

Ombudsman's Determination

Applicant	Mr N
Scheme	Firefighters Pension Scheme (1992) (the Scheme)
Respondent	Merseyside Fire & Rescue Service (MFRS)

Outcome

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

Complaint summary

2. Mr N has complained that he was unreasonably denied the opportunity to claim a refund of contributions. He contends that the criteria MFRS set for entitlement to this refund was unnecessarily restrictive, following an amendment to the regulations governing the Scheme.

Background information, including submissions from the parties

3. Until 2016, Schedule 2, Section G2 of The Firemen's Pension Scheme Order 1992 (**the Scheme Regulations**), with regard to employee contributions stated:-

"(1) A regular firefighter shall, except while an election under rule G3 has effect, pay pension contributions to the fire authority at the rate of 1p a week less than 11% of his pensionable pay.

(2) The contributions payable under paragraph (1) on each instalment of pay are due at the same time as that instalment and, without prejudice to any other method of payment may be deducted by the fire authority from the instalment."

4. In 2016, an amendment was made to the Scheme Regulations, (**the Regulations amendment**), with effect from 1 December 2006 as follows:-

"(1) Schedule 2 to the Firemen's Pension Scheme Order 1992 (1) is amended as follows.

(2) In rule G2 (pension contributions)

(a) in paragraph (1) for "A regular firefighter shall" substitute "Subject to paragraph (1B), a regular firefighter shall"; and

(b) before paragraph (2) insert—

“(1B) Paragraph (1) does not apply to a firefighter below the age of 50 who has reckoned 30 years or more pensionable service.””

5. The Scheme provides nationwide retirement benefits to members under the authority of the Government, but is managed by a number of regional Fire and Rescue Authorities, including MFRS.
6. Mr N commenced employment with Liverpool Fire Brigade, in 1964, at age 16.
7. In August 1966, Mr N started paying employee contributions to the Scheme when he was aged 18.
8. Mr N retired, at age 55, in February 2003 and stopped paying contributions to the Scheme.
9. On 2 January 2017, Mr N emailed his union, the Fire Brigades Union, (**the union**) and said:-
 - He considered it unreasonable that a decision had been made to backdate the Regulations Amendment to 2006.
 - This meant that he was excluded from claiming a refund of contributions covering the period August 1966 to February 1968.
10. On 7 February 2017, the union emailed Mr N in response and said:-
 - The effective date of the Regulations Amendment was set as 1 December 2006, because this is the date on which age discrimination became unlawful.
 - Although ‘unfair’, this is still applicable under the Equality Act 2010.
11. On 10 July 2019, Mr N wrote to Local Pensions Partnership (**LPP**), the Scheme administrator for MFRS, and complained that:-
 - A decision was made to refund contributions paid by members before age 20 but this only applied to those who had retired after 1 December 2006.
 - The criteria for a member to claim such a refund was that they were required to have ‘made contributions to the Scheme before age 20 and retired at age 50 or later.’
 - He had started paying contributions in August 1966, aged 18, and ceased making the payments on retirement in February 2003, aged 55.
 - Consequently, the contributions that he made to the Scheme between August 1966 and February 1968 were ‘excess’ payments.
 - Following a previous enquiry, he had unreasonably been told that he did not qualify for a refund of those contributions.

12. On 1 August 2019, LPP wrote to Mr N in response and said:-
- The Regulations Amendment means that the requirement to pay employee contributions does not apply to any member under age 50 with 30 years or more of pensionable service.
 - This regulation came into force on 30 September 2016, but with effect from 1 December 2006.
 - Mr N retired before this date, so there was no period during which he had paid contributions that could be refunded, following the change.
13. On 17 October 2019, Mr N wrote to LPP and brought his complaint to be considered under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**).
14. On 7 November 2019, MFRS wrote to Mr N in response and reiterated the conclusions that had previously been reached by LPP in the letter of 1 August 2019. Mr N's complaint was not upheld.
15. On 21 November 2019, Mr N appealed against this decision under stage two of the IDR and said:-
- He was aware that, due to the Regulations Amendment being effective from 2006, it would not be possible to claim a refund of contributions having retired in 2003.
 - There is no mechanism in place to override MFRS' legislative right to implement the Regulations Amendment from that date.
 - He still considered it unreasonable that the Scheme Regulations prevented him from claiming a refund of contributions, having matched every part of the criteria in order to do so, apart from the fact that he had retired before 2006.
16. On 25 November 2019, MFRS wrote to Mr N in response and confirmed that the conclusions reached at stage one of the IDR were correct, so Mr N did not qualify for a refund of contributions.

Mr N's position

17. Mr N says:-
- The Regulations Amendment in 2016 means that he has paid around 19 months' worth of 'excess' employee contributions.
 - This covers the period from August 1966, when he started paying contributions up to February 1968, when he reached age 20.
 - MFRS unreasonably made the Regulations Amendment effective from 1 December 2006, on the basis that there were no age discrimination laws in place before that date.
 - So, MFRS should allow him to claim a refund of contributions.

MFRS' position

18. MFRS said:-

- The Regulations Amendment became effective on 1 December 2006, and Mr N retired before this date.
- There was no period after 1 December 2006, during which Mr N had made contributions that could be refunded.
- Consequently, Mr N does not qualify for a refund of contributions and MFRS has no discretion to make such a payment to him.

Adjudicator's Opinion

19. Mr N's complaint was considered by one of our Adjudicators who concluded no further action was required by MFRS. The Adjudicator's findings are summarised below:-

- In the Adjudicator's view, the Government has ultimate legislative authority over the Scheme, and it has determined that the Regulations Amendment should be implemented from 1 December 2006. So, MFRS had no discretion to award Mr N a refund of contributions, as he had retired before this date.
- The Adjudicator also took the view that there was no requirement for MFRS to consider any implications of the date on which age discrimination legislation was introduced, since this was also a matter for the Government to determine. So, in the Adjudicator's opinion MFRS had correctly concluded that it cannot pay Mr N a refund of contributions.

20. MFRS accepted the Adjudicator's Opinion, Mr N did not, 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 note the additional points raised by Mr N.

Mr N's additional comments

21. The Regulations Amendment implementation date of 1 December 2006, and the implications of this are "unreasonable".
22. Previously there was an accrual cap of 30 years, meaning that historically members had to pay contributions for up to 32 years, in order to accrue 30 years of pensionable service at age 50.
23. This is the reason why the Scheme Regulations were amended to allow a refund of contributions to some members.
24. Accordingly, there was no need to set an implementation date for the Regulations Amendment.

25. However, the Government has unfairly implemented the Regulations Amendment and introduced age discrimination legislation from 2006.
26. This has resulted in him being unable to claim a refund of contributions.

Ombudsman's decision

27. Mr N has complained that he was unreasonably denied the opportunity to claim a refund of contributions. He contends that the criteria MFRS set for entitlement to this refund was unnecessarily restrictive following an amendment to the regulations governing the Scheme.
28. Mr N submits that the Regulations Amendment implementation date of 1 December 2006, and the implications of this are unreasonable.
29. He has also said that an accrual cap of 30 years had previously caused members to pay contributions for up to 32 years, in order to accrue 30 years of pensionable service at age 50, and that this is the reason for the contribution refunds to some members.
30. I find that the implementation date of the Regulations Amendment and the reasons for selecting that date were a matter for the Government to rule on in view of its legislative authority over the Scheme. Similarly, the timing of the age discrimination legislation, that Mr N has referred to, was a point for the Government to consider before determining that it would be implemented from 2006, under the Equality Act 2010. MFRS is required to act in accordance with the regulations governing the Scheme. The Regulations Amendment became effective from 1 December 2006. Consequently, I find that MFRS had no discretion to pay Mr N a refund of contributions, because he had retired before that date.
31. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
14 March 2022