they were received because, if left on the pension, it would show incorrect values. Therefore, the contributions were wound off as if they’d never been received.”

Adjudicator’s Opinion

14. Mr S’ complaint was considered by one of our Adjudicators who concluded that no further action was required by L&G. The Adjudicator’s findings are summarised briefly below:-
 - L&G has agreed that it was at fault by not responding to Mr S’ complaint in a timely manner. However, it apologised and offered Mr S £100 in recognition of the trouble and upset caused.
 - Mr S was not entitled to the amount of £654.00 that was wrongly paid to his pension account. Legally L&G was obliged to return this payment back to the employer and did not need Mr S’ permission to do so. L&G notified Mr S of the error in the letter dated 22 July 2015, and advised that the employer had sent a group email to all Plan members. Although L&G has not been able to provide a copy of this email because it was not available on its system, on the balance of probabilities, it is likely that the email had been sent.
 - L&G cannot be held liable for an error that it did not make.
 - L&G cannot be held accountable for not providing a further explanation about why the error occurred because it was the employer that made the error.
 - It is not unreasonable that L&G is now unable to show the incorrect amount paid as the systems have been wound back. The system now reflects the correct position.
15. Mr S did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr S provided his further comments which do not change the outcome. I agree with the Adjudicator’s Opinion and I will therefore only respond to the key points made by Mr S for completeness.
16. Mr S asserts that he specifically did not agree to the refund of his pension contributions to his employer.
17. Mr S says he does not recall if the £100 offered by L&G was accepted.
18. L&G has confirmed that the cheque for £100 was accepted and cashed by Mr S on 5 October 2016.

Ombudsman's decision

19. Mr S maintains that L&G was wrong to refund the overpaid Employer contributions. Mr S asserts that he did not agree to the refund.
20. L&G has made clear to Mr S that there is no legal impediment to L&G returning the pension contributions overpaid by the employer. Essentially, the employer made a mistake and paid too much into the Plan. The error was identified and the employer asked for the money to be returned. Mr S must understand that he was not entitled to this money and therefore L&G was correct in refunding the money to the employer.
21. It is unfortunate that L&G, in its letter of 22 July 2015, led Mr S to believe that it needed his permission to refund the overpaid amount. This obviously created confusion which could have been avoided if a clear explanation had been provided at the outset.
22. However, L&G cannot be held responsible for the overpayment as that was an error on the employer's part.
23. L&G has accepted that it should have dealt with Mr S' complaint regarding the overpayment in a more timely manner. I am satisfied that the payment of £100 already paid to Mr S in recognition of his distress and inconvenience is adequate.
24. Therefore, I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
5 June 2018