

Ombudsman's Determination

Applicants	Those listed in the Appendix (the Applicants)
Scheme	IVI Metallics Group Scheme, also referred to as Standard Life Group Flexible Retirement Plan (the Plan)
Respondent	IVI Metallics Ltd (the Employer)

Outcome

1. The Applicants' complaint is upheld. To put matters right, the Employer shall pay any missing contributions into each Applicant's account within the Plan and remedy any loss of investment return. In addition, it shall pay each Applicant £1,000 for the serious distress and inconvenience it caused them.

Complaint summary

2. The Applicants complained that the Employer had not paid their pension contributions into the Plan.

Background information, including submissions from the parties

3. The Pensions Act 2008 stipulated that all employers must enrol certain workers into a workplace pension scheme (**automatic enrolment**). Between 1 October 2012 and 1 April 2017, all employers in existence on 1 April 2012 had to begin their automatic enrolment duties. The Employer's duties commenced in approximately August 2016.
4. In accordance with part one of the Pensions Act 2008, employers are responsible for establishing whether or not they need to provide a pension scheme and what their duties are. Employers who are required to provide a pension scheme must:-
 - Set up a pension scheme (ideally before their employer duties start).

- Automatically enrol eligible workers¹ into a pension scheme from their first day of employment and deduct pension contributions from their pay².
 - Inform their workers how automatic enrolment applies to them, within six weeks of the employer duties start date.
 - Declare their compliance to the Pensions Regulator (**TPR**) within five months of their duties start date.
5. In August 2016, the Applicants were automatically enrolled into the Plan.
 6. Between 2017 and 2018, the Applicants noticed that the Employer had deducted contributions from their monthly pay but had not paid them to the Plan. Mr L raised a “collective grievance” and subsequently contacted the Pensions Ombudsman’s Office (**TPO’s Office**).
 7. In late 2018, the Applicants noticed that the Employer had again deducted contributions from their monthly pay but had not paid them into the Plan.
 8. On 20 February 2019, the Employer notified the employees that:-
 - It had been acquired by Vulcan Industries PLC (**the acquisition**).
 - It would still operate under the same name, but the ownership had changed.
 - There had been a “lack of payments to the pension provider [Standard Life] over the last few months” while it dealt with “stretched cashflow” and “financial changes”.
 - It planned to continue to pay contributions to the Plan that same month and make extra payments for the missing contributions.
 9. In March 2019, the Applicants contacted TPO’s Office concerning the missing contributions. Mr E had particular concerns because he was due to retire in July 2019.
 10. Between March and November 2019, TPO’s Office liaised with the Employer in connection with the missing contributions. Mr E later retired but did not take his retirement benefits from the Plan.
 11. The Employer accepted that it had not paid all the Applicants’ contributions to the Plan.

¹ Members of staff who are: aged between 22 and State Pension Age; earning more than £833 a month; working in the UK and; have a contract

² Contributions must be deducted in line with the Pensions Act 2008 section 49. All contributions deducted during the first three months of membership must reach the scheme by 22nd of the fourth month, where paid electronically (or by the 19th if paid by another means).

12. The Employer continued to deduct contributions in respect of each Applicant. However, it failed to remit them to the Plan. The Employer made some additional payments but did not bring all the contributions up to date.
13. **The Employer's position:-**
 - It had recommenced payments and made additional payments into the Plan.
 - The global pandemic and "Brexit" had affected its sales. Its main aim was to retain staff.
 - It had now turned its attention to making good the missing pension contributions by making multiple payments each month.
 - It would not be in a financial position to compensate staff for the fact that the contributions were paid late.
14. **The Applicants' position:-**
 - The issue with non-payment of contributions was "companywide" and affected at least 20 employees.
 - Mr E retired in summer 2019. Some of his contributions were not paid by the Employer until after he had left employment.
 - Mr G had planned to retire in early 2021, but this seemed unlikely because of the missing contributions.
 - The Employer had "unlawfully" deducted money from their monthly pay.
 - It was unclear what the Employer was doing with the contributions.
 - There were still missing contributions.
 - Staff were furloughed during part of the pandemic. So, the Employer did not have to pay wages during this time. At the very minimum, it should have paid the employee contributions into the Plan.
 - They had suffered a loss of investment return as a result of the missing contributions.
15. Standard Life confirmed that it has reported the Employer to TPR for non-payment of contributions and notified affected members.

Adjudicator's Opinion

16. The Applicants' complaint was considered by one of my Adjudicators who concluded that further action was required by the Employer. The Adjudicator's findings are summarised below:-

- The Employer's duties remained unchanged, despite the events outside of its control. So, the contributions should have been paid to the Plan irrespective of any "cashflow problems."
 - The Applicants were likely to have suffered a loss of investment return.
 - The failure to pay the contributions to the Plan constituted maladministration. Given that the Employer had deducted the contributions from each Applicant's pay, the outstanding payments should have been made to the Plan in accordance with the Regulations.
 - The maladministration would have caused the Applicants serious distress and inconvenience, particularly because the issues had been ongoing since at least 2018. Furthermore, the Employer had agreed, but failed, to make remedial payments on a number of occasions.
 - The Employer should pay the missing contributions into the Plan and make good any loss of investment return.
 - The Employer should also pay each applicant £1,000 for the serious distress and inconvenience they had suffered.
17. The Employer accepted the Adjudicator's Opinion but it failed to put matters right. The Applicants, on the whole, accepted the Adjudicator's Opinion. Mr L was unhappy with the level of award recommended by the Adjudicator, which he considered "did not fit the crime." The Employer provided its further comments which do not change the outcome. In summary, it said:-
- It was in a position to pay the £1,000 awards, but it could not make the outstanding contribution payments, and any loss of investment return, within the 14 days recommended by the Adjudicator.
 - It restated that its priority was to retain staff, which it had done.
18. The Adjudicator subsequently contacted the Employer to establish when it would be in a position to pay the missing contributions and liaise with Standard Life concerning any loss of investment return. The Employer did not respond to the Adjudicator.
19. I agree with the Adjudicator's Opinion and note the additional points raised by the Employer and Mr L.

Ombudsman's decision

20. I acknowledge that the Applicants and the Employer accept the Adjudicator's findings that there are outstanding contributions due to the Plan.
21. I also acknowledge the Employer has been affected by factors outside of its control. This does not negate its obligations to remit pension contributions to the Plan. The Employer ought to have been aware that its legal duties remain unchanged. Its failure

to pay the contributions to the Plan amounts to unjust enrichment. The Applicants are entitled to redress to remedy any financial loss they have suffered.

22. I note that the Employer has not attempted to remedy matters or provide a timeframe of when it will be in a position to do so. I find on reviewing the evidence that it has shown disregard for the Applicants. They have been affected by its maladministration since at least 2018 and have suffered a financial loss as a result. Each Applicant is entitled to redress to remedy any financial injustice they have suffered.
23. The purpose of my awards for distress and inconvenience is to recognise any non-financial injustice that an applicant may have suffered. Such awards are not intended to be punitive. In this case, there is no doubt that the Applicants have suffered serious distress and inconvenience, which continued during the course of this investigation. They shall each receive an award in recognition of this. I find that £1,000, to each of the Applicants, is sufficient in the circumstances and in line with what I would direct for non-financial injustice in similar cases.
24. I uphold the Applicants' complaint.

Directions

25. Within 28 days of the date of this Determination, the Employer shall:-
- pay £1,000 to each Applicant in recognition of the serious distress and inconvenience the Employer has caused them to suffer;
 - pay any unpaid pension contributions in respect of each Applicant to the Plan;
 - request that Standard Life calculate any loss of investment gains from the due date of each contribution to the date of actual payment, on the assumption the contributions were invested in the Applicant's chosen investment fund(s); and
 - pay any reasonable administration fee should Standard Life charge a fee for carrying out the above calculations.
26. Within 21 days of receiving confirmation from Standard Life of any loss of investment gains, pay to Standard Life the amount(s) required to remedy that loss.

Anthony Arter

Pensions Ombudsman
30 July 2021

PO-39953

Appendix

Name of Applicant	Pensions Ombudsman's Reference
Mr D	CAS-46982-B5L8
Mr E	PO-39964
Mr G	PO-39958
Mr L	PO-39953
Mr R	PO-39961