

Ombudsman's Determination

| | |
|------------|--|
| Applicant | Mr I |
| Scheme | Modified Firefighters Pension Scheme (the Scheme) |
| Respondent | Leicestershire Fire and Rescue Service (LFRS) |

Outcome

1. I do not uphold Mr I's complaint and no further action is required by LFRS.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr I is unhappy that LFRS failed to keep him updated about the process for joining the Scheme. As a result, he has missed the deadline to join and LFRS has said it is not possible to set up his membership now.

Background information, including submissions from the parties

4. In March 2014, a retained firefighters pension settlement was published pertaining to service between 1 July 2000 and 5 April 2006. Following this, retained firefighters were given the opportunity to buy past service in the Scheme.
5. In May 2014, the Pensions Manager, on behalf of LFRS, wrote to Mr I saying:-

“Recent legislation has been published which will allow access to a new “modified” section of the New Fire-fighters Pension Scheme. Those individuals who would be eligible to purchase pension rights under the terms of the new pension arrangement are those that were employed as a retained fire-fighter between 1 July 2000 and 5 April 2006. This includes any retained fire-fighter appointed before 1 July 2000, as long as they were still employed on that day.

Within 2 months of the legislation coming into force on 1 April 2014, I was required to use all reasonable endeavours to notify all persons eligible to join the modified scheme, and this letter is that notification, based on information provided by the respective fire and rescue authorities.

You now have a further two months from the date of receiving this letter, (which for administrative purposes I shall assume to be 7 days from the date of this letter), to indicate your interest in joining the scheme. To do this, I have attached an application form.

After we have received your initial interest, we have six months to notify you of the amount of service that you are entitled to purchase and the costs to do that.

After you have received the details of the costs you will need to confirm your election to take up the membership within six months of receiving that letter.

A further point to mention here, we would still require the expression of interest form to be returned even when you are declining the option.”

6. On 2 June 2014, Mr I completed the Expression of Interest Form and returned this to the Pensions Manager. This was received on 6 June 2014.
7. On 30 October 2014, the Pensions Manager wrote to Mr I, acknowledging receipt of the Expression of Interest Form. He further explained that the Leicestershire County Council Pension Section was responsible for the administration of the Firefighters Pension Scheme for the local Fire Authorities and would need to provide Mr I with details of his calculation so that he could make a further decision on joining. He then said:

“However, the necessary information in full from the respective Fire Authorities is still awaited or has been received later than expected and so this will impact on these timescales. I wanted to let you know the situation and confirm that the details will be provided as soon as we can, but we are reliant on receiving this information. With that in mind we should be most grateful if the Pension Section is not contacted regarding progress as this will slow down any progress, also when the information is provided it may well be that this is released in batches, so a colleague may receive information before you...I would ask for your patience in this matter.”
8. In January 2015, LFRS wrote to Mr I advising him of the amount he would be required to pay to purchase the relevant benefits under the Scheme. The letter required members to complete an attached election form (**the election form**) and indicate whether they wished to opt into membership of the Scheme or instead, confirm that they did not wish to become a member. The election form stated that if members wished to proceed, they should elect to do so within 4 months of receiving this form. Mr I says he did not receive this letter.
9. On 30 September 2015, the Scheme closed to new membership.
10. I understand that Mr I made further enquiries about the Scheme towards the end of 2016.

11. On 31 January 2017, Mr I's representative wrote to LFRS requesting that the matter be dealt with under its Internal Dispute Resolution Procedure (**IDRP**). It was highlighted that LFRS had acknowledged receipt of Mr I's Expression of Interest Form and said there would be a delay in the process. Further, it was explained that Mr I did not request an update for this very reason and had put the matter to the back of his mind until recently, when he came across a previous letter on the matter.
12. On 21 August 2017, LFRS responded under stage one of the IDR. The key points were:-
 - A letter was sent to Mr I in January 2015 requiring him to complete the election form. Although Mr I said he never received this, it was sent to the same address as that of the Expression of Interest Form. There was no reason to doubt that this was sent, although it could not be evidenced that it was received.
 - The October 2014 letter did advise against contact with the pensions team at Leicestershire County Council (**the Council**), the Scheme Administrator, and advised of a delay. However, it was difficult to understand why Mr I had waited over two years to raise this concern or make any attempt to ascertain the latest position on his Expression of Interest Form.
 - Too great a period of time had elapsed to conclude that errors were made, as opposed to the conclusion that Mr I had failed to return the election form or ask for an update in a timely manner. The dispute could not be upheld.
13. On 23 October 2017, Mr I and his representative appealed the matter under the second stage of the IDR. They added that, irrespective of whether the January 2015 letter was sent or received, Mr I's lack of reply should have led the Council to write to him again as per the government best practice guidance document.
14. On 12 December 2017, LFRS wrote to Mr I's representative saying that it was making arrangements for Mr I's appeal to be discussed, it asked about his or his representative's availability to attend.
15. On 9 March 2018, LFRS responded under stage two of the IDR. It said the Leicester, Leicestershire and Rutland Combined Fire Authority (CFA) Employment Panel (**the Panel**) met on 5 March 2018 to consider Mr I's appeal. It was willing to allow the appeal and would remit the matter to the Council, to consider with advice from the Department for Communities and Local Government (**DCLG**).
16. On 27 March 2018, the Council replied acknowledging the stage two decision but said:

“As the current Pensions Manager I have considered the decision and liaised with the LGA Bluelight Pension Team who liaise with DCLG on regulatory issues.

My decision is as follows; I have no power to act upon the stage 2 decision as the regulations [sic] closed on the 30th September 2015 so [sic] recommend you take your appeal to the Pensions Ombudsman.

The Pensions Ombudsman investigates and determines complaint [sic] or dispute [sic] of facts or law in relation to a scheme, I believe they will consider the vires to allow you into the scheme and may suggest what redress (if any) should be made.”

17. The complaint was subsequently referred to this Office.

18. On 5 July 2018, LFRS sent us its formal response. This said:-

- Mr I said he had not received the election form in January 2015. There would have been a reasonable expectation that he make enquires at this stage and if he had, he would still have been within the prescribed timescales within which an election was required under the Scheme.
- It was not possible to prove or disprove whether Mr I received this letter, but the earlier letter sent in May 2014 stipulated that there were time limits which applied and, based on this, Mr I should have expected to receive further communication from the Pensions Manager within six months of returning the Expression of Interest Form. This was returned on 6 June 2014 and accordingly Mr I ought to have expected to hear back by the end of 2014.
- In a copy of the Panel’s decision of 5 March 2018, it could be seen that they were satisfied Mr I had not received the letter and it must have gone astray, on the basis that it was more likely than not that had he received it, he would have acted and returned the election form. In any event, as the Scheme was closed, the Pensions Manager had no discretion to allow access outside of the prescribed timescales. The issue was referred to the Pensions Manager who made enquires with a representative from the DCLG, who confirmed that the former had no power to reopen the Scheme.

Adjudicator’s Opinion

19. Mr I’s complaint was considered by one of our Adjudicators who concluded that no further action was required by LFRS. The Adjudicator’s findings are summarised below:-

- It was not possible to definitively say whether the January 2015 letter had been sent or was received and instead the timescales in this matter would be focused on. She did not agree with LFRS’ view that Mr I ought to have reasonably expected further communication from the Pensions Manager within six months of returning the Expression of Interest Form. In its 30 October 2014 letter, it seemed deliberately vague on the timescales to expect and said that information

was “still awaited.” It would not have been reasonable for Mr I to chase the matter before the end of 2014.

- This being said, Mr I did not chase the matter for over two years from the point of receiving the October 2014 letter. This was an excessive length of time to await doing so. Taking into account the information within, and tone of, the October 2014 letter, February 2015 at the latest would have been a reasonable point at which to make enquiries on the information he was awaiting in order to formally make an election to join the Scheme. Therefore, whilst Mr I’s position in not making these enquires soon after receiving the above letter was understandable, he nonetheless waited longer than was reasonable.
- Mr I’s representative said a reminder letter could have avoided this outcome and that Mr I’s lack of reply should have led the Council to write to him again as per the government best practice guidance document. However, the “Retained Firefighters’ Pension Settlement” document did not suggest that this was a requirement.
- On page 7, this stated: “FRAs may wish to consider sending out a reminder, perhaps 3 months after the election pack was issued, to any firefighter who has failed to return the option form. Request its return even if the firefighter does not wish to pursue the option (marked “No”) and remind the firefighter that time is nearly up to make a valid election.”
- Therefore, whilst it would have been sensible or best practice to send a further reminder when the election form had not been returned, the language in the above was conditional rather than unequivocal, there was no obligation on LFRS to do this.
- In the Council’s letter of 27 March 2018, it suggested this Office might have the legal power to admit Mr I into the Scheme now. This Office would not override legislation but, where satisfied that maladministration had occurred, suggest appropriate redress to best remedy the situation. However, an administrative error had not taken place in this instance.

20. LFRS accepted the Adjudicator’s Opinion. Mr I and his representative did not accept the Adjudicator’s Opinion and made the following points:-

- It seemed the Adjudicator decided not to uphold the case because of the length of time between the last correspondence Mr I received from LFRS and the submission of his stage one IDRPs complaint. It would therefore be helpful to put some context on the time delay between these points.
- Mr I was a member of the Retained Firefighters’ Union at the time it first submitted employment tribunal applications in July 2000. A long and costly legal test case then ensued leading to a decision by the House of Lords to uphold the rights of retained firefighters in March 2006. A further two years passed and the

National Employers confirmed negotiations were ongoing to find a remedy. Two more years later further progress was made, however, it was not until 2014 that paperwork was sent out to eligible personnel to make them aware of their entitlement. After 14 years of “toing and froing,” it was fair to say that some thought the delays would be never ending and a pension would not be available in their lifetime.

- Hence, although two years might seem excessive to most for communications between Mr I and LFRS to recommence, it had been par for the course for retained firefighters in their wait for their rightful entitlement.
- Also, the Adjudicator did not give much weight regarding LFRS’ decision not to write to Mr I again where there was no requirement for it to do so. Whilst there was no ‘requirement’, this was a reasonable action for an employer to undertake in the circumstances, especially as Mr I had expressed an interest to join the Scheme and would therefore have been provisionally enrolled.

21. The Adjudicator replied saying that in view of the context, she understood why Mr I did not chase the election form in the same way as he might have done other matters. However, once arrangements had been made on setting up the Scheme and enrolling members, there were timescales involved which were communicated in May 2014. Whilst LFRS’ October 2014 letter warned of delays, there was still a timetable in place and in this context, it was excessive that Mr I waited two years to chase further correspondence.
22. The complaint has now been passed to me to consider. I agree with the Adjudicator’s Opinion and I will therefore only respond to the key points made by Mr I and his representative for completeness.

Ombudsman’s decision

23. I am mindful of the long wait Mr I has endured in this matter and I understand why Mr I’s representative considered this context particularly important. For a number of years, Mr I was in a position whereby he could only wait, while relevant authorities made decisions or arrangements in relation to the Scheme.
24. However, LFRS’ May 2014 letter made it clear that these arrangements had been put in place and it was now his turn to consider the information which would be forthcoming and make a decision on whether he wished to join the Scheme. I deem the May 2014 letter as an indication of a point of change whereby after a long period of discussions, action was being taken and according to an agreed timetable.
25. Therefore, whilst I do have regard to the overall timescales in this matter from when the matter was first brought to the attention of the courts, I consider that Mr I waited an unreasonable length of time to chase the matter given the May 2014 letter and despite the delays highlighted in LFRS’ October 2014 letter.

PO-22496

26. Further, although I appreciate that sending another letter to those who had expressed an interest in joining the Scheme but not returned the election form would have been helpful, this was not mandatory. It is possible that LFRS felt this to be an additional administrative burden in an already extensive and tightly timed exercise, which would not be an unreasonable position for it to take. Overall, LFRS' failure to send such a reminder did not amount to an administrative error.
27. Therefore, I do not uphold Mr I's complaint.

Anthony Arter

Pensions Ombudsman
21 December 2018