

Ombudsman's Determination

Applicant	Mr S
Scheme	Firefighters' Pension Scheme Wales 2015 (FPSW 2015)
Respondents	South Wales Fire & Rescue Service (SWFRS) Rhondda Cynon Taf County Borough Council (the Council)

Outcome

1. I do not uphold Mr S' complaint and no further action is required by SWFRS.

Complaint summary

2. Mr S complained that SWFRS and the Council have refused his request to transfer his preserved benefits from the Principal Civil Service Pension Scheme (**PCSPS**) to FPSW 2015 on Club transfer terms.
3. Mr S says he would have arranged a transfer into FPSW 2015 within a year of joining that scheme, had he been aware that an age discrimination issue had been resolved through legislation. He wants SWFRS to exercise discretion in his case and allow the transfer on Club transfer terms.

Background information, including submissions from the parties

4. 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.
5. Mr S joined SWFRS on 10 September 2007 at the age of 25, having previously accrued seven years and four days' pensionable service in the PCSPS.
6. On joining SWFRS, Mr S became a member of the New Firefighters' Pension Scheme (Wales) 2006 (**NFPS 2006**).
7. In 2008, Mr S asked if he could transfer his preserved PCSPS benefits into NFPS 2006 and his request was granted. However, during the process of carrying out the transfer, the scheme administrator discovered that, due to Mr S' age, his preserved benefits only equated to three years and 361 days' service in NFPS 2006. Mr S

sought, and was granted, a reverse transfer and his preserved benefits were returned to and accepted by the PCSPS in 2009.

8. Subsequently, NFPS 2006 closed and Mr S joined FPSW 2015.
9. On 16 March 2018, Mr S asked the scheme administrator if he could transfer his preserved PCSPS benefits into FPSW 2015 on Club transfer terms. Briefly, a Club transfer is a method whereby members of certain public service pension schemes can transfer between schemes on preferential terms. Mr S wanted to transfer his preserved PCSPS benefits as FPSW 2015 had no limits in respect of the number of years' service that would be bought by the transfer value. Mr S was aware his request was out of time but asked if there was any discretion to permit a Club transfer due to his particular circumstances.
10. On 16 March 2018, the scheme administrator responded to explain that the Cabinet Office's Public Sector Transfer Club Memorandum (**the Memorandum**) provided the rules on Club transfers, confirming that transfers of this nature were subject to a strict time limit and members could only effect such a transfer within 12 months of first joining the scheme. This also meant that being transferred from another Firefighters' pension scheme on a compulsory basis did not confer on the member a fresh 12-month period in which to request a transfer in from another scheme on Club transfer terms.
11. Mr S was informed that, while it would not be possible to transfer on Club transfer terms, he could transfer his preserved PCSPS benefits into FPSW 2015 on normal terms.
12. On 17 December 2018, Mr S met with the Human Resources (**HR**) department at SWFRS to discuss his Club transfer request. The history of his transfer request was explored and it was noted that his 2008 transfer to the NFPS 2006 Scheme had been reversed in 2009 to avoid any loss of accrued rights and benefits already built up in the PCSPS.
13. His new request to transfer retrospectively into NFPS 2006, following the outcome of court cases that had resulted in legislation amending age discrimination, was discussed and an alternative transfer to FPSW 2015 on Club transfer terms was also considered. However, no resolution was reached, with Mr S alleging age discrimination.
14. The particular discrimination to which Mr S refers arose following Government reforms to the main public service pension schemes, including FPSW 2015. These reforms contained transitional protection so that older members, being closest to retirement, could remain in their legacy schemes. The Court of Appeal found this policy to be discriminatory towards younger members in some schemes, including FPSW 2015. The period during which the alleged discrimination occurred is between 1 April 2015 and 31 March 2022. To compensate for any discrimination arising from the 2015 reforms, eligible members would receive a deferred choice underpin at retirement for that period.

15. A deferred choice underpin is the Government's method of resolution to this particular form of discrimination issue and it means that eligible members of affected pension schemes will be able to continue accruing benefits under their legacy scheme for the duration of the remedy period, April 2015 to March 2022. At retirement, these eligible members can opt for the alternative scheme if this would produce a larger pension.
16. Following his discussions with HR, Mr S remained dissatisfied and raised a complaint under the Internal Dispute Resolution Procedure (**IDRP**), as follows:-
 - He had previously arranged a transfer in of his preserved PCSPS benefits but, in 2009, this was reversed due to the adverse effect of his age on the amount of benefit that the transfer would have secured for him in NFPS 2006.
 - However, in December 2015, age discrimination in pensions had been ruled unlawful. This meant that firefighters who, by virtue of contributing between the ages of 18 and 20, would previously have exceeded their maximum permitted Scheme membership, would now be able to take a contribution holiday if their Scheme membership exceeded 40 years.
 - He contended this outcome meant he should have been allowed to transfer in the full value of his preserved PCSPS benefits, and take a contribution holiday in future, should he exceed the maximum 40 years' membership in FPSW 2015.
 - Now that he was a member of FPSW 2015, he should be able to transfer in his preserved benefits and continue to contribute, thus enhancing his future pension benefits.
17. On 20 February 2021, SWFRS issued its Stage One IDRP letter which stated:-
 - Individuals joining NFPS 2006 at 18 years of age would have continued to pay into NFPS 2006 and would have had their service capped at 40 years.
 - NFPS 2006 was now closed, and therefore no mechanism existed whereby Mr S' preserved PCSPS benefits could be transferred into that scheme.
 - It was open to Mr S to transfer his preserved PCSPS benefits to FPSW 2015 on non-Club transfer terms. There were no statutory time limits for this to happen.
 - However, there was a statutory time limit of 12 months from joining NFPS 2006 to effect a transfer on Club transfer terms. As Mr S' request had been made outside this time limit, he could only transfer on non-Club transfer terms.
18. Mr S did not accept SWFRS' response and asked for reconsideration of his complaint under IDRP Stage Two. He argued that:-
 - He had previously been discriminated against on the grounds of age when his previous transfer of preserved PCSPS benefits was reduced in value.

- In December 2015, age discrimination in pensions had been ruled unlawful, meaning the full amount of his transfer should have been applied when he was a member of the NFPS 2006 scheme. Failing that, it should be transferred to FPSW 2015 on the more favourable Club transfer terms.
- He had been promoted, and looked to progress further in future, meaning the preserved PCSPS benefits could be significantly enhanced by transferring in to FPSW 2015 on Club transfer terms.

19. On 8 July 2019, SWFRS and the Council's Panel (**the Panel**) issued the Stage Two IDR response to Mr S and stated:-

- There was unanimous agreement that Mr S' appeal would not be upheld.
- It confirmed the Stage One decision that there was no mechanism to transfer his preserved PCSPS benefits into NFPS 2006 because this was a closed scheme.
- The only alternative was to transfer into FPSW 2015 on non-Club transfer terms.
- Compulsory transfer to FPSW 2015 from NFPS 2006 did not allow a fresh 12-month period in which to request a Club transfer, and therefore this option was not open to Mr S.
- It found no further evidence or provisions that could allow the transfer into any of the Firefighter Pension Schemes on Club transfer terms.
- It acknowledged that there had been maladministration during the processing of the 2008 transfer, but this had since been rectified when Mr S' preserved benefits were transferred back to the PCSPS in 2009.
- It found that no loss had been suffered and Mr S was not in a worse financial position as a consequence of previous events.

20. Mr S' position:-

- He suffered age discrimination relating to his pension provision in his earlier career, meaning it was not advantageous to proceed with his earlier transfer. Now that the age discrimination issue had been settled in legislation, he sought to revisit his transfer.
- Since it was not possible to transfer to a closed scheme, he sought to transfer to FPSW 2015 on Club transfer terms.
- Since discretion had been applied previously to his situation, he believed he should be offered the opportunity to transfer on Club transfer terms, even though the deadline for a Club transfer had expired before he had brought his request and subsequent complaint to SWFRS.

Adjudicator's Opinion

21. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by SWFRS or the Council. The Adjudicator's findings are summarised below:-
- She noted Mr S' belief that recent age discrimination legislation applied in his case and that he should now be permitted to effect the transfer retrospectively. The particular form of discrimination which was the subject of court cases resulting in the Government reforms in 2015 did not deal with members whose length of service exceeded the scheme maximum number of years as a result of joining at a very young age, as could have been the case for Mr S, had his PCSPS benefits been transferred back in 2008.
 - Her view was that a scheme which had a maximum number of years in which contributions could be made, after which a contribution cap was reached was not discriminatory. Although members who had joined at a young age would be more likely to hit the cap, both NFPS 2006 and FPSW 2015 offered mechanisms to assist members whose length of service meant they would exceed the maximum years' service before retirement.
 - SWFRS and the Council were bound by the Scheme Regulations, and the Memorandum Rules, which stated that Club transfers could only be effected for members who made their request within 12 months of first joining the scheme. However, Mr S could transfer on non-Club terms.
 - Mr S had no right to a transfer to FPSW 2015 on Club transfer terms because the rules stated a transfer request must be made within 12 months of joining NFPS 2006 and he had applied after the deadline had passed.
22. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. SWFRS confirmed it had nothing to add to the matter but that Mr S could still request a non-Club transfer and it would be happy to assist him. The Council made no further comment.
23. Mr S 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 S, which are summarised below:-
- His case mirrors the 1992 Firefighters' Pension Scheme age discrimination case which considered the issue of members below the age of 20 paying contributions for which they received no direct benefit.
 - His earlier attempt at transferring his PCSPS benefits was reversed as there was no alternative to reducing the value of the benefits being transferred due to the Regulations which would have treated some of the transfer value as having been paid when he was under age 20.

- When the option came in 2015 to transfer from NFPS 2006 to FPSW 2015 he was still unaware of a cause for complaint because nothing had changed, as far as he knew. However, when the age discrimination case succeeded, he applied to have his case reviewed, hoping to:-
 - Have the original transfer request granted on the basis there was no difference between his case and that pertaining to the 1992 Firefighters' Pension Scheme age discrimination case.
 - Have his pension transferred on Club transfer terms.

Ombudsman's decision

24. Mr S contends that because of the age discrimination legislation which has resulted in the Government's recent resolution, he should now be entitled to transfer his benefits on Club transfer terms. He argues that, had he been aware when he first joined FPSW 2015, he would have transferred at that point.
25. SWFRS states that his only alternative is to transfer on non-Club terms.
26. The Stage Two IDRPs response stated that compulsory transfer to FPSW 2015 did not allow a fresh 12-month period in which to request a Club transfer, and therefore this option was not open to Mr S. This is supported by Scheme Rule 2.6 of the Memorandum which states that Club transfer arrangements do not apply when an employer either requires its employees to change schemes or offers them the opportunity to do so. Mr S transferred to FPSW 2015 because NFPS 2006 had closed. This constitutes a compulsory transfer as described under Rule 2.6.
27. What this means for Mr S is that a window of opportunity only existed for him to transfer his PCSPS benefits to a firefighters' scheme up to 12 months after joining SWFRS as a firefighter and joining NFPS 2006 in September 2007. Transferring to FPSW 2015 did not grant him a new transfer window on Club transfer terms.
28. Having missed this deadline Mr S is free to request a transfer on non-Club terms, which SWFRS has agreed it will consider. Mr S should liaise with SWFRS if he still wishes to transfer his preserved PCSPS benefits.
29. Whether or not age discrimination rules have changed does not affect the Rule quoted in paragraph 26 above in respect of being able to effect a transfer now on Club transfer terms.
30. The original transfer, had it proceeded in the year following Mr S' joining NRPS 2006, may have been discriminatory, but any discrimination issue was fully resolved when Mr S' benefits were returned to the PCSPS.
31. I find that Mr S has no grounds for claiming that he has suffered

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discrimination and no grounds upon which he can successfully argue that he should be granted a transfer on Club terms.

32. I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
17 December 2021