

Ombudsman's Determination

Applicant	Mr Ian Cole
Scheme	Albion Hose Group Pension Plan (the Plan)
Respondent(s)	Albion Hose Ltd (Albion) Legal & General

Complaint summary

Mr Cole's complaint which is against Albion and Legal & General is about the inability to trace his entitlement under the Plan. Effectively, Mr Cole's complaint is that he has accrued no benefit in respect of contributions paid in the period May 2008 to the end of February 2010.

Summary of the Ombudsman's determination and reasons

The complaint should not be upheld against Legal & General because they were not sent the necessary documents by Albion to set up a pension arrangement for Mr Cole.

However, the complaint against Albion should be upheld because they did not send the necessary documents to Legal & General to set up a pension arrangement for Mr Cole. In addition, they did not check to see if an arrangement had been set up.

DETAILED DETERMINATION

Material Facts

1. Mr Feasey, the Finance Director at Albion, wrote to Legal & General on 4 May 2008 informing them of the contributions, by both employer and employees, with effect from 1 May 2008 for members of the Plan. Mr Cole, plus two other employees were shown as new members. The letter to the Legal & General does not quote a plan or policy number. It just refers to the 'Group Pension Plan for Albion Hose Limited'.
2. Legal & General say that they have no record on their file of the letter of the 4 May 2008. They also say that they have no details on their records of the pensions set up for Mr Cole or the two other employees shown as new members and that the number of members shown do not tally with the records they have for the Plan.
3. Mr Cole's payslips show the following pension contributions were deducted: £125.00 for July 2008; £62.50 each month from August to October 2008; £62.50 each month from December 2008 to January 2009; and £62.50 for March 2010. A total of £1,250.
4. In 2010 Mr Cole asked for his benefits from the Plan to be transferred to another pension provider. He was informed by Legal & General that no pension arrangement had been set up for him.
5. Legal & General have provided a copy of an undated letter, which they say was sent to Mr Feasey in February 2010. The letter stated that the direct debit mandate had failed to collect the February premium and the Plan had fallen into arrears. It also stated that Albion may be reported to The Pensions Regulator under the Personal Pension Schemes (Payment of Employers) Regulations 2000. Mr Feasey says that he has never seen this letter.
6. Mr Feasey has provided a breakdown of the contributions which should have been made for Mr Cole between May 2008 and December 2009. The breakdown shows 20 monthly contributions of £125.00 (£62.50 for the employee and the same amount for the employer) – a total of £2,500.

7. Legal & General have provided samples of an application form and a confirmation of identity form which they say would need to complete for a member before they can join the Plan. Besides basic details about themselves (ie name, date of birth, national insurance number etc), the sample application form shows that Legal & General needs to be informed of the level of the member and employer contributions and also the fund into which these contributions are to be invested. The confirmation of identity form is completed by the independent financial adviser (IFA) to the Plan.
8. Legal & General have also provided a copy of a letter sent to them by Harris & Associates, the IFA to the Plan, in 2003 enclosing an application for a new entrant. The letter which was sent to Legal & General did not quote a plan or policy number. Legal & General say that according to their records this was the last new member who joined the Plan.
9. Mr Cole informed Legal & General that had a pension arrangement been set up for him, he would have invested his pension fund in their Managed Fund. Legal & General say that assuming the 20 monthly contributions of £125.00 were invested in time, the current value of Mr Cole's fund would be £4,112.60.
10. I asked Mr Feasey to provide evidence to show that pension arrangements had been set up for the two other employees who were mentioned as new members in their letter of 4 May 2008; the necessary documentation had been sent to Legal & General to set up pension arrangements for the three new entrants named in their letter of 4 May 2008; and the checks that were carried out in 2009 to ensure that pension arrangements were in place for all members of the Plan before it was transferred to Aegon. He did not respond to my request for this information.

Summary of Mr Cole's position

11. Albion claim that the pension contributions were paid, but Legal & General claim that they have never received contributions for him. He has lost pension contributions and the investment returns on these contributions as a result of this.
12. He would like his contributions allocated to him and compensated for the loss of investment returns and for distress and inconvenience he has suffered.

Summary of Albion's position

13. Legal & General took contributions from their bank account on a direct debit rather than payments being made to them. The January 2010 payment was in relation to December 2009 salary deductions, which was the final month the Plan was with Legal & General. The Plan was moved to another provider which is why no payment was taken by Legal & General from February 2010 onwards.
14. They have no evidence that Legal & General had received pension contributions for Mr Cole. Both they and the IFA to the Plan had made several attempts to obtain a breakdown of the monthly payments taken out of their bank account by Legal & General to establish whether contributions had been deducted for Mr Cole. At no point did Legal & General forward this information.
15. Mr Cole was advised of their efforts to obtain the information from Legal & General and he was comforted with the fact that they would fund the shortfall.
16. They feel that Legal & General have not acted as they should with regard to the collection of contributions for Mr Cole.

Summary of Legal & General's position

17. The file for the Plan has been reviewed, as have the individual records for the members. There is no record of Mr Cole being a member of the Plan or holding a policy with them.
18. When a new member joins the Plan a completed application form is submitted. In addition, fund choices and decisions relating to contracting out of SERPS would be required. They would also need identification verification documentation for the new member. This was the standard approach adopted for the other members.
19. They have no record of the letter of 4 May 2008 from Mr Feasey. There is no record or mention of Mr Cole in any files they hold or on their system data. Albion should have been aware of the requirements needed to add new members to the Plan and the appropriate paperwork was not completed or submitted to start a pension arrangement for Mr Cole.

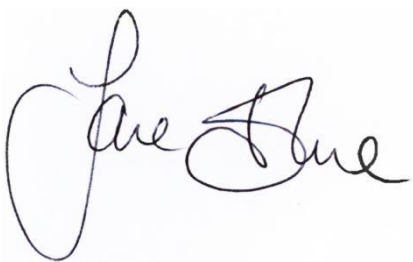
Conclusions

20. Albion say that they notified Legal & General in May 2008 that Mr Cole was to join the Plan. They were not aware as to whether or not contributions for Mr Cole were being deducted as these were taken by Legal & General on a direct debit from Albion's bank account. They have no evidence to show that contributions were collected by Legal & General for Mr Cole.
21. Legal & General say that they have no record of the letter of May 2008 from Albion. They also say that they have no records of the pensions set up for Mr Cole or the two other employees mentioned in the May 2008 letter as new members.
22. Before contributions can start to be collected for a new member, the necessary documentation needs to be completed to set up a pension arrangement. Albion's letter of May 2008 did not enclose completed application forms and identification verification documents for the new members. In addition no evidence has been provided that the necessary documents were subsequently sent. Based on the available evidence I would have to conclude that on the balance of probability Legal & General could not have set up a pension arrangement for Mr Cole and consequently could not have collected contributions for him.
23. Therefore, I am unable to uphold the complaint against Legal & General.
24. I now turn to the complaint against Albion. I do not dispute that Albion had sent Legal & General the letter of May 2008. However, they do not appear to have followed up that letter to check that it had been received or sent the necessary documents to set up pension arrangements for the new members. Given that new members had been admitted to the Plan in the past, Albion should have been aware of the documentation needed to set up a pension arrangement for a new member. Albion's failure to send the necessary documents resulted in a pension arrangement not being set up for Mr Cole and this is maladministration.

25. Mr Cole suffered financial loss as a consequence of Albion's maladministration in that both his own and Albion's contributions were not collected by Legal & General and invested in a pension arrangement with them. I therefore uphold the complaint against Albion.
26. I recognise that Mr Cole has also suffered non-financial injustice, in the form of distress and inconvenience, and I have made the appropriate direction below.

Directions

27. I direct that, within 14 days of the date of this determination, Albion write to Mr Cole asking him for his choice of pension provider together with details of the pension arrangement he has set up with that provider. Within 14 days of receiving Mr Cole's response, Albion shall pay £4,112.60 into that pension arrangement.
28. In addition, within 14 days of the date of this determination, Albion will pay direct to Mr Cole £400 for the non-financial injustice he has suffered. Not being able to trace payments into his pension must have caused him significant worry and upset.

A handwritten signature in blue ink, appearing to read 'Jane Irvine', is positioned above a faint rectangular stamp.

Jane Irvine

Deputy Pensions Ombudsman

18 December 2014