Ombudsman's Determination

Applicant	Mr Richard Moore
Scheme	Lloyd Loom of Spalding Group Personal Pension Plan (the **Plan**)
Respondent	Lloyd Loom of Spalding Ltd (the **Company**)

Complaint summary

Mr Moore has complained that pension contributions which were deducted from his salary were not paid into the Plan by the Company.

Summary of the Ombudsman's determination and reasons

The complaint should be upheld because the Company failed to pay contributions (on Mr Moore's behalf) within the required time frame.

Detailed Determination

Relevant legislation

1. Section 111A of the Pensions Schemes Act 1993, provides that where contributions are not paid by the “due date” then, amongst other things, the manager of the scheme may notify the Pensions Regulator, who may impose a penalty on the employer.

“111A Monitoring of employers’ payments to personal pension schemes

(1) This section applies where-

(a) an employee is a member of a personal pension scheme; and

(b) direct payment arrangements exist between the employee and his employer.

(2) In this section “direct payments arrangements” means the arrangements under which contributions fall to be paid by or on behalf of the employer towards the scheme-

(a) on the employer’s own account (but in respect of the employee); or

(b) on behalf of the employee out of deductions from the employee’s earnings.

…

“(8) If- …

(b) a contribution payable under the direct payment arrangements is not paid to the trustees or managers of the scheme on or before its due date,

Section 10 of the Pensions Act 1995 (power of the Regulatory Authority to impose civil penalties), applies to the employer.”

“(15) In this section **“**due date**”**, in relation to a contribution payable under the direct payment arrangements, means-

(a) if the contribution falls to be paid on the employer’s own account, the latest day under the arrangements for paying it;

(b) if the contribution falls to be paid on behalf of the employee, the last day of a prescribed period.”

Material facts

1. Mr Moore was a member of the Plan. The Company operated a salary sacrifice arrangement where an employee agreed for a portion of their salary to be deducted so that the Company could pay contributions into the Plan on their behalf.

2. Mr Moore was paid weekly. His payslips showed a deduction of £22.39 from gross pay described initially as “Scot Eq EE” then “Sal Sac Pen”.

3. Mr Moore did not receive payslips from January 2014 to April 2014, but he continued to receive his usual net salary (though this was paid in different ways during this period).

4. Mr Moore contacted AEGON (the pension provider) in March 2014. They informed him that the last contribution paid into his policy was received on 17 December 2013 (in respect of the November 2013 premium). They informed him that the premiums for December 2013, January, and February 2014, remained outstanding as at that date.

5. Mr Moore wrote to the Company on 28 March 2014, regarding the unpaid contributions. He asked the Company to confirm their intentions regarding his missing contributions and any future contributions.

6. The Company did not respond to Mr Moore.

7. In a letter dated 30 April 2014, from AEGON to the Company, AEGON said contributions had not been received for 12 members of the Plan, Mr Moore included.

8. Mr Moore stopped the pension deductions from his salary in June 2014 (with the last deduction being made on 6 June 2014).

9. Mr Moore wrote to the Company again the following month about the pension contributions. The Company did not respond to Mr Moore. He subsequently resigned from the Company with effect from 7 November 2014, and his further letters of 17 November 2014, and 2 January 2015, also went unanswered.

10. Mr Moore brought his complaint to our service and the Company did not provide a formal response to Mr Moore’s complaint.

11. A director from the Company contacted our service in June 2015, to say he wanted to pay Mr Moore the money directly. He was told to put this in writing so that it could be forwarded to Mr Moore for consideration. The director agreed to do so but the Company did not provide written confirmation of this intention.

12. In July 2015, Mr Moore informed our service of his belief that the Company would be going into liquidation. He says he saw a ‘winding up order’ in a publication and that the Company’s status on Companies House is “Active – proposal to strike off”. He is very concerned that he will not be able to recover the unpaid pension contributions.

Conclusions

13. Although Mr Moore did not receive payslips between January and April 2014, I am satisfied that what he says is correct, and that contributions continued to be deducted from his salary during this period.

14. AEGON's communications to Mr Moore and the Company confirm that contributions were not paid into the Plan after December 2013. The Company have not offered any explanation for the failure to pay contributions into the Plan. They have also not responded to our requests for information or provided any defence to the complaint.

15. The Company's actions are in breach of statutory provisions which require money deducted from an employee's earnings (for the purpose of paying pension contributions), to be paid before the due date.

16. As Mr Moore's contributions were not paid by the Company, there has been maladministration.

17. I uphold Mr Moore's complaint. He is entitled to be put in the position he would have been in had all the contributions been paid when due. I make the relevant direction below.

18. In my opinion, Mr Moore has also suffered considerable distress and inconvenience as a result of the Company's failure to pay his pension contributions.

19. My directions are enforceable by Mr Moore in the County Court as if they were a County Court Judgment or Order.

Directions

20. Within 14 days of this determination, Lloyd Loom of Spalding Limited must contact AEGON for a calculation of what Mr Moore's fund would be worth, if contributions had been paid on time, at the correct level after they were deducted, and the difference between that and the current value of the fund.

21. Within 14 days of being notified by AEGON of the required sum, Lloyd Loom of Spalding Limited is to pay the amount required to bring Mr Moore's fund at that date to the level at which it would have been, as notified above.

22. Within 14 days of this determination, Lloyd Loom of Spalding Limited is to pay Mr Moore £500 in respect of the significant distress and inconvenience which he has suffered.

Anthony Arter

Pensions Ombudsman
16 September 2015