

Ombudsman's Determination

Applicant	Mr N
Scheme	Firefighters' Pension Scheme 2015 (the Scheme)
Respondent	Essex Police, Fire and Crime Commissioner Fire and Rescue Authority (the Authority)

Outcome

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

Complaint summary

2. Mr N has complained that the Authority, his employer, provided inadequate information at the time he was enrolled into the Scheme, causing him to miss the opportunity to opt out and claim a refund of contributions.

Background information, including submissions from the parties

3. Section 3(2) of the Pensions Act 2008 (**the 2008 Act**), provides that: "The employer must make prescribed arrangements by which the jobholder becomes an active member of an automatic enrolment scheme with effect from the automatic enrolment date."
4. To qualify for a pension under the 2008 Act, eligible jobholders are defined as workers who meet the following criteria:-
 - Aged between 22 years old and the state pension age.
 - Receiving wages in excess of £10,000 a year.
 - Working in the UK.
5. The Firefighters' Pension Scheme (England) Regulations 2014 (**the 2014 Regulations**) govern the Scheme. Regulation 15 and Regulation 16 stipulate that:
"Opting out before the end of the first three months"
 - 15.-(1) This regulation applies if a person (P) opts out of this scheme in relation to a continuous period of service in scheme employment—

- (a) before the end of three months after P's first day of a continuous period of service in scheme employment; or
 - (b) before the end of three months after the automatic re-enrolment date.
- (2) If paragraph (1)(a) applies, P is taken never to have been in pensionable service under this scheme in relation to that continuous period of service in scheme employment.
 - (3) If paragraph (1)(b) applies, P is taken not to have been in pensionable service under this scheme in relation to that period of service during the period referred to in paragraph (1)(b).

[...]

Opting out after the first three months

16.-(1) This regulation applies if a person (P) opts out of this scheme in relation to a continuous period of service in scheme employment—

- (a) three months or more after P's first day of a continuous period of service in scheme employment; or
 - (b) three months or more after P's automatic re-enrolment date.
- (2) If P exercises the option under paragraph (1)(a) or (b), P ceases to be in pensionable service under this scheme in relation to that continuous period of service in scheme employment—
 - (a) on the first day of the first pay period beginning on or after the date on which the option is exercised; or
 - (b) if the scheme manager considers that day inappropriate, on the first day of any later pay period the scheme manager considers appropriate.”

- 6. The Pensions Regulator's guidance on information that an employer should provide to workers who have been automatically enrolled to a pension scheme includes, "For jobholders being automatically enrolled, automatically re-enrolled or enrolled following opt-in, they must be given information about what it means for them and their right to opt out."
- 7. Essex County Council is the Scheme's administrator (**the Administrator**) and the Authority is the Scheme's manager.
- 8. On 17 September 2019, the Authority wrote to Mr N offering him a role as a full-time trainee firefighter for an annual salary of £23,366. The Authority said that in order to accept the offer Mr N would need to read and sign parts I and II of the Statement of Conditions of Service (**the Statement of Conditions**) that was enclosed with the letter and return those documents.

9. Part I of the Statement of Conditions stated that Mr N's employment would commence on 23 October 2019. It also set out details including Mr N's "Terms and Conditions of Employment, Place of Work, Hours of Work, Salary and Holidays".
10. Under the heading 'Place of Work', the Statement of Conditions stated:-

"You will initially be based at Fire Service College for 8 weeks residential course...Following the residential course you will be based at Service Training Centre Witham for a further 7 weeks non-residential course..."
11. Mr N was required to sign Section 18, which was headed "Acknowledgement of Receipt" if he wished to accept the job offer. It stated: "I have received a copy of this statement and have read and understood it..."
12. Part II of the Statement of Conditions set out details on subjects including "Training, Disciplinary Rules and Procedures, Grievance Procedures, Health and Safety, and Pension Schemes". Regarding 'Pension Schemes', Section 11 stated:

"As your appointment is a substantive contract, you will automatically become a member of [the Scheme] from the first day of work..."

Should you wish to opt out of [the Scheme], you must return a completed opt out form to the HR department as soon as possible. The opt out form is available under the Forms section of [the Administrator's] website or by contacting [the Administrator] [by telephone] or via [email]...Providing your opt out is received by the [Authority's] HR department within 3 months of the date of joining [the Scheme], you would be entitled to a refund of any contributions you have paid since that date.

[...]

For the 2019/2020 year, you will pay contributions based on your pensionable salary as follows:

Band	If your yearly pay is	You pay a contribution rate of:-
1	Up to £27,818	11.0%

[...]"
13. Section 20 of Part II of the Statement of Conditions was a signature section to be completed by Mr N if he accepted the job offer and to confirm he had read and understood these conditions.
14. On 18 September 2019, Mr N signed Part I and Part II of the Statement of Conditions and returned the documents to the Authority.
15. On 23 October 2019, Mr N commenced employment with the Authority.
16. On 17 February 2020, Mr N emailed the Authority and said that he would like to opt out of the Scheme and receive a refund of his own contributions. Mr N also said he

had previously thought that he was in continuous service via membership of a military pension scheme. However, after checking, he had recently established that this was not the case.

17. On 18 February 2020, the Authority emailed Mr N and confirmed that he could opt out of the Scheme but, as he had been automatically enrolled more than three months earlier, a refund of contributions would not be permitted. The Authority said that Mr N would, instead, qualify for deferred benefits from state pension age, should he elect to opt out of the Scheme. The Authority also provided a link to an opt out form that Mr N could use for this purpose via the Scheme's website.
18. On 20 February 2020, the Authority again emailed Mr N and said that a refund of contributions would not be permitted under the 2014 Regulations, since he had not elected to opt out of the Scheme within three months of joining.
19. On the same day Mr N emailed the Authority and said:-
 - Before establishing that he had been making contributions to the Scheme, he had thought that his pay was lower than his expected salary due to incorrect tax being deducted. On that basis he had expected a tax rebate.
 - He had no access to any payslips, having been required to attend training upon commencement of his employment with the Authority. So, he had only recently been able to check the details of any deductions from his salary.
 - Contributions of over £200 a month were deducted from his salary without being informed beforehand that this would be the case. If those contributions were not refunded, he would suffer financial hardship.
20. On 28 February 2020, Mr N emailed the Authority and said he had sent a completed opt out form by first class post on 26 February 2020. He would like confirmation of it being received.
21. On the same day the Authority emailed Mr N and confirmed that the opt out form had been received.
22. On 18 March 2020, Mr N complained under stage one of the Scheme's Internal Dispute Resolution Procedure (**IDRP**) and said:-
 - Having commenced employment with the Authority on 23 October 2019, he was required to attend training courses and had no access to its systems and HR resources. At the time his payslips were only available to view online so he had no access to them either. So, he would not have been able to opt out of the Scheme before the three-month deadline, and he was initially unaware of contributions being deducted from his salary.
 - He had fully focussed on his training courses with no consideration for his pension entitlement under the Scheme. At the end of the training courses, he concentrated fully on some ongoing training. It was only on completion of all the necessary

training that he became aware of having joined the Scheme, and that he could elect to opt out.

- The deduction of contributions from his salary had a detrimental impact on his finances. He had previously received an email from His Majesty Revenue & Customs (**HMRC**) stating that his tax code had changed. He assumed that lower than expected pay was received due to this change in his taxes rather than pension contribution deductions.
- As a result of the reduced pay, he went into an overdraft with his bank to fund additional expenses, due to being an expectant father. This also meant that he was busy preparing for the birth, while assuming that a tax rebate would offset the additional expenses.

23. On 20 May 2020, the Authority wrote to Mr N in response and said:-

- He had opted out of the Scheme under Regulation 16 on 29 February 2020, having been automatically enrolled on 23 October 2019. Scheme Regulation 15 only applies when a member has opted out of the Scheme within the first three months of joining. In that case the member is treated as never having been in pensionable service and any contributions they have paid are refunded.
- His signed opt out form was received on 28 February 2020, four months after joining the Scheme. So, his election to opt out of the Scheme was subject to Regulation 16, which does not permit a refund of employee contributions. The Authority has applied that regulation correctly.
- HMRC could impose penalty tax charges on him and the Scheme if the Authority permitted a refund of contributions in breach of the 2014 Regulations. The statutory nature of the 2014 Regulations means that the Authority has no discretion to pay a refund of contributions in this case.
- The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 as amended by The Occupational and Personal Pension Schemes (Disclosure of Information) Amendment Regulations 2015 (**the Disclosure Regulations**), stipulates the information that pension scheme administrators must send to members and when.
- Under the Disclosure Regulations, information regarding a member's automatic enrolment must be sent to them within one month of the date on which the scheme manager has been informed that they have joined the scheme. This information must be sent to the member's last known postal address, or by sending it to their last known email address, or by making it available on a website.
- Appropriate information was provided in the Statement of Conditions. It confirmed his membership of the Scheme, the level of contributions he and the Authority would pay and the age at which he could retire. The Statement of Conditions also

confirmed the deadline and process for opting out of the Scheme. The Authority has complied with its obligations under the Disclosure Regulations in that regard.

24. On 11 June 2020, Mr N appealed under stage two of the IDRPs and said:-

- He accepted that under the 2014 Regulations, the Authority was unable to refund his employee contributions as his opt out form was received after the three-month deadline.
- The Pensions Regulator's detailed guidance for employers on the information to be provided to automatically enrolled employees includes the start and end date of the opt out period and a statement confirming what opting out means. Confirmation should also be provided that an eligible jobholder will be treated as not having become an active member, had they elected to leave the scheme within the opt out period.
- The Statement of Conditions stated, "Should you wish to opt-out of the [Scheme], you must return a completed opt out form...as soon as possible." It also confirmed that an opt out form could be obtained via the Administrator's website, or by contacting the Administrator by email or telephone. There was no additional or explanatory information as to what opting out meant.
- The Pensions Regulator's guidance on information that an employer should provide to automatically enrolled employees also includes, "Giving' information does not include merely signposting to an internet or intranet site, attaching a URL or displaying a poster in the workplace. In these circumstances the employer is providing the worker access to the information but not giving the actual information to the worker."
- There was a lack of detailed information in the Statement of Conditions regarding the Scheme. For example, it included no details on whether the Scheme is a defined benefit or defined contribution arrangement, the relevant accrual rates, or lump sum commutation rates upon retirement, early retirement penalties, ill-health retirement, spouse's pension and death in service payments.
- According to the Pensions Regulator, this type of information 'should have been provided within one month of him joining the Scheme'. He contacted the Authority more than three months after joining the Scheme, and at the time had not received the previously specified information. So, the Authority had failed in its responsibility to provide adequate information.

25. On 1 October 2020, the Authority wrote to Mr N in response and reiterated the information previously provided in the letter of 20 May 2020. The Authority also confirmed that the complaint had not been upheld.

Adjudicator's Opinion

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

- The Authority is required to act in accordance with the provisions of the 2008 Act and the 2014 Regulations. Having assessed Mr N as meeting the criteria of an eligible jobholder, the Authority was required to automatically enrol him into the Scheme. There was no requirement under the 2008 Act for the Authority to seek Mr N's approval before doing so.
- It was for Mr N to opt out of the Scheme if he was unhappy with the conditions of his membership. Scheme Regulation 15 provides that a member who elects to opt out of the Scheme within three months of their automatic enrolment date is deemed to never have been in pensionable service. In that case a refund of contributions is permitted.
- The Statement of Conditions confirmed that Mr N's employment would commence on 23 October 2019 and that he would be automatically enrolled into the Scheme on the same date. An explanation of the rate of contributions that would be deducted and how Mr N could opt out of the Scheme was also included.
- The Authority said, "Providing your opt out is received...within 3 months of the date of joining [the Scheme], you would be entitled to a refund of any contributions you have paid since that date." On 18 September 2019, Mr N signed the Statement of Conditions confirming "I have received a copy of this statement and have read and understood it..."
- Mr N ought to have been aware that he needed to opt out of the Scheme, within three months of joining, in order to receive a refund of contributions. He should also have been aware of the date he had joined the Scheme.
- However, it was not until 17 February 2020 that Mr N said that he wished to opt out of the Scheme. His signed opt out form was then received by the Authority on 28 February 2020. By that time the three-month deadline had already passed, so, the Authority had correctly concluded that Mr N was not entitled to a refund of contributions under Regulation 15.
- Mr N ought to have been aware that contributions would be deducted from his salary as this information was included in the Statement of Conditions. Further, Mr N could have contacted the Authority before commencement of his employment on 23 October 2019, since he signed the Statement of Conditions on 18 September 2019. That left a five-week period during which Mr N could have opted out of the Scheme or sought further information, including clarification of the term 'opt out' if he was unclear on that point.

- The Pensions Regulator's guidance for employers includes that they must provide jobholders who are being automatically enrolled into a pension scheme with information about what this means for them, and their right to opt out of the pension schemes concerned. The Statement of Conditions complied with this guidance. In the Adjudicator's view there was no requirement for the Authority to send Mr N more detailed information regarding the Scheme at the time of his automatic enrolment unless he asked for it. Mr N had not provided evidence that he made any such enquiry.
 - The Statement of Conditions clearly provided important information that Mr N was required to read and understand before signing it. This included the date that he would join the Scheme, and that there was a three-month deadline to opt out of the Scheme for a refund of contributions. It was for Mr N to make any enquiries that he felt were necessary before that time expired.
 - The Authority cannot be held responsible if Mr N failed to do so, or for him not qualifying for a refund of contributions under Scheme Regulation 15. The Authority has correctly applied Scheme Regulation 16, which does not permit a refund of contributions when a member opts out of the Scheme more than three months after being automatically enrolled, as in Mr N's case.
27. The Authority accepted the Adjudicator's Opinion, but Mr N did not, and the complaint was passed to me to consider. Mr N has provided further comments, which I have considered, but they do not change the outcome, I agree with the Adjudicator's Opinion.

Mr N's additional comments

28. He could have made enquiries regarding automatic enrolment and his entitlement to opt out of the Scheme before the three-month deadline for a refund of contributions, but this was not possible due to the training he was required to attend at the time his employment with the Authority commenced.
29. The information concerning the Scheme, which was included in the Statement of Conditions, was insufficient to conform with The Pensions Regulator's guidance on information to be provided when a member has been automatically enrolled into a pension scheme. This information was amongst over 30 other sections that the Statement of Conditions covered.
30. There was no further Scheme information attached to the Statement of Conditions. The Pension Regulator has written a sample letter, which was designed to provide members with appropriate pension scheme details. The Authority ought to have provided him with a letter following that example.

Ombudsman's decision

31. Mr N contends that the training he was required to complete at the time his employment with the Authority commenced, prevented him from considering his pension before the three-month deadline to opt out of the Scheme had elapsed. This was necessary in order to be eligible for a refund of contributions. Mr N submits that he was also unaware that contributions would be deducted from his salary. He thought he was receiving a lower salary than expected because of possible changes to his tax code.
32. I note that Mr N signed the Statement of Conditions, to confirm he had read and understood it, on 18 September 2019. The onus was on Mr N to consider whether he was happy to do so at the time. His employment with the Authority was not due to commence until 23 October 2019. So, Mr N could have used the time to read the Statement of Conditions diligently, or to make further enquiries regarding his pension before the training commenced.
33. I find that the Statement of Conditions made it clear that Mr N was to be automatically enrolled into the Scheme. It also provided details of the date he would become a member of the Scheme, how he could opt out of the Scheme, and the contribution rate that would be applicable. Having signed the Statement of Conditions, Mr N ought to have been aware of this information. I find that the information included in the Statement of Conditions was sufficient to comply with the mandatory requirements, as set out on The Pensions Regulator's website.
34. A letter template for employers to use when writing to employees who are being automatically enrolled is available via The Pensions Regulator's website. However, the Authority is not required to use that template so long as the information, referred to in paragraph 33 above, is provided. I find that there was no requirement for the Authority to attach further details in addition to the Statement of Conditions.
35. The Authority has correctly concluded that Mr N is not entitled to a refund of contributions in accordance with Regulation 16 of the 2014 Regulations, since he did not submit an opt out form until 28 February 2020. By that date the three-month deadline had already passed. There is also no evidence of a financial loss to Mr N as the Authority has confirmed that he will be entitled to his deferred benefits from the Scheme at state pension age.
36. I do not uphold Mr N's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
18 January 2024