

Ombudsman's Determination

Applicant	Mr L
Scheme	Amnesty International Superannuation Scheme (the Scheme)
Respondent	Amnesty International Limited (Amnesty)

Outcome

1. Mr L's complaint is upheld, and to put matters right, Amnesty shall:
 - restore his position in the Scheme, including paying back-contributions and accounting for any loss of investment returns to date, net of the value of his benefits in the Plan, by paying the amount to him, or, at his option, to his account in either the Scheme or the Amnesty International Retirement Plan (**the Plan**); and
 - pay him £1,000 for the serious distress and inconvenience caused to him.

Complaint summary

2. Mr L complained that Amnesty stopped paying pension contributions to the Scheme in April 2016, and automatically enrolled him into the Plan, despite telling him that he could remain an active member of the Scheme when he moved overseas.
3. Mr L asked to be put back in the position he would have been in if he had been permitted to carry on in the Scheme.

Background information, including submissions from the parties

4. Amnesty is represented by DWF Law LLP (**the Representative**).
5. The Plan is an overseas pension arrangement, not registered with HM Revenue & Customs.
6. In 2009, Mr L started working for Amnesty in the United Kingdom (**UK**). He joined the defined contribution (**DC**) section of the Scheme, which is an occupational pension arrangement. Aon were the Scheme's administrator at the time.

7. Mr L said that he agreed to pay additional voluntary contributions (**AVCs**) of 3% of his salary to the Scheme. Amnesty contributed 7.5% in employer contributions and matched his AVCs.
8. In January 2014, Mr L started a 12-month assignment for Amnesty in Dakar. In a letter to Mr L dated January 2014 (**the January 2014 Letter**), Amnesty confirmed the following:-
 - While on assignment in Dakar, he would remain an employee of Amnesty and would be subject to UK employment legislation.
 - His salary in the UK was higher than the local salary.
 - He would be able to remain a member of the Scheme, as he would maintain links with the UK.
 - If he decided not to remain in the role on a permanent basis at the end of the assignment, he could return to his position in the UK.
9. In 2014, Mr L raised several employment and pension related grievances against Amnesty.
10. In June 2014, Amnesty responded to Mr L (**the June 2014 Letter**). Amnesty agreed that Mr L was advised that he could remain an active member of the Scheme for the duration of his assignment in Dakar. However, as he was not planning to return to the UK, he could enrol into the Plan designed for non-UK domiciled staff.
11. Mr L was offered the option to receive the employer pension contributions with his taxable pay, which he could then invest in an alternative pension arrangement of his choosing. He chose to remain in the Scheme.
12. Mr L said that he received a pay rise in December 2014, because his role in Dakar changed. As the new role was back dated, he received additional back pay. The Representative has confirmed that the role was under a permanent employment contract with Amnesty in Dakar.
13. In December 2015, Mr L's role in Dakar changed. Details of his new role were confirmed in a letter dated 7 December 2015 (**the December 2015 Letter**).
14. On 14 December 2015, Mr L agreed the terms and conditions of his new role by signing the December 2015 Letter. A copy of the employment terms (**the Employment Terms**) included with the December 2015 Letter stated the following:-

In section 5.2

“You will comply with any codes, policies, rules and regulations which Amnesty International Limited may issue from time to time. These are subject to review and amendment in accordance with business need, best practice and in line with legal requirements. You must at all times act in accordance with these.”

....

In section 15.1

“Upon joining Amnesty International Limited you are eligible to be a member of the Amnesty International Limited Pension Scheme. You are automatically enrolled in the Scheme, with the right to opt out of its provisions. For more information about the Scheme, which may be amended from time to time, and to obtain an opting out form, please contact the Human Resources team.”

....

In section 15.2

“The Scheme is a defined contribution occupational pension scheme (money purchase) and it is contracted in to the earnings related part of the State Pension Scheme (State Second Pension – S2P).”

15. Part of Mr L’s salary was paid to him in local currency.
16. On 22 April 2016, Amnesty emailed Mr L and raised the following points:-
 - Following an audit, the Scheme was no longer able to accept contributions from international staff.
 - As Mr L was an active member of the Scheme, his contributions would need to stop. He could either become a deferred member of the Scheme or transfer his benefits to the Plan. He needed to make a decision by 19 May 2016 (**the Deadline**) when he would be automatically enrolled into the Plan.
17. Later the same day, Mr L responded to Amnesty with the following points:-
 - He was told that he could remain in the Scheme while working in Dakar and that the Plan only applied to new staff.
 - Since transferring to Dakar, Amnesty had not matched his AVCs in the Scheme.
 - He wanted the missing contributions paid to the Scheme before deciding whether to transfer his existing benefits to the Plan.
 - He also wanted to understand his options and obtain advice from the union about the changes to the Scheme before making a decision.
18. On 5 May 2016, Amnesty emailed Mr L and confirmed that the Deadline could not be extended as it “needed to be legally compliant with the Aon scheme [the Scheme] or risk severe financial penalties”. Any future pension contributions could be held outside the Plan and would accrue interest until he had made a decision.
19. During the period May 2016 to April 2017, Mr L exchanged several emails with Amnesty about his pension.

20. On 20 April 2017, Mr L emailed Aon and asked whether he was still in the Scheme and when the last contribution was paid. He also asked why he had been taken out of the Scheme.
21. On 5 May 2017, Aon confirmed that Mr L was a deferred member of the Scheme and that contributions had ceased in March 2016. Aon asked him to contact Amnesty regarding his contributions.
22. Amnesty subsequently confirmed the following:-
 - It had not paid the correct employer contributions to the Scheme during the period October 2015 to March 2016 (**the 2015 Missing Contributions**).
 - He had been enrolled into the Plan.
23. Amnesty shared a summary of its calculation of the corrected contributions to the Scheme with Mr L. It confirmed that the calculation reflected increases that had been applied to his salary. Amnesty advised that it had not paid interest on the corrected contributions.
24. Mr L did not recall receiving the calculation of the corrected employer's contributions to the Scheme for the period October 2015 to March 2016.
25. In February 2020, Mr L left Amnesty through redundancy.
26. In June 2021, Amnesty and Mr L held a meeting to discuss his complaints about the Plan, but no resolution was reached.
27. On 20 December 2021, Amnesty wrote to Mr L and said that it was willing to offer him £3,000 (**the Offer**) in respect of interest due on the 2015 Missing Contributions and missing contributions to the Plan. Alternatively, it could carry out a more accurate calculation.
28. On 4 April 2022, Mr L rejected the Offer.
29. Following the complaint being referred to The Pensions Ombudsman, Mr L and the Representative made further submissions that have been summarised below.
30. Mr L's further submissions:-
 - He was given multiple assurances that he could remain in the Scheme. After receiving the June 2014 Letter, he decided to remain an active member of the Scheme. When he changed roles in 2015, his updated contract still referred to the option to remain in the Scheme.
 - The Offer did not reflect the fact that he was switched to the Plan, which had been underperforming for years at the time he transferred to Dakar. The investment performance was lower when compared with the returns that had been achieved by the Scheme. The Plan provided less protection.

- Amnesty had not been transparent about the financial impact of the missing contributions. The lack of information on the interest calculations made it difficult for him to assess whether the Offer was fair.
- By making back-payments, rather than contributions on a monthly basis, Amnesty had exposed him to additional market volatility.
- He was not an isolated case; his colleagues had experienced similar problems with their pension. Amnesty offered a single resolution in respect of both the employment related matters and pension issues he had raised. So, he felt pressured into accepting the solution.
- Amnesty did not address the issues he raised in a timely manner or take his complaint seriously. Amnesty should acknowledge its errors and apologise for the distress and inconvenience it has caused him.

31. The Representative's further submissions:-

- Rule 1.1 of the Scheme's rules stated the following:

"In the event of any doubt or dispute as to whether an Employee is or is not eligible to join the Scheme or to remain in the Scheme, the Principal Employer's decision will be final. Nothing in the Rules will prevent a temporary or contract Employee with a statutory right to join the Scheme from being able to do so."
- Amnesty was the Principal Employer of the Scheme and Mr L's employer.
- Only eligible UK employees were able to participate in the Scheme.
- In response to the Occupational Pension Schemes (Cross-border Activities) (Amendment) Regulations 2018 (SI 2018/1102) (**the Cross-Border Regulations 2018**), many defined benefits/or hybrid occupational pension arrangements had used separate DC schemes to provide pension benefits for non-UK domiciled employees. Amnesty offered separate pension arrangements for non-UK domiciled employees; a practice adopted by many international organisations.
- Under Amnesty's international reward framework, known as Global Transition Programme (**GTP**), Mr L maintained his UK salary and pension benefits between January 2014 and March 2016. Protection under the GTP lasted for a two-year period before Mr L was moved to Dakar's local terms and conditions.
- Amnesty ended Mr L's pensionable service in the Scheme with effect from April 2016 using its unilateral power to do so under Rule 1.1 and in line with its GTP.
- Mr L's new role, which commenced in December 2015, was under a permanent contract in Dakar.

- The Scheme's investments were managed by trustees (**the Trustees**). The Plan offered members the option of a default strategy and a range of other funds. Fund performance differed between funds, leading to different outcomes.
- When Amnesty discovered that Mr L's contributions to the Scheme were missing, it acted swiftly to instruct Aon to calculate his financial loss and pay the backdated contributions.
- There were no remaining employees of Amnesty's human resources department from 2015. So, it was not able to say what information or documents Mr L would have been provided and for which pension arrangement, if he had requested information in 2015, as suggested in section 15.1 of the Employment Terms.

Adjudicator's Opinion

32. Mr L's complaint was considered by one of our Adjudicators who concluded that there was maladministration. The Adjudicator's findings are summarised below:-

- Both the January 2014 Letter and the June 2014 Letter stated that Mr L could remain an active member of the Scheme during his assignment in Dakar. This was because his UK employment benefits, including pension rights, were protected under the GTP for a period of two years. Mr L's assignment was then replaced by a further contract in December 2015, and the protection under the GTP expired in January 2016. So, by April 2016, when Mr L was told that he needed to stop contributing to the Scheme, he was no longer on a temporary assignment in Dakar, and the conditions of his employment were specified in the Employment Terms.
- Section 15.1 of the Employment Terms said that Mr L was eligible to join the Amnesty International Limited Pension Scheme. Mr L took this to mean that he would remain in the Amnesty International Superannuation Scheme. The name of the pension arrangement referred to in the Employment Terms was different to the name of the Scheme. It was also not the same name as the Plan. However, when Mr L agreed the terms, he was already a member of the Scheme, and he received no other indication that he would be switched from the Scheme to the Plan for future service accrual. So, the reference to the Amnesty International Limited Pension Scheme in the Employment Terms should be interpreted as referring to the Scheme, not the Plan.
- Section 15.1 of the Employment Terms said that the Scheme "may be amended from time to time". This should be read as allowing for amendments to the Scheme, not its replacement with an entirely different pension arrangement.

- Section 5.1 of the Employment Terms said that Mr L should comply with any codes, policies, rules and regulations issued by Amnesty and amended from time to time. This should relate to his conduct and the carrying out of his job and not be interpreted as allowing Amnesty to change the terms of his contract, such as his pension entitlement, without obtaining his consent.

33. Rule 1.1 of the Scheme's rules said that if there was any doubt about a member's eligibility to the Scheme, Amnesty's decision would be final. This was a power that helped with administration and allowed Amnesty to make determinations where something was unclear or in doubt. It did not allow Amnesty to override the Scheme's rules or employment contracts and did not give it unilateral power to terminate membership of an active member. In this situation, Amnesty needed to either use a power of amendment, which in this case required the agreement of the Trustees, negotiate with the individual members and obtain their consent to opt-out of the Scheme, or change members' employment contracts. In other words, Amnesty needed to engage with and secure agreement from the Trustees or affected employees before making a change. In Mr L's situation, Amnesty did neither and acted as if it had a unilateral power. This amounted to maladministration.

- The Adjudicator also noted the following:-
 - While the Cross-Border Regulations 2018 had implications for defined benefit pension arrangements that employed employees working in other European Union (**EU**) countries, this would not have impacted Mr L as he was a member of the DC section of the Scheme and not working in another EU country.
 - The definition of Pensionable Service in the Scheme's rules said that it continued until the member opted out or service with a participating employer ended.
- Amnesty's maladministration resulted in Mr L incorrectly being switched from the Scheme to the Plan for future service accrual from April 2016 to when his employment ceased in February 2020. The remedy for this situation was to restore Mr L's position in the Scheme, including paying back-contributions and accounting for any loss of investment returns to date, net of his entitlement under the Plan.
- The administrative errors occurred over a prolonged period and the unreasonable delay in putting matters right would have caused Mr L to suffer serious distress and inconvenience. In recognition of this, Amnesty should pay Mr L £1,000.

34. The Representative did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. The Representative's comments are summarised below:-

- Reference in the Employment Terms to the Amnesty International Pension Scheme was clearly a mistaken reference. The more natural reading was that the 'P' and 'S' should not have been capitalised to allow for the template to be used in various jurisdictions and where different pension schemes applied. This was supported by section 15.2, which referred to a "contracting-out certificate is in force in respect of your employment...where an occupational scheme is in place...". The Scheme was an occupational scheme and a contracting out certificate would have been in place as a result. The conditionality meant that this section was generic.
- The Employment Terms stated in section 5.2 that "you will comply with any codes, policies, rules and regulations which Amnesty International Limited may issue from time to time" were to be complied with at all times. GTP protection expired in January 2016 and as a result, Mr L was informed on 22 April 2016 that he needed to stop contributing to the Scheme. It queried why the Adjudicator did not consider that these policies should supersede Mr L's employment contract and asked why the codes, policies, rules and regulations were only applicable in so far as they related to conduct and the carrying out of Mr L's job. Mr L's employment contract, the Employment Terms, was subject to these conditions, and as a matter of contractual construction, took priority.
- Rule 1.1 of the Scheme's rules stated:

"In the event of any doubt or dispute as to whether an Employee is or is not eligible to join the Scheme or to remain in the Scheme, the Principal Employer's decision will be final."
- A dispute was different to something that was unclear or in doubt. This was to be distinguished from a power which required negotiation with the Trustees and the agreement of the member, which it did not believe was the case in Mr L's situation.
- In the event of the Pensions Ombudsman upholding Mr L's complaint, it queried whether 28 days would be sufficient time to obtain the required information from Aon.

35. I have considered the Representative's comments, but they do not change the outcome. I agree with the Adjudicator's opinion.

Ombudsman's decision

36. The Representative has submitted that the capitals used in the term "Pension Scheme" in section 15.1 of the Employment Terms was an error, and that this section was referring generally to a pension scheme of Amnesty. I do not accept this position. As Mr L was already a member of the Scheme, and at the time he agreed the Employment Terms, he was not told that he would be switched from his existing pension to a different one, it was reasonable for someone in his position to interpret section 15.1 as referring to the Scheme, not the Plan. The reference to the "Amnesty International Limited Pension Scheme" was unchanged from the employment terms attached to his previous employment contract and it would be reasonable to construe it as referring to the same scheme of which he was already a member. While it is understandable that templates are used, the template was amended in other respects (such as jurisdiction and applicable law) in relation to Mr L's different employment contracts and had there been an intention to provide for a change of pension plan, a change could and should have been made to section 15.1. Section 15.2 of the Employment Terms states "The scheme is a defined contribution occupational pension scheme...". This statement could apply to either of the two pension arrangements and does not support the Representative's argument that section 15.1 was referring to the Plan, not the Scheme. Section 15.2 also specifically states that it is contracted in and explains the effect for "staff who are liable to pay UK National Insurance contributions. Nothing in this wording supports the view that it was referring to the Plan and not the Scheme. I do not consider that section 5.1 of the Employment Terms, where it says that Mr L should comply with any codes, policies, rules and regulations issued by Amnesty, would include requiring him to switch pension arrangements without first obtaining his consent. A material change to Mr L's employment terms, such as a switch to an entirely different pension arrangement, required his consent.
37. Rule 1.1 of the Scheme's rules does not provide a power for Amnesty to terminate Mr L's membership of the Scheme where the other provisions of the Scheme do not provide for his membership to terminate. The provision deals only with situations where a doubt or dispute over eligibility or the right to remain in the Scheme (under the terms of the Scheme) has already arisen. Mr L was a member of the Scheme, continued to meet the conditions for membership of the Scheme, including employment with a participating employer, had not taken any action to opt-out of the Scheme or contractually agreed that his membership of the Scheme would terminate. As such, there was no doubt or dispute about his right to remain a member of the Scheme in respect of which the power under Rule 1.1 could be invoked. To terminate Mr L's membership of the Scheme while he remained an employee, Amnesty could either exercise the amendment power under the Scheme with the agreement of the Trustees or obtain the agreement of Mr L to switch his membership to the Plan. As Amnesty did neither of these, its actions amount to maladministration.
38. I uphold Mr L's complaint.

Directions

39. Within 28 days of this Determination, Amnesty shall:

- I. determine the current value of the benefits Mr L should have accrued in the Scheme between April 2016 and February 2020, based on the contributions he paid into the Plan and the contributions that Amnesty should have paid into the Scheme, including investment returns up to the date of the calculation;
- II. determine the current value of Mr L's benefits in the Plan;
- III. notify Mr L of the values determined in (I) and (II) above;
- IV. if (I) is greater than (II), pay the difference to Mr L, or, at his option, to his account in either the Scheme or the Plan; and
- V. pay Mr L directly, £1,000 for the serious distress and inconvenience caused to him.

Camilla Barry

Deputy Pensions Ombudsman
8 January 2025