

Ombudsman's Determination

Applicant	Mr L
Scheme	Firefighters' Pension Scheme (the Scheme)
Respondents	Bedfordshire Fire and Rescue Authority (BFRA) London Pensions Fund Authority (LPFA)

Outcome

1. I do not uphold Mr L's complaint and no further action is required by BFRA, Mr L's previous employer, and LPFA, the Scheme administrator.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr L complains that the respondents provided him with incorrect estimates of his pension benefits on 4 different occasions, which he relied on when deciding to retire.

Background information, including submissions from the parties

4. Mr L claims that if he had received the correct information about his pension entitlement from the outset, then he would not have decided to retire when he did. He says that he would have remained with BFRA and tried to secure a permanent position.
5. Mr L says that after a period of temporary promotion, he decided to retire from his role with BFRA on the 1 October 2014, after 30 plus years' service. He had received incorrect estimates over the 7 months prior to his retirement date which showed that his pension benefits included an uplift due to his temporary promotion. Based on the incorrect estimates he says he retired as planned on the 1 October 2014.
6. Mr L also says that he was informed on 10 October 2014; 10 days after he retired that there was a potential problem with the estimates because of changes made to the Scheme which were introduced on 1 July 2013. This meant that his temporary promotion no longer counted in the final salary calculations. As a result of not implementing the changes made in July 2013, his pension calculations were wrong. This was explained to him in a follow up meeting with BFRA on 15 October 2014.

PO-9965

7. Mr L's lump sum was overpaid by £83,000 and his pension had to be reduced by £13,000 per annum.
8. Mr L asserts that as he was not told of the correct position regarding his pension benefits until 10 days after he received his lump sum, he had already used the amount paid to pay off loans, mortgages, other debts and he bought a car.
9. He also says that his life style plans have had to change; they were based on the incorrect annual pension figure quotations.
10. Mr L claims that even if he were to commit to repaying £500 per month of the £83,000 lump sum overpayment, it would take him nearly 14 years to repay.
11. BFRA have offered to pay Mr L £4,000 for the considerable distress and inconvenience caused by their error in sending him the incorrect estimates.
12. Mr L has subsequently secured a new role in the private sector and has access to new pension provision.
13. Mr L is currently 52 years old.

Adjudicator's Opinion

14. Mr L's complaint was considered by one of our Adjudicators who concluded that no further action was required by BFRA and LPFA. The Adjudicator's findings are summarised briefly below:
 - The Adjudicator thought it was more likely than not that Mr L would have retired when he did even if he had received the correct figures from the outset. This is because he says based on the incorrect estimates he retired as planned on the 1 October 2014. This suggests that he was already intending to retire prior to receiving the incorrect information.
 - Mr L says that had he been informed at any time up to his retirement that the pension benefits were incorrect, he would have actively started to apply for a permanent position with BFRA. However, as Mr L failed to mitigate his perceived loss by pursuing a permanent position with BFRA once he was aware of the correct position regarding his benefits, this weakens his case.
 - In any event, Mr L found alternative employment to mitigate his perceived loss, so, the Adjudicator did not think that he was financially disadvantaged in the way that he claims, as he will benefit from the income received from the alternative work. The Adjudicator therefore did not consider that he has a justifiable claim for financial loss in reliance on the incorrect estimates.
 - The Scheme is a statutory one governed by the Scheme's regulations. Members of the Scheme are only entitled to benefits in line with the regulations. Where

pension benefits have been paid in error, BFRA are entitled to seek recovery. This is the case even if they are responsible for the error.

- There are circumstances where the recipient of an overpayment might not be required to repay all or some of the overpaid sum. However, Mr L's loans, mortgages and other debts were long standing on-going financial commitments, which commenced before he received the incorrect estimates in question. It is also not a detriment to pay off loans, mortgages or other debts, which would have to be paid off in any event. Therefore, the Adjudicator did not consider that he has any justifiable claim for detrimental reliance regarding his loans, mortgages and other debt repayments.
- BFRA say that they gave Mr L the opportunity, in a meeting on 7 November 2014, to return the leased car but he chose not to do so. Mr L says that as he purchased the car from the lease company at the time of the meeting, BFRA would have had to buy the car from him, which is not what they offered or implied.
- At the time Mr L was notified of the correct position regarding his retirement benefits on 15 October 2014, the car was still under lease, so he could have sought to return the car then. In addition, following the meeting of 7 November 2014, he failed to explore whether or not BFRA were willing to do this, so the Adjudicator did not believe he had a justifiable case for detrimental reliance regarding the car he purchased.
- The Adjudicator noted Mr L's comments that he has to change his lifestyle plans that he made based on the incorrect estimates. However, as he has not committed to any of the lifestyle plans, the Adjudicator did not think that any detriment had been suffered.
- Mr L contends that even if he were to commit to repaying £500 per month of the £83,000 overpayment, it would take him nearly 14 years to repay. A rule of thumb is that an overpayment should be recovered over a period not shorter than the period in which the overpayment took place and should not cause undue financial hardship. The Adjudicator was sure that BFRA will take Mr L's circumstances into account, and the fact that the overpayment was their mistake, in coming to a suitable arrangement to recover the overpayment.
- Mr L asserts that the £4,000, compensation offered by BFRA is insufficient redress for the gravity of their errors and the financial loss of not receiving the benefits stated in the incorrect estimates.
- The provision of incorrect figures simply should not have occurred in this way. Providers are aware that they will be taken into account. Clearly where figures are wrong they cause inconvenience. As Mr L was considering retirement when the incorrect estimates were sent; they were provided at a critical time to him, the impact was greater than it may otherwise have been.

- However, Mr L's actual entitlement cannot be altered and his benefits are those set out in the Scheme regulations. It was the Adjudicator's opinion that Mr L has suffered a loss of expectation rather than an actual financial loss. In these situations compensation for the distress and inconvenience suffered is appropriate. The Adjudicator thought that the £4,000 offered by BFRA is at the high end of the scale for such awards and is reasonable and represents appropriate redress.

15. Mr L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr L provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr L for completeness.

Ombudsman's decision

16. Mr L maintains that it was highly likely that he would not have retired when he did had he received the correct information about his pension entitlement from the outset.

17. I note that Mr L says that the reason why he did not apply for a permanent position within BFRA was because they planned to remove the temporary post that he was undertaking. However, as explained by the Adjudicator in the Opinion, he could have attempted to mitigate his perceived loss by exploring the possibility with BFRA of an alternative permanent position with BFRA after he had been informed of the correct position regarding his benefits. In addition, Mr L was not financially disadvantaged in this respect as the temporary post was going to be ended. Therefore, he cannot reasonably claim loss of earnings, when it is clear his earning capacity would have been reduced as a result of the organisational changes.

18. Mr L asserts that he purchased the leased car on 2 October 2014; the car was clearly not under lease when he was informed of BFRA's error on the 15 October 2014, therefore he had no opportunity to explore whether or not the lease company would take the car back. However, there was nothing to prevent him from selling the car, following the meeting of 15 October 2014, if he wanted to mitigate his loss. In any event, Mr L has not argued that the car purchase has caused him any undue financial hardship and he has derived benefit from the use of the car.

19. Mr L contends that he was given incorrect information about his pension entitlement on several occasions, so BFRA's maladministration was significant.

20. Having carefully considered all the available evidence, I am satisfied that Mr L has not suffered any direct financial loss as a result of BFRA's maladministration. The fact that Mr L has repaid outstanding debts, mortgages and loans means that he may have gained considerably through the saving of interest on those financial commitments. The money he will be repaying BFRA will not have interest added even though its repayment may take some time. So although, it must be a

PO-9965

considerable disappointment to Mr L that he has not received the retirement benefit he thought he was due, the interest saving may be of significant benefit to him.

21. With regard to non-financial compensation for the significant distress and inconvenience Mr L has suffered, BFRA have offered to pay £4,000 accepting that this was due to their error in providing him with incorrect benefit estimates; I consider this to be reasonable in the circumstances.
22. Therefore, I do not uphold Mr L's complaint.

Anthony Arter

Pensions Ombudsman
18 October 2016