

## Ombudsman's Determination

Applicant	Mr O
Scheme	Amnesty International Superannuation Scheme ( <b>the Scheme</b> )
Respondents	Amnesty International ( <b>AI</b> )  Trustees of the Amnesty International Superannuation Scheme ( <b>the Trustees</b> )  Mercer, formerly JLT Benefit Solutions Limited ( <b>the Administrator</b> )

## Outcome

1. I do not uphold Mr O's complaint and no further action is required by AI, the Trustees, or the Administrator.

## Complaint summary

2. Mr O has complained that AI, the Trustees, and the Administrator have said that he is not entitled to a pension from his employment by AI.

## Background information, including submissions from the parties

3. Mr O was employed by AI between 1973 and 1983. He worked mostly overseas.
4. The Scheme was set up in 1988 to replace the AI Retirement Benefits Scheme (**the Old Scheme**). The Old Scheme was wound up in 1992.
5. In August 2013, Mr O began to receive his State pension, which was backdated to 2010 when he reached age 65.
6. Mr O has said that in 2018 his former colleagues made him aware that AI provided occupational pension benefits .
7. In September 2018, Mr O contacted the Administrator about the pension that he believed he was due from his employment. The Administrator informed him that he would have had to have at least five years' pensionable service to qualify for a pension, and paid UK income tax.

8. Around December 2018, Mr O sent the Administrator proof of his employment with AI. In response, the Administrator said:-
- It had referred the documents to AI to check its archived personnel records.
  - Aon, the former scheme administrator, had provided a copy of its records but there was no file for Mr O.
  - It had conducted a review of its archived papers and electronic records but had found no evidence to show that Mr O was entitled to a pension from the Scheme.
  - It had checked with Her Majesty's Revenue and Customs (**HMRC**) and had been told that there was no Guaranteed Minimum Pension (**GMP**) liability under the Scheme in respect of Mr O<sup>1</sup>.
  - Mr O might not have paid tax through a UK payroll, or he might have completed less than five years' pensionable service.
  - Mr O should provide copies of his payslips or pensions statements so that it could pass them on to the Trustees and AI to investigate.
9. Mr O has said that during a telephone conversation in December 2018, AI informed him that it had located his file and would contact him again in 2019. The Trustees have said that there is no record of this telephone conversation.
10. In March 2019, the Trustees and AI met to discuss Mr O's case. Following the meeting, the Trustees informed Mr O that the Administrator's and AI's records did not support his claim that he was due a pension from the Scheme.
11. In April 2019, AI informed Mr O that he was not entitled to a pension from the Scheme (the **April 2019 decision**).
12. On 30 May 2019, Mr O complained to the Administrator under the Scheme's Internal Dispute Resolution Procedure (**IDRP**) and said that:-
- He believed that he was entitled to a pension from the Old Scheme.
  - He had provided the Administrator with evidence of his 10 years' service with AI and he was paid through UK payroll.
  - It was not clear what evidence he had to provide to support his claim that he was entitled to a pension from the Scheme.
  - He held limited documentation from his time at AI as he had left the UK.
  - AI had a responsibility to monitor former staff member's pension entitlement.

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<sup>1</sup> Mr O was informed that if he had been a member of the Old Scheme, he would have accrued a GMP from 1978 to 1983.

- He was reliant on the benefits from the Scheme to support his family in the UK.
13. On 6 June 2019, the Trustees acknowledged Mr O's complaint and asked him to direct future communications to the Trustees rather than the Administrator.
  14. On 14 June 2019, Mr O requested an update from the Trustees.
  15. On 19 June 2019, the Trustees provided Mr O with the April 2019 decision and explained that it would respond to Mr O when he had raised a complaint directly with the Trustees following the process in its IDRPs.
  16. Between June and August 2019, Mr O contacted the Trustees to dispute AI's claim that he was not entitled to a pension.
  17. On 9 August 2019, the Trustees responded to Mr O's complaint under stage two of the Scheme's IDRPs and said:-
    - It considered the April 2019 decision to be the stage one response under the Scheme's IDRPs.
    - The Scheme's lawyer, the Trustees and AI had reviewed the letter before it was sent to Mr O.
    - Mr O had provided evidence which confirmed that he was employed by AI, but it was not sufficient evidence of his entitlement to benefits from the Scheme.
    - In 1992, the Old Scheme was wound up and its members were given options to secure their benefits, which included a transfer into the Scheme.
    - The Trustees had located a list of members of the Old Scheme in 1992, and Mr O's name was not included.
    - As Mr O had not transferred into the Scheme, he had no entitlement under it.
    - In December 2018, the Administrator had provided Mr O with criteria that had to be met for eligibility to a UK pension scheme around the time that Mr O was employed by AI.
    - Mr O may have satisfied the criteria, but it did not mean that he had joined the Old Scheme.
    - The Trustees did not have a copy of the rules for the Old Scheme when Mr O commenced employment at AI but had located a copy of the 1976 AI staff terms and conditions. These stated that all permanent staff who joined AI from 1 January 1974 had to join the Scheme and contribute five per cent of their salary.
    - Mr O may have been employed on fixed term contracts by AI. If this was the case, he would not have qualified for a pension because he was not a permanent member of staff.

- Any further correspondence should be directed to AI and not the Trustees or the Administrator.
18. On 13 August 2019, Mr O contacted the Trustees about the stage two IDRPs response and said:-
- He was a permanent member of AI staff.
  - He was entitled to a pension as a result of his membership in the Old Scheme.
  - Membership of the Old Scheme was compulsory when he was employed by AI.
  - He made five per cent contributions to the Old Scheme from his salary.
19. Mr O also contacted AI to dispute its findings.
20. On 13 September 2019, AI wrote to Mr O and said:-
- AI and the Trustees had carefully considered Mr O's entitlement, and concluded that he was not entitled to a pension.
  - AI did not accept that Mr O had a claim against it for his alleged pension entitlement.
  - Mr O had the right to seek to bring a complaint against AI in the Employment Tribunal or to The Pensions Ombudsman's Office, but AI would argue that it was time barred.
  - AI could not assist Mr O any further, and would not enter into any further correspondence with Mr O about the matter.
21. Mr O remained dissatisfied with AI's and the Trustees' responses and maintained that he had been a permanent employee so should have been entitled to a pension from the Old Scheme.

## **Adjudicator's Opinion**

22. Mr O's complaint was considered by one of our Adjudicators who concluded that no further action was required by AI, The Trustees, or the Administrator. The Adjudicator's findings are summarised below:-
- Mr O had provided evidence that he was employed by AI, but none of the parties involved had submitted sufficient documentation to prove that Mr O was a member of the Old Scheme or entitled to a pension from the Scheme that replaced it.
  - HMRC had confirmed that Mr O held no pre-1997 GMP entitlement within the Scheme, so it was unlikely that he was a member of the Old Scheme.

- The available evidence provided by AI, the Trustees, and the Administrator, combined with the lack of evidence from Mr O, suggested that he was not a member of the Old Scheme.

23. Mr O did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr O provided further comments which do not change the outcome. Mr O said:-

- He had provided evidence to show that he was a permanent, full time member of staff at AI, so it was arbitrary and insulting to suggest that he was not.
- Former colleagues with "legally identical contracts" were in receipt of their pensions, so he should have also been entitled to a pension.
- He was "illegally excluded" from the list of Old Scheme members and he was not informed that the Old Scheme would be replaced by the Scheme.
- AI and the Trustee lacked direct knowledge and experience of the history of the Old Scheme and the Scheme.
- He held limited records because he had travelled frequently during his employment with AI.
- AI should have retained records about his employment and pension entitlement.
- He had been in contact with his trade union and legal advisers. Both had advised him to ask AI to complete a subject access request (**SAR**).
- He had provided contact details of former colleagues who could provide personal testimonies.

24. I note the additional points made by Mr O, but I agree with the Adjudicator's Opinion.

### **Ombudsman's decision**

25. Mr O believes that he was a member of the Old Scheme, so is entitled to a pension from the Scheme backdated to 2011. AI and the Trustees refute Mr O's claim.
26. There is no legal requirement for AI, the Trustees, or the Administrator to keep detailed records from over 35 years ago where a member's employment has ceased and they hold no pension entitlement. I understand that Mr O travelled a lot during his time with AI, but the burden of proof lies with him to prove that he was in fact a member of the Old Scheme. So far, all that has been confirmed is that he was employed by AI for a period of time. The fact that Mr O was in employment does not necessarily mean that he was a member of an occupational pension scheme with preserved benefits.
27. Mr O has said that he made five per cent contributions to the Old Scheme, but has not been able to provide any evidence to support this assertion, for example his pay

slips showing contribution deductions. None of the respondents have evidence of any contributions being made. Given the time that has passed since Mr O was employed by AI, this is not surprising, but for me to uphold this claim, there needs to be supporting documentary evidence.

28. The September 1976 terms and conditions state that all permanent members of staff, appointed after 1 January 1974, had to join the company pension, and contribute five per cent of their annual salary to the Old Scheme. Mr O joined AI in 1973, so those terms and conditions are not sufficient evidence of his membership in the Old Scheme.
29. The Trustees used HMRC's GMP Checker to establish whether Mr O held any GMP entitlement under the Old Scheme. The results of this check showed that Mr O held no pre-1997 GMP liability, so it is unlikely that Mr O was a member of the Old Scheme or, if he was a member, this indicates that he may have received a refund of the relevant contributions and been bought back into the State Pension scheme.
30. Mr O has provided comments made by his former colleagues who believe that he should be entitled to a pension. I am unable to rely on personal testimonies from Mr O's former colleagues because they are not sufficient evidence of his membership of the Old Scheme.
31. Had Mr O been entitled to a preserved pension under the Old Scheme, the Administrator would have sent him information about his options in the lead up to his retirement, as is standard practice for scheme administration. Mr O was not aware of the Old Scheme's existence until 2018, and he did not receive any correspondence about any pension entitlement after he left AI. So, it was not reasonable for Mr O to believe that he was entitled to a pension from a pension arrangement of which he had received no information and knew nothing about until 2018.
32. Mr O has been advised to make a SAR to AI with a view to pursuing the matter against AI in an Employment Tribunal. Mr O may need to take legal advice on that as employment disputes are a separate issue that fall outside of my statutory jurisdiction.
33. In the absence of any corroborating evidence being supplied to my Office, I am not satisfied that Mr O was a member of the Old Scheme during his employment with AI, and there is no evidence that AI promised him a pension outside of the Old Scheme.
34. I do not uphold Mr O's complaint.

**Anthony Arter**

Pensions Ombudsman  
23 November 2020