

Ombudsman's Determination

Applicant	Mr N
Scheme	Firefighter Pension Scheme 1992 (the Scheme)
Respondent	Warwickshire Fire & Rescue Service (WFRS)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by WFRS.

Complaint summary

2. Mr N has complained that he is not able to access his benefits in the Scheme before he reaches age 60 which, as a deferred member of the Scheme, is his normal retirement age (**NRA**). He considers this goes against what he was previously told, is age discrimination and said that this has caused him a financial burden. He would like to be granted access to his pension including a lump sum with immediate effect, or at the very least, as soon as he turns age 55.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. On 29 December 1994, Mr N joined the Scheme and consented to the Scheme Regulations (see Appendix 1).
5. On 23 October 2007, Mr N left employment at WFRS and became a deferred member of the Scheme. He was at that point age 37.
6. On 15 November 2007, the Scheme sent Mr N a deferred benefit statement. Within the statement it said:

“Following your recent termination of employment from the WFRS, you have become entitled to a deferred pension of £8802.52 per annum, which normally becomes payable from July 2030.

There is provision for the pension to be paid at an earlier date should you become permanently disabled...”

7. From 2017 to 2022, WFRS sent Mr N his annual benefit statements (**ABS**), which informed him that his benefits were payable from July 2030.
8. On 18 May 2020, Mr N telephoned WFRS to ask about the pension options that were available to him as he was approaching age 50. He spoke with a representative who informed him that he would speak with his colleagues and get back to him in due course.
9. On 27 May 2020, WFRS wrote to Mr N to confirm that he would need to speak with its Human Resources department to request for his benefits to be paid before his NRA and that this would only be possible if he became permanently disabled as per the Scheme Regulations.
10. Between May to August 2020, Mr N telephoned the Money and Pensions Service (**MaPS**). During one of the calls, Mr N requested confirmation from MaPS that it understood the details of the Scheme. Mr N said that he was informed that given the McCloud Judgment, he would be able to access his pension early and that it would be solely down to the decision makers to allow for this.
11. On 14 August 2020, WFRS wrote a letter to Mr N. It said in summary:-
 - Mr N's ABS was enclosed.
 - On 20 December 2018, the Court of Appeal ruled that the transitional arrangements introduced as part of the 2015 reforms to the Firefighter's Pension Scheme (**the 2015 Scheme**) were discriminatory and therefore, unlawful.
 - The Government accepted that all public service pension schemes were similarly affected and were working on removing discrimination from the schemes for all affected members.
12. On 17 December 2020, Mr N submitted a complaint to WFRS under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**). He said in summary:-
 - Since the McCloud Judgment he had been left without a clear understanding of his pension availability and the approach WFRS was taking to remove age discrimination.
 - He believed it was age discrimination that deferred members would only receive their pension benefits upon them reaching age 60.
 - Given the known health impacts for fire service personnel, it was unacceptable to have to wait until age 60 to receive pensionable benefits.
 - The MaPS informed him that all pensions had a mechanism for earlier reduced pensionable payment and that it was down to the decision makers to provide that option to members.
13. On 18 February 2021, the following events took place:-

- Mr N wrote to WFRS requesting an update in relation to his IDRPs stage one complaint as it had exceeded its two month response time.
 - WFRS wrote to Mr N to confirm that a response had been drafted and was being reviewed by its legal team. It also said that it hoped to send the response to him in the next week.
14. On 25 February 2021, WFRS sent Mr N its IDRPs stage one response by post.
15. On 4 March 2021, Mr N wrote to WFRS to request an update in relation to his complaint.
16. On the same day, WFRS resent Mr N the stage one IDRPs response. The response said in summary:-
- Mr N was a member of the Scheme for the period of 29 December 1994 to 23 October 2007.
 - It was not possible for it to deviate from Regulation B5 of The Firemen's Pension Scheme Order 1992, and as such it could not make decisions around when pensions became payable for individuals.
 - With regard to the McCloud/Sargeant litigation information on the ABS, this was a standard statement in order to update members who might potentially be affected by the case.
 - It apologised if this information caused Mr N confusion, however it confirmed that the McCloud litigation related only to the discriminatory impact of transitional protections under the Firefighters Pension Scheme (England) Regulations 14 for those members who transferred to the 2015 Scheme.
 - As Mr N had left employment before the 2015 Scheme was introduced, he was not affected by the transitional protections.
 - The Pensions Schemes Act 2015, introduced new pension freedoms from 6 April 2015 to allow certain individuals more freedom and choices to access their pension as they wished from age 55. However, this did not include individuals who held benefits in an unfunded public service defined benefits scheme, such as the Scheme.
 - It did not uphold Mr N's complaint.
17. On the same day, Mr N submitted a stage two IDRPs complaint to WFRS. He said in summary:-
- He was dissatisfied with the IDRPs stage one response as WFRS had failed to respond to him within the quoted two months it promised.
 - The language used in Regulation B5 was age discriminatory and did not withstand the standards to be acceptable in 2021.

- MaPS had informed him that the NRA was 55 in the UK and it was the discretion of WFRS to allow the pension to be taken earlier at a reduced amount.
 - He did not know of any other pension arrangement that did not allow an option to take an early pension at a reduced amount.
 - It was his understanding that it was solely within WFRS's discretion to allow a pension to be taken early at a reduced amount.
 - It was discriminatory that in order to take the pension early, he must be disabled.
18. On 18 March 2021, WFRS provided its stage two IDR response to Mr N. It said in summary:-
- The Scheme's Regulations were clear that for members who left the Scheme before their NRA, their accrued pension benefits were deferred and became due for payment at age 60.
 - It had no discretion to pay benefits any earlier unless a member became permanently disabled.
 - The information provided to Mr N by MaPS was not relevant to the Scheme that Mr N was in.
19. Following the complaint being referred to The Pensions Ombudsman, Mr N and WFRS made further submissions that have been summarised below.

WFRS's position

20. Mr N left the Scheme before his NRA. On leaving the Scheme, Mr N was informed of the value of his pension benefits and when they would be due for payment, which was when he reached NRA, on his 60th birthday. He was also informed that benefits could only be brought into payment earlier if he became permanently disabled.
21. Within the Regulations, the NRA for deferred benefits is age 60. There is not an option to take payment from an earlier date at a reduced rate, however this option is available within the Firefighter's Pension Scheme 2006 and 2015, which does not apply to Mr N as his membership relates only to the Scheme.
22. At no point in Mr N's request for early payment had he made mention that he required early payment of his benefits on ill health grounds.
23. Mr N was sent ABS since 2017 which informed him of the date his benefits would be paid.
24. Mr N referred to the McCloud Judgment after seeking advice from MaPS. However, he was not eligible for this remedy as he was not in pensionable service under the relevant public service pension scheme on or before 31 March 2012 and on or after 1 April 2015 without a qualifying break.

25. It agreed it could have made it clearer to him that he was not affected by the McCloud Judgment or in scope for this remedy.

Mr N's position

26. He believed WFRS's representative informed him during the telephone call of 18 May 2020 that he would be able to access his pension given the McCloud Judgment, so he relied on this information and believed he would be able to access his benefits before his NRA.
27. This information was backed up by MaPS.
28. He does not understand why he is not able to take his benefits early at a reduced rate.
29. The language used within the Regulations is outdated and age discriminatory.

Adjudicator's Opinion

30. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by WFRS. The Adjudicator's findings are summarised in paragraphs 31 to 34 below.
31. The Adjudicator was of the opinion that as Mr N would have had sight of the Scheme Regulations before becoming a member and then went onto consent to being bound by its terms to become a member, coupled with the information contained in the ABS he received from 2017, he ought to have been aware that his pension was not payable until he reached his NRA.
32. It was the Adjudicator's opinion that while the letter sent to Mr N on 14 August 2020 would have caused him some confusion in relation to the McCloud Judgment as it did not make clear which members were affected, the McCloud Judgment did not apply to Mr N's benefits under the Scheme but rather applied to members who transferred into the 2015 Scheme. It did not automatically apply to all schemes.
33. The Adjudicator could not comment as to why the MaPS informed Mr N that he was eligible to receive his pension earlier due to the McCloud Judgment. It was her view that this information did not apply to the Scheme in which Mr N was a deferred member of, and as such did not mean that the Scheme Regulations used age discriminatory language.
34. The Adjudicator went on to say that it is an industry standard for benefits to be paid at age 60 and it was not within the remit of the Pensions Ombudsman, nor WFRS to deviate from. As Mr N was not affected by the McCloud Judgment, he is not permitted to have his benefits paid before the Scheme's NRA or at a reduced rate. So, the Adjudicator disagreed that Mr N had suffered any discrimination by being a member of the Scheme.

35. 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 largely agree with the Adjudicator's Opinion and note the additional points raised by Mr N.

Mr N's additional comments

36. He disagreed that his NRA was age 60 and that the Scheme Regulations referenced age 50 being the earliest age the pension can be accessed and age 60 being the age upon which members have to exit the Scheme, due to the nature of the job, members could not operationally work beyond 60 years of age.
37. He did not agree that he was fully aware of what he agreed to when he signed his employment contract 31 years ago. At no point did WFRS go through the Regulations with him.
38. When he left employment with WFRS in 2007, they did not discuss his pension with him, nor did they send him annual statements from 1994 to 2007.
39. WFRS caused confusion and did not tailor its correspondence to each member.
40. After a google search of "how can I access my deferred 1992 firefighters pension earlier" he was able to find that a member is able to access his deferred pension at the sole discretion of the fire chief. So, he does not understand why he is not able to access his pension early.
41. He feels that by not being able to access his pension until his NRA he is being punished for leaving his employment.

Ombudsman's decision

42. Mr N has complained that it is unfair that he cannot access his scheme pension prior to age 60, and that the Scheme Regulations are age discriminatory towards him.
43. Mr N has referred to the Scheme Regulations indicating an NRA of age 50, as opposed to age 60. Indeed, normal pension age is defined in the Scheme Regulations as being age 55¹, and a member who retires from service on or after that age can take their pension immediately². There are also provisions in the Scheme Regulations that would, in some circumstances, allow a member to take a pension at age 50 (where the individual has at least 25 years' service)³.
44. However, having left service at age 37, Mr N was not entitled to receive a benefit under either Regulation B1 or B2. Instead, Regulation B5 (deferred pension) applied and, as set out in the appendix, it is clear that such a pension only becomes payable "*from the 60th birthday of the person entitled to it*", other than in circumstances of ill

¹ See Regulation A13.

² See Regulation B2(1), and Regulation A16 for the meaning of 'retire'.

³ See Regulation B1(1).

health (which I understand do not apply here). As, the Regulations clearly state that a deferred pension becomes payable when a member reaches age 60, the WFRS has adhered to the Scheme Regulations and is correct in not allowing Mr N to take his pension benefits early or at a reduced rate.

45. Nor, do I consider this to be discriminatory on the basis of age. Firstly, it is not clear that there is any discrimination at all – as, to the extent that an active member retiring from service can take their pension at an earlier age than a deferred member, the discrimination (if any) would appear to be on the basis on the category of membership (and not age). However, even if that were not the case, and it could be argued that there was discrimination, in my view it would be an excepted rule under The Equality Act (Age Exceptions for Pension Schemes) Order 2010⁴.
46. I do not agree that Mr N was not fully aware of what he consented to at the time of becoming a member of the Scheme. Mr N was provided with the relevant Regulation that he was being bound by and at no point did Mr N contact WFRS to discuss the Regulations if he was unsure of the terms. Similarly, benefits statements issued to Mr N since leaving the Scheme and becoming a deferred member have been clear as to the date on which his benefits become payable.
47. WFRS could have been clearer on which members were affected by the McCloud Judgment in its letter sent to Mr N on 14 August 2020. However, this does not impact the fact that the McCloud Judgment does not apply to Mr N's benefits. Information found on online search engines do not override the Regulations upon which Mr N's benefits are bound
48. I understand that Mr N feels like he is being penalised for leaving employment. However, I find that WFRS has not discriminated against Mr N in adhering to the Regulations by which his pension benefits are bound.
49. I do not uphold Mr N's complaint.

Dominic Harris

Pensions Ombudsman
7 April 2025

⁴ For example, The Equality Act (Age Exceptions for Pension Schemes) Order 2010: Paragraph 3 and Paragraph 11 of Schedule 1 (no breach of the non-discrimination rule where there is a different early retirement pivot age for deferred members and active members).

Appendix 1

Firefighter Pension Scheme 1992 Regulations

The Firemen's Pension Scheme Order 1992, Regulation B5 states:

Deferred pension

B5—

CAS-83544-R4Z8

(4) A deferred pension becomes payable -

(a) from the 60th birthday of the person entitled to it, or