

Ombudsman's Determination

Applicant	Mr S
Scheme	The New Firefighters' Pension Scheme (modified section for retained firefighters) (the Modified Scheme)
Respondent	Humberside Fire & Rescue Service (HFRS)

Outcome

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

Complaint summary

2. Mr S' complaint concerns the administration of his membership of the Modified Scheme. He says:-
 - He never received an adequate explanation of the calculation of the amount deducted from his retirement lump sum in respect of his backdated membership of the Modified Scheme. He was also misinformed in relation to the cost of the backdating.
 - He had encountered delays when dealing with HFRS and had received no acknowledgement of his communications. It had only responded when he threatened to raise a complaint.
 - He had received no apology from HFRS for its maladministration and had not been offered any redress for the distress and inconvenience it had caused him.

Background information, including submissions from the parties and timeline of events

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 2006, Mr S received an invitation to join the New Firefighters' Pension Scheme 2006 (**the 2006 Scheme**), which he accepted.
5. On 22 May 2014, Mr S was given the opportunity to join the Modified Scheme. He was provided with an 'expression of interest' form so he could request a statement of

the past service he could purchase in the Modified Scheme and the cost. He returned the form on 3 June 2014.

6. The administrator of the Modified Scheme is West Yorkshire Pension Fund (**WYPF**).

7. On 21 January 2015, HFRS sent Mr S a personalised statement providing details of his eligibility to join the Modified Scheme. It provided a copy of a calculation showing how his service had been treated and said:

“In order to enrol into the modified scheme with effect from 1 July 2000 and uplift your membership from 2006 membership to modified pension the contributions that will be required to be paid will be £16268.61, including interest. [...]

This payment will effectively provide you with an additional membership of 2.75 years within the modified pension scheme and uplift 5.05 years to the modified scheme from the 2006 scheme.”

8. HFRS informed Mr S that, if he accepted this offer, he needed to decide how to pay the contributions. An option form (**the Form**) was enclosed for him to complete. The options available were:

- by payment of a lump sum within six months of his election to accept the offer;
- by payment of periodic contributions over a period of 10 years. Under this option, any outstanding balance when he became entitled to his pension had to be paid within three months. One option would be for him to pay this from his retirement lump sum; or
- by deduction from his retirement lump sum.

9. A ‘terms of payment’ leaflet (**the Leaflet**) provided with the Form stated that:

“Alternatively, you will have the option of purchasing your past service rights by means of making periodic contributions over a spreading period of 10 years (which will include interest), or up to the point where you retire, whichever comes earlier.”

10. Mr S returned the Form to HFRS, indicating that he wished to accept the offer and pay the contributions that were due by deduction from his retirement lump sum.

11. On 25 September 2015, HFRS wrote to Mr S. It said that the option he had selected to pay the contributions was only available to pensioners who were entitled to immediate payment of their benefits. It confirmed that the contribution arrears payable amounted to £16,449.88, which could be paid as a lump sum or by monthly payments of £167.83 over 10 years. A further copy of the Form was enclosed for Mr S to complete together with a copy of contribution arrears and retirement benefit calculations.

12. On 10 October 2015, Mr S signed and returned the Form to HFRS. He indicated that his chosen option was to pay the contribution arrears by instalments over a 10-year period.
13. On 18 February 2016, following a meeting with Mr S, HFRS wrote to him. It provided revised contribution arrears and retirement benefit calculations. It said that the contribution arrears that were now due amounted to £16,905.31, which equated to a monthly instalment of £171.63.
14. In May 2016, Mr S' enrolment in the Modified Scheme was finalised. He had elected to pay the contribution arrears over a 10-year period.
15. On 7 June 2016, HFRS responded to a query that Mr S raised on 6 June 2016. It confirmed he had been paying arrears of contributions in accordance with its letter of 18 February 2016. It said that the monthly deductions of £171.63 were referred to as 'Arrears' or 'HFRS Modified Additional Pension' on his payslip.
16. On 13 August 2018:-
 - Mr S emailed HFRS to confirm he was likely to retire in July 2019, at age 55. He asked for an update on his pension benefits and the amount of contribution arrears that were outstanding.
 - HFRS responded to confirm that Mr S had commenced his arrears payments in May 2016 and a total of 27 monthly payments had been made up to 31 July 2018. The payments made totalled £4,634.01, leaving a balance of £14,502.49 to be paid.
 - Mr S queried the figures provided by HFRS. He said he had a total to repay of £16,905.31, as stated in its letter of 18 February 2016. However, the latest figures it had provided totalled £19,136.50.
 - HFRS advised that an error in a formula in a spreadsheet had resulted in it providing incorrect information earlier that day. It confirmed that the outstanding balance was £12,271.30.
17. On 15 January 2019, Mr S emailed HFRS to confirm that his retirement date was likely to be 30 September 2019. He requested estimates of his retirement benefits, based on different commutation percentages. He subsequently asked HFRS for an update on the provision of this information on 26 February 2019.
18. On 26 February and 18 March 2019, HFRS emailed Mr S to inform him that it was waiting on the information he had requested, which was being provided by WYPF.
19. On 21 March 2019, Mr S notified HFRS that WYPF had provided him with the retirement quotes he had requested.
20. On the same day, Mr S emailed HFRS to ask for confirmation of the amount of contribution arrears he would still owe when he retired.

21. On 26 March 2019, HFRS confirmed that, at 30 September 2019, Mr S would owe an estimated amount of £11,841.06.
22. On 5 April 2019, following a meeting with HFRS, Mr S sent it an email. He asked for an explanation of the discrepancy between its figure of £11,841.06 and the figure he had calculated. His figure was £10,040.11, being £12,271.30 less 13 monthly instalments of £171.63. He had expected the figure to be further reduced as the sum payable would be paid off early out of his retirement lump sum, thus reducing the interest due.
23. On 15 April 2019, HFRS apologised to Mr S for the delay in it responding to his email of 5 April 2019. It said that the delay was due to annual leave.
24. On 23 April 2019, Mr S asked HFRS for an update on his query.
25. On 24 April 2019, HFRS notified Mr S that the figure of £11,841.52 that WYPF had provided was slightly less than the figure it had calculated of £11,878.52. It explained that the difference between these figures and those calculated by Mr S was due to the period from September 2015 to February 2016 when he was paying contributions to the 2006 Scheme. Following his decision to join the Modified Scheme, he should have been paying contributions to the Modified Scheme during this period. It advised that, while this period had not been accounted for in the original figures Mr S had been provided with, it was included in his 10-year contract for recovery of contribution arrears. It said it would provide him with details of the calculation.
26. On the same day, Mr S emailed HFRS. In summary, he said:-
 - WYPF's forecast sent to him by HFRS on 26 March 2019 estimated arrears of contributions due at 30 September 2019 of £11,841.06. He considered this to be higher than it should be.
 - HFRS' letter of 18 February 2016 stated he was required to repay £16,905.31 at a rate of £171.63 a month. He had calculated that he would have £10,040.11 left to pay if he retired in July 2019. He was considering this to be a maximum figure, as he was expecting the interest due figure to be reduced.
 - He had not been advised clearly enough in February 2016 to have been able to consider the different options available at the time. Had he been made aware of the sum now due at the inception of the process he would have opted for a lump sum payment.
 - He was now facing an additional sum of approximately £1,800 to repay.
27. On 9 May and 12 and 24 June 2019, Mr S asked HFRS for a response to his email of 24 April 2019. On 10 May 2019, HFRS told Mr S that it had as yet been unable to speak to the person who could clarify the position.

28. On 25 June 2019:-

- HFRS emailed Mr S. It said that WYPF had advised that there was no scope for him to change the option he had chosen when joining the Modified Scheme.
- Mr S confirmed to HFRS that he had previously queried why the total contribution arrears figure had increased by approximately £1,800.
- Mr S sent a further email to HFRS to let it know that he was considering raising a complaint.

29. On 30 September 2019, Mr S retired.

30. On 2 October 2019, Mr S raised an informal complaint with HFRS. In summary, he said:-

- Any incorrect information he had been provided with should be explained and, where necessary, put right.
- He had not received an adequate response to his emails of 5 and 24 April 2019, requesting an explanation as to why the figures were significantly different.

31. On 15 October 2019, HFRS acknowledged receipt of Mr S' complaint. It said a response would be provided within four months.

32. On 22 October 2019, Mr S wrote to HFRS. He told it that, as he could not expect a response to his informal complaint in the near future, he wished to submit a complaint under the Modified Scheme's internal dispute resolution procedure (**IDRP**). He asked for an electronic version of the IDR details.

33. On 5 November 2019, Mr S repeated his request for a copy of the IDR details. Later that same day, HFRS provided the information he had requested.

34. On 11 November 2019, Mr S submitted a complaint under the IDR.

35. On 5 December 2019, HFRS provided its response to Mr S' complaint which it had considered under the IDR. In summary, it said:-

- Mr S was employed prior to 1 July 2000 and had joined the 2006 Scheme when it was instigated. Hence, he had the option to enrol in the Modified Scheme for the period from 1 July 2000 to 5 April 2006 and convert his service to modified service. To do this, he was required to pay full contributions for the period from 1 July 2000 to 5 April 2006 and the difference in contributions from 6 April 2006.
- Due to the timescales of the option exercise, the contributions arrears figure had to be recalculated during the process.
- It had been provided with a spreadsheet by the Government Actuary's Department (**the Spreadsheet**) to undertake the arrears calculation. This could only be used for service up to 31 August 2015. The option exercise was not

completed until March 2016. So, it had to calculate some additional contribution arrears for the period from September 2015 to February 2016. This had resulted in an additional £455.43 being due. As a result, £16,905.31, being £16,449.88 plus £455.43, was due.

- The Spreadsheet calculated the monthly contributions that were due, including interest, as being £167.83 in respect of Mr S' service to 31 August 2015. A further £3.80 was added in respect of the additional £455.43. This increased the monthly payment to £171.63, payable over a 10-year period. The total of the payments due was £20,595.60, which included interest of £3,700.29. This was the interest applicable if the contribution arrears were repaid over 10 years.
- It acknowledged that this was not explicitly detailed in its correspondence with Mr S. However, references had been made to the fact that interest would be payable.
- When Mr S retired before the end of the 10-year period, a recalculation was undertaken. The outstanding amount due was calculated as £11,971.15. It acknowledged that there had been some confusion in relation to the calculation of the amount to be deducted from Mr S' retirement lump sum. This had highlighted some issues with its communications with WYPF.
- Mr S highlighted where its responses had not been timely or had been contradictory. It apologised for this and the fact that the documentation issued during the option exercise did not provide sufficient clarity around the calculation of the interest. However, it did provide Mr S with the monthly repayment figure and the period of recovery, which was considered sufficient at the time for him to assess the options.
- During its investigation into Mr S' complaint, it was identified that one payment of the contribution arrears was not taken into account when carrying out the final calculations. The correct amount to be deducted from Mr S' retirement lump sum was £11,841.06, a decrease of £130.09.
- Following the settlement of a recent wage award, Mr S' pension had been recalculated. WYPF was in the process of writing to him to detail the revision, and a payment would be sent to him including the £130.09.

36. On 10 February 2020, Mr S replied to HFRS' response. In summary, he said:-

- He had only ever been provided with estimated figures and had never seen any communications stating that the sum he actually owed was in the region of £20,595. He questioned whether he owed an additional £4,000. The fact that he had been given false expectations amounted to maladministration.
- Details of the original and final calculations had not been provided for him to review as he had requested.

- He had never queried the monthly amounts deducted from his salary or the period over which deductions were to be made. His complaint primarily concerned the amount deducted from his retirement lump sum.
- HFRS' response skirted around issues and did not answer the questions he had raised.

37. On 2 March 2020, HFRS responded to Mr S' comments. It repeated some of its earlier arguments and, in summary, it said:-

- It was required to apply the Regulations that govern the Modified Scheme including the use of the Spreadsheet. These had been applied correctly.
- The Spreadsheet determined that, on joining the Modified Scheme, Mr S owed £16,449.88 in contribution arrears. This figure included £3,127.89 of interest. If he had paid this sum immediately then no further interest would have been added.
- The Fire Brigades Union (**the Union**) had negotiated a 10-year repayment period. In the case of Mr S, this had resulted in further interest of £3,689.72 being payable. It had also been agreed with the Union that any outstanding contributions due would be deducted from the lump sum at retirement. A sum of £11,971.15 was outstanding at Mr S' retirement.
- These figures related to the backdating of Mr S' membership of the Modified Scheme for the period from 1 July 2000 to 31 August 2015. An additional amount of £455.43 for the period from 1 September 2015 to 28 February 2016 was collected at the rate of £3.80 a month.

38. Mr S made the following additional submissions:-

- He had signed the Form in October 2015 based on incomplete information. He would have viewed the options available to him differently if he had been aware of the position in relation to future interest.
- HFRS had given him a figure of £16,905.31 for the contribution arrears that were due. He questions why interest for the full period of recovery was not included when HFRS was aware that he had elected to pay the arrears over a 10-year period.
- When he queried the sum due in August 2018, HFRS said that the amount still owing was £12,271.30. He questions why HFRS' mistake of not disclosing the full interest was not rectified then. He says that, given that he had questioned the figures, it was clear that he did not have a full understanding of them. However, he was not provided with a full explanation.
- Even if WYPF was responsible for the calculation of his final benefits and contribution arrears, HFRS was responsible for the figures used in the calculations.

- HFRS' apology had only been issued when he made his formal complaint. Its response was inadequate given the time and effort he had spent analysing the figures and the inconvenience he had experienced waiting for responses which were always delayed.

Adjudicator's Opinion

39. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by HFRS. The Adjudicator's findings are summarised in paragraphs 40 to 52 below.
40. The Adjudicator said that there were a number of factors that resulted in variances in the contribution arrears figures that were provided by HFRS to Mr S. The Adjudicator provided his analysis of some of those figures:-
- The final figures that Mr S received before returning a valid option election form were provided by HFRS on 25 September 2015. These quoted a contribution arrears figure of £16,449.88 and an instalment figure of £167.83, payable over 120 monthly payments. The first figure did not include future interest. However, the instalment figure equated to a total payment of £20,139.60, which included future interest. It was later acknowledged by HFRS that these figures were incomplete. They did not cover the backdating of Mr S' membership of the Modified Scheme for the period from 1 September 2015 to 28 February 2016.
 - On 18 February 2016, Mr S was quoted a revised contribution arrears figure of £16,905.31, and an instalment figure of £171.63 payable for 120 monthly payments. These figures rectified the earlier omission where part of Mr S' service had not been allowed for in the calculation. Again, the contribution arrears figure did not include future interest, but the instalment figure did. The instalment figure equated to a total payment of £20,595.60, which indicated that future interest of £3,690.29 had been allowed for.
 - On 13 August 2018, Mr S requested confirmation of how much contribution arrears he had left to pay. He was initially quoted an incorrect figure, but this was corrected later that same day. The correct information that HFRS supplied was based on 27 instalments having been made, resulting in £12,271.30 being outstanding. This figure did not include future interest.
 - HFRS sent Mr S a further update on 24 April 2019. By this time, it was aware that Mr S planned to retire on 30 September 2019. The figure it provided was an outstanding balance of £11,878.52 as at 30 September 2019. Unlike previous quotes, the future interest that would be due up to that date was included. As Mr S was paying off the contributions arrears earlier than originally planned, the interest included in this figure was lower than the £3,690.29 previously allowed for.
 - Final adjustments were made to the figures, resulting in a deduction from Mr S' retirement lump sum of £11,841.06.

41. It was unfortunate that the figures that HFRS sent to Mr S in September 2015 did not allow for all of his service. However, the Adjudicator noted that he was provided with figures in February 2016 which did fully reflect his service. In the Adjudicator's view, had the increase in contribution arrears caused Mr S to reconsider the option he had chosen, he had ample time to raise this with HFRS before his election was finalised in May 2016. Furthermore, the increase in cost was less than 3%. On the balance of probabilities, the Adjudicator's opinion was that this increase would have been unlikely to have caused Mr S to change his mind.
42. Mr S raised a number of concerns with HFRS in relation to the information it had provided. In the Adjudicator's view, the main reason for his uncertainty was the way in which interest was allowed for in the figures HFRS provided. Before Mr S communicated to HFRS his retirement date of 30 September 2019, the figures HFRS provided in relation to the outstanding arrears of contributions did not include any future interest. However, once Mr S' date of retirement was known, future interest was included.
43. While the information that HFRS provided could have been clearer in this respect, the Adjudicator noted that the monthly instalment figures that it provided did consistently include future interest. So, before his election was finalised, Mr S knew the monthly contribution he would be required to pay and that 120 instalments were to be payable. A simple calculation would have confirmed the total amount he was due to pay over the 10 years.
44. Furthermore, Mr S had been made aware that interest would be payable on the contribution arrears in the Leaflet provided in January 2015.
45. The Adjudicator's view was that Mr S had adequate information available to him before his election was finalised in May 2016 to make an informed choice. So, he had not suffered any direct financial loss as a result of the actions of HFRS.
46. The Adjudicator considered any non-financial injustice that HFRS may have caused Mr S as a result of its actions. As already noted, it could have provided a more detailed explanation of some of the figures that it sent to Mr S, particularly in relation to the treatment of interest. However, in the Adjudicator's view, this amounted to poor administration and could not be considered as maladministration.
47. HFRS provided Mr S with incorrect information in an email exchange on 13 August 2018, when he asked for confirmation of the balance of contribution arrears that was outstanding. The provision of a figure that was over £2,000 higher than Mr S would have expected would likely have caused him some distress. However, the adverse impact on Mr S was limited by the fact that HFRS acknowledged the error and provided the correct figure later that same day.
48. Mr S referred to delays in HFRS providing him with information that he had requested. The Adjudicator noted that, while some of HFRS' responses were provided in a timely manner, others were not. The longest of these delays were:

- retirement estimates based on a number of scenarios that Mr S had requested on 15 January 2019, which Mr S confirmed on 21 March 2019 he had received from WYPF; and
 - a request for an explanation in relation to the contribution arrears figures that Mr S had requested on 24 April 2019. This was only partially responded to on 25 June 2019.
49. In relation to the delay of over two months in providing the retirement estimates, HFRS notified Mr S on 26 February and 18 March 2019, that it was waiting on this information from WYPF. So, while the Adjudicator's view was that the time taken to provide this information was excessive, HFRS could not be held responsible for all of the delay. It was waiting for some of this period for a third party to provide input.
50. In relation to Mr S' query concerning the contribution arrears figures, the Adjudicator's view was that the delay of two months was excessive, and the response HFRS provided was incomplete. The Adjudicator's opinion was that this amounted to maladministration on the part of HFRS.
51. Mr S said that he never received an apology for the problems he had encountered. However, in its IDRPs response of December 2019, HFRS apologised to Mr S for any delayed or contradictory responses it had provided. Its apology also included any lack of clarity in relation to the calculation of interest.
52. The Pensions Ombudsman's awards for non-financial injustice start at £500 for significant distress and inconvenience. In the Adjudicator's view, HFRS' actions would have caused Mr S distress and inconvenience, but it would not be at the level that would warrant the minimum award.
53. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
54. Mr S provided his further comments in response to the Opinion. In summary, he said:-
- Some of the information provided by HFRS had been difficult to understand. Financial information should be displayed concisely, and he should not have had to question and correct information to the degree that he did.
 - He believes that he is entitled to compensation for HFRS' maladministration and the inconvenience he suffered. He spent considerable time raising issues, spotting mistakes and trying to understand something that should have been far simpler.
 - HFRS should be held accountable. It should be directed to make the position clear to everyone it originally wrote to concerning this matter, so no other individual has to rely on the same substandard information it had provided to him.
55. I have considered the additional points raised by Mr S, however they do not change the outcome.

56. I agree with the Adjudicator's Opinion.

Ombudsman's decision

57. Mr S' complaint primarily concerns the calculation of the amount deducted from his retirement lump sum in respect of his backdated membership of the Modified Scheme. He has also raised a number of additional points in relation to the service he received from HFRS.
58. Mr S has referred to errors in the information that he was sent by HFRS. I find that these errors amounted to maladministration on the part of HFRS and I acknowledge that they would have been a cause of frustration for Mr S. However, I do not find that Mr S has suffered any financial loss as a result of these errors.
59. I say this because the incomplete contribution arrears figures Mr S was provided with in September 2015 were corrected on 18 February 2016. It was not until May 2016 that his enrolment in the Modified Scheme was finalised. So, if he wished to reconsider the election he had made in light of the higher cost, he had time to raise this with HFRS.
60. In August 2018, as a result of an error in the Spreadsheet, HFRS provided Mr S with incorrect information in relation to the contribution arrears that were outstanding. However, I note that a revised figure was provided later that same day. So, I do not consider that this error would have had an adverse impact on Mr S.
61. Mr S has drawn my attention to the difficulties he had understanding some of the information provided by HFRS. I have reviewed these communications and I agree with the Adjudicator's assessment that the main reason for any confusion relates to the treatment of future interest on the contribution arrears that were due.
62. In relation to the total and remaining repayment figures that HFRS had provided to Mr S, the communications did not deal with future interest in a consistent manner. Furthermore, no explanation was provided in relation to future interest. However, I note that the monthly arrears repayment figures provided by HFRS consistently included future interest and Mr S had been notified that interest was payable.
63. I have given some thought to whether it would be appropriate for Mr S to receive a payment for non-financial injustice; commonly referred to as distress and inconvenience. On balance, I have concluded that the circumstances of Mr S' case do not quite meet the threshold for a distress and inconvenience payment, in line with my current guidance.
64. Mr S has also referred to the quality of communications that may have been sent to other members of the Modified Scheme in a similar position to him. The scope of my investigation is restricted to the backdating of service for Mr S. I am unable to consider, or make a direction in respect of, the circumstances of other members who were not a party to Mr S' original complaint to The Pensions Ombudsman.

CAS-72510-R0F4

65. I do not uphold Mr S' complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman
6 October 2023