

## Ombudsman's Determination

Applicant	Mr N
Scheme	Standard Life Auto Enrolment Scheme ( <b>the Scheme</b> )
Respondent	AmTrust Europe Limited ( <b>AmTrust</b> )

## Outcome

1. Mr N's complaint against AmTrust is partly upheld, but there is a part of the complaint I do not agree with. To put matters right for the part that is upheld, AmTrust should pay Mr N £500 in respect of the significant distress and inconvenience that Mr N has suffered and follow the directions in paragraph 28 below.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr N's complaint is that AmTrust did not make the correct employer contributions into the Scheme, and failed to deduct employee contributions from January 2016. Mr N asserts that as this matter has caused him significant distress and inconvenience, and because of the large arrears he now has to pay, AmTrust should pay him substantial compensation.

## Background information, including submissions from the parties

4. Mr N is currently employed by AmTrust and is an active member of the Scheme.
5. In June 2017, Mr N received an update from AmTrust about paying pension contributions by salary sacrifice. This prompted him to review his payslip and raise enquiries with AmTrust.
6. Mr N formally complained to AmTrust on 27 June 2017. He said AmTrust had issued correspondence on 20 June 2014, which stated that from 2016, employer contributions to the Scheme would increase from 3% to 6%, and employee contributions would increase from 0% to 3%. Mr N had however discovered that this had not been implemented for him. Employer contributions to the Scheme were being paid at 3%, and employee contributions had not been deducted from his salary from 2016 onwards.

7. Mr N said he had an expectation that AmTrust would manage his pension properly and deduct the appropriate contributions. Mr N said he felt discriminated against as he was aware that other employees were paying 3% contributions and receiving 6% employer contributions. Mr N said the issues were impacting his health and creating unnecessary stress and anxiety.
8. AmTrust responded to Mr N on 26 October 2017. It confirmed that its auto-enrolment staging date was July 2014 and its 3% contribution was the minimum required to satisfy legislative requirements. In relation to the communication sent regarding increases to contributions, AmTrust said the information was incorrect as it had the wrong timescales. However, AmTrust accepted that because of the incorrect information, there had been an assumption that employer and employee contributions had increased from 2016.
9. AmTrust therefore proposed to backdate the employer contributions from 2016 to 6%, on the condition that Mr N makes backdated employee contributions at the rate of 3% for the same period; the back payments to be paid over an agreed timescale. AmTrust confirmed that if Mr N accepted the proposal, it would be his new, permanent pension provision. It requested that Mr N provide his "feedback on the proposal" by 31 October 2017.
10. Mr N responded to AmTrust via email on 31 October 2017. He said he had not budgeted to pay the backdated contributions in addition to the monthly employee contributions which he had also not budgeted for. He said AmTrust had not acknowledged that due to its error, he was now on the back foot. He said the mistake had prejudiced him financially and AmTrust's proposal fails to acknowledge that its erroneous communication was the cause.
11. Mr N questioned why it had taken four months for AmTrust to respond to his complaint. As he received its response on 30 October 2017, he only had one day to respond. Mr N said this timeframe caused him considerable stress and AmTrust's response failed to offer a resolution which rectified its error.
12. Consequently, Mr N brought his complaint to The Pensions Ombudsman (**TPO**). To put matters right, Mr N requested that AmTrust backdate its employer contributions to 6% from January 2016, and pay the 3% employee contributions he believed he had been paying. Mr N also requested interest and £500 compensation for the distress and inconvenience this matter has caused him.

## **Adjudicator's Opinion**

13. Mr N's complaint was considered by one of our Adjudicators who concluded that further action was required by AmTrust. The Adjudicator's findings are summarised briefly below:-

- There had been maladministration by AmTrust for its failure to deduct employee pension contributions and pay the increased employer contributions. This is likely to have caused Mr N significant distress and inconvenience.
  - AmTrust's proposal to pay the backdated contributions was reasonable but did not cover some additional areas.
  - The Adjudicator recommended that AmTrust pay the backdated additional employer contributions into the Scheme, subject to Mr N agreeing a repayment plan in relation to the backdated employee contributions also due. Further, with Mr N's consent, AmTrust should establish what the fund value would have been had the correct contributions been paid into the Scheme on the dates specified in its correspondence, and if the fund value had increased, pay the difference. Finally, the Adjudicator recommended that AmTrust pay Mr N £500 in respect of the significant distress and inconvenience caused by its maladministration.
14. AmTrust responded to the Adjudicator's Opinion on 27 February 2018. As its initial proposal to Mr N was in October 2017, AmTrust requested that Mr N make his decision by 30 April 2018, with all repayments made no later than 31 October 2018. If Mr N's employment terminates before then, AmTrust said the repayment plan would need to be accelerated. AmTrust agreed to establish the fund value as recommended in the Adjudicator's Opinion. In addition, it agreed to pay £500 compensation to Mr N on the condition that Mr N agrees with its proposal.
15. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N 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 N for completeness.

## **Ombudsman's decision**

16. Given the passage of time, Mr N does not now consider that £500 is a sufficient sum in respect of the distress and inconvenience this matter has caused him. Mr N asserts that AmTrust's mismanagement of its auto enrolment process has caused him to miss out on contributions to the Scheme.
17. As at 31 March 2018, the outstanding employee contributions, backdated to January 2016 amounted to £2,031. This is a large sum of money which Mr N asserts has put him in a position of financial prejudice. Repaying this accrued sum over the short timeframe stipulated by AmTrust is not affordable for him, especially as he will also have to make his ongoing employee contributions as well.
18. Mr N maintains that none of the recommendations include any sort of tax calculation as he has lost the benefit of the tax relief that would have been applied if the employee contributions had been correctly deducted. Mr N believes that the award should reflect the considerable stress and time that will be involved in rectifying this.

19. Mr N asserts that AmTrust's mistake has resulted in an ultimatum in which he will either, miss out on an increased pension pot, or he will be financially tied to a company that has not shown him a duty of care. He believes that it will cost more than £500 in charges and repayment options should he wish to go down the route of trying to get the pension he thought he had, and asserts that this matter has caused him a lot of time and hardship.
20. I have not seen any evidence that AmTrust had failed to meet with its auto-enrolment responsibilities in respect of Mr N. AmTrust has continued to pay employer contributions at the rate of 3%. It has confirmed that its current auto-enrolment offering is a 3% employee contribution and a 6% employer contribution. Employees can elect to increase their employee contribution to a maximum of 20%, and are able to opt out of the Scheme at any time by contacting the pension provider.
21. Essentially, the additional points raised by Mr N centre on his belief that the sum of £500 is no longer sufficient in view of the time that has passed since he first raised this matter with AmTrust, and also because of the distress and inconvenience it has caused. While I note Mr N's assertions, I do not consider that a higher award is warranted.
22. As pension contributions were not being deducted from Mr N's salary from January 2016, it is not unreasonable to suggest that Mr N could have noticed earlier, that he was not paying employee contributions, thereby mitigating his position. Further, he was aware from June 2017, that he had not been contributing into the Scheme. Even though he was going through a complaints process with AmTrust, from the time he became aware, he had the option of further mitigating his perceived losses by putting the relevant amount aside each month, so, I do not find that AmTrust is at fault for the amount of employee contribution that Mr N is required to pay and that Mr N should receive additional monies as a consequence of it.
23. Mr N is correct that if employee contributions were deducted, he would have benefitted from the available tax relief. As Mr N is able to contact HM Revenue and Customs for further assistance on claiming the tax relief, I do not consider that further compensation is necessary to cover the time this may take.
24. Awards for distress and inconvenience are only made where there has been significant distress and inconvenience. I do not dispute the impact this matter has had on Mr N, and I am satisfied with the Adjudicator's recommendation and I make the relevant direction below.
25. I have noted AmTrust's offer to backdate both the employer and employee contributions rates to January 2016, subject to Mr N agreeing a repayment plan. In order for Mr N to benefit from the increased employer contributions, he is responsible for paying the necessary employee contribution. Consequently, I find AmTrust's offer to be reasonable and I would expect AmTrust to be flexible in its arrangements with Mr N, so that a repayment plan can be agreed that will not cause him undue financial hardship.

26. In relation to Mr N's assertion that he is now financially tied to AmTrust, presumably for the duration of a repayment plan, it is ultimately for him to decide whether he wants the benefit of the increased employer contributions. AmTrust do not have to backdate the increased employer contributions if Mr N does not want to pay the backdated employee contribution.
27. For the reasons I have given, I uphold Mr N's complaint in part.

## **Directions**

28. Within 28 days of the date of this Determination, AmTrust shall:
- pay Mr N £500 compensation;
  - contact Mr N to discuss and agree a repayment plan for the backdated employee contributions;
  - subject to the agreement of a repayment plan, pay both the employer and employee contributions into the Scheme, backdated to January 2016;
  - contact the pension provider to establish what the value of Mr N's fund would have been, had the contributions been paid in correctly, and pay the difference if there is a shortfall.

**Anthony Arter**

Pensions Ombudsman  
26 April 2018