

Ombudsman's Determination

Applicant	Mr T
Scheme	Firefighters' Pension Scheme (the Scheme)
Respondent	Cheshire Fire and Rescue Service (the Cheshire Service)

Outcome

1. Mr T's complaint is upheld and, to put matters right, the Cheshire Service shall take the actions set out in paragraph 105.

Complaint summary

2. Mr T has complained that he was not afforded the opportunity to transfer his whole-time service into the new modified firefighters' pension scheme 2006 (**the Modified Scheme**). He has inferred that this act was discriminatory due to his previous service as a retained (part-time) firefighter.

Background information, including submissions from the parties

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 16 December 2002, Mr T was employed by the Staffordshire Fire and Rescue Service (**the Staffordshire Service**) as a retained firefighter. As Mr T was not a wholetime firefighter, he was not eligible to join the Firefighters' Pension Scheme 1992 (**the 1992 Scheme**), a final salary occupational pension scheme.
5. On 1 March 2006, in *Matthews v Kent and Medway Towns Fire Authority* [2006]¹ the Court of Appeal found that the difference in pay between full time and part time firefighters amounted to unlawful discrimination under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000.
6. On 6 April 2006, the New Firefighters' Pension Scheme 2006 (**the 2006 Scheme**) was established and the 1992 Scheme was closed to any new entrants. The 2006 Scheme is administered in accordance with the Firefighters' Pension Scheme

¹ Matthews & Ors v. Kent and Medway Towns and Fire Authority & Ors [2006] UKHL 8 (1 March 2006)

(England) Order 2006 (**the 2006 Order**). Mr T joined the 2006 Scheme as a retained firefighter.

7. On 16 April 2007, Mr T began a secondary period of employment with the Cheshire Service as a wholetime firefighter and joined the 2006 Scheme.
8. On 1 April 2014, after a settlement agreement was reached with the Government:-
 - The Firefighters' Pension Scheme (Amendment) (England) Order 2014 came into force (**the Amendment Order**).
 - The Amendment Order provided a number of changes to Schedule 1 of the 2006 Order. See appendix for extracts of the relevant amendments to the 2006 Order.
 - In line with the requirements of the Amendment Order, the Modified Scheme was established for retained firefighters with pensionable service between 1 July 2000 and 5 April 2006, who were unable to join the 1992 Scheme.
 - As the 1992 Scheme was closed, the benefits available under the Modified Scheme broadly mirrored those of the 1992 Scheme for eligible members.
 - The eligibility requirements to join the Modified Scheme, as a special member, were:
 - the member was employed as a retained firefighter between 1 July 2000 and 5 April 2006, while continuing in employment;
 - elected to become a special member and agreed to pay retrospective contributions plus interest for the period of their employment as a retained firefighter ("**retained period of employment**"); or
 - if a firefighter ceased to be a retained firefighter on or after 6 April 2006, but immediately thereafter, with no breaks in service, became a wholetime firefighter.
 - Special members of the Modified Scheme were also afforded the same right to transfer in benefits from other pension arrangements to increase their pensionable service. Members were able to transfer benefits from the 1992 Scheme, and from the 2006 Scheme into the Modified Scheme.
 - Part of the settlement agreement specified that the relevant authorities had from 1 April 2014 to 30 September 2015 to identify and inform individuals of their eligibility to join the Modified Scheme (**the Remedy Period**).
9. In 2014, the Staffordshire Service sent Mr T an expression of interest form to join the Modified Scheme. It provided him with an information leaflet on the eligibility criteria for joining the Modified Scheme and said that he should complete and return the form by 31 August 2014. He should also provide the details of his retained and wholetime employment.

10. In response, Mr T completed and returned the retained firefighter expression of interest form as he met the eligibility criteria for “retained special membership”.
11. On 31 June and 22 July 2014, the Cheshire Service posted a weekly bulletin signposting its firefighters to the employee intranet which contained information on the eligibility requirements to join the Modified Scheme. This included a guide to “the Firefighters Pension Scheme 2006 for retained Firefighters who are special members of the Modified Scheme”.
12. On 3 December 2014, the Staffordshire Service wrote to Mr T about his interest in joining the Modified Scheme. It provided him with a transfer leaflet and outlined three options as to how he could become a member of the Modified Scheme, which were:-
 - Option 1: buy back service in the Modified Scheme only up to the date he joined the 2006 Scheme, or up until 31 March 2014, if he never joined the 2006 Scheme.
 - Option 2: buy back service in the Modified Scheme, whilst also converting his membership in the 2006 Scheme into additional Modified Scheme membership.
 - Option 3: buy back service in the Modified Scheme and, thereafter, converting the Modified Scheme service into the 2006 Scheme.
13. The transfer leaflet explained that if a member joined the Modified Scheme as a special member, they had the opportunity to transfer any external pensions into the Modified Scheme.
14. Mr T elected to join the Modified Scheme as a “retained special member”. Consequently, Mr T’s membership in the Modified Scheme covered his retained period of employment, with the Staffordshire Service, from 16 December 2002 to 6 April 2006. Mr T also elected to transfer his post 6 April 2006 retained pensionable service into the Modified Scheme from the 2006 Scheme.
15. Between 2018 and 2019, Mr T assisted a colleague with an application for a personal injury claim due to an on-duty accident. Mr T’s assistance progressed to also helping his colleague apply for ill health early retirement. In doing so, Mr T’s colleague provided him with information on his pensionable service and benefits. It was within this bundle of documents that Mr T noted that his colleague was afforded the opportunity to transfer his whole-time service from the 2006 Scheme, into the Modified Scheme. Mr T was not offered this opportunity.
16. On 2 January 2021, Mr T submitted a complaint under stage one of the Scheme’s internal dispute resolution procedure (**IDRP**), and said, in summary, that:-
 - In 2002, he began a period of employment as a retained firefighter for the Staffordshire Service. At the time he was unable to join the 1992 Scheme; however, he joined the 2006 Scheme when it was established.
 - On 16 April 2007, he began a period of employment with the Cheshire Service, as a wholetime firefighter, and joined the 2006 Scheme.

- In 2014 he was offered, and accepted, the opportunity to join the Modified Scheme. This was after the introduction of the Amendment Order, in response to the outcome of the *Matthews v Kent and Medway Towns Fire Authority* [2006] court case.
 - He converted his retained pensionable service in the 2006 Scheme into the Modified Scheme. He also paid backdated contributions to buy back pensionable service from 1 July 2000 to 6 April 2006 in the Modified Scheme.
 - He recently became aware of colleagues who were afforded the opportunity to transfer their wholetime pensionable service into the Modified Scheme. He was not offered this same opportunity despite there being no difference in his circumstances compared to that of his colleagues.
17. In April 2021, the Cheshire and Staffordshire Service corresponded with each other about Mr T's IDRP complaint. The Staffordshire Service provided copies of the letters and information that was available, and sent, to Mr T, in 2014, about the Modified Scheme. It also said that it understood that retained special membership in the Modified Scheme could only be linked with whole time service if:
- the firefighter left their retained role and took up a wholetime role the next day; or
 - the firefighter was retained, but took up a wholetime role at the request of the same employing authority, thereby having two concurrent roles for the same authority.
18. On 4 May 2021, Deputy Chief Fire Officer (**the Deputy**), on behalf of the Cheshire Service, provided his stage one IDRP response to Mr T and did not uphold the complaint. The Deputy's response is summarised between paragraphs 19 and 31.
19. The benefits available under the Modified Scheme were comparable to those of the 1992 Scheme and the 2006 Scheme. In essence, the Modified Scheme was an accompaniment to the 2006 Scheme.
20. The *Matthews v Kent and Medway Towns Fire Authority* case resulted in the Amendment Order and the Remedy Period. During this time, fire authorities needed to identify and contact any affected members who were eligible to join the Modified Scheme.
21. The Amendment Order provided the fire authorities with the necessary discretion to extend the deadline, if it was not reasonably possible to comply with the Remedy Period.
22. Part 2, regulation 1A(1b)(iii) states that a retained firefighter, who became a wholetime firefighter, can only be eligible for special membership if the following criteria were met:
- they were employed as a retained firefighter before 6 April 2006, thereafter, becoming a wholetime firefighter;

- no breaks in employment between the change over from retained to wholetime firefighter service; and
 - the retained employment was ended the day before they took up the wholetime role.
23. Mr T did not meet one of the criteria, under regulation 1A, as he continued in his retained role with the Staffordshire Service, after 6 April 2006, alongside his wholetime role with the Cheshire Service.
24. Regulation 5A(2)(b)(iii), of the Amendment Order, provided the relevant authority with the discretion to allow for a firefighter's wholetime service to be included within the Modified Scheme. However, this was on the basis that the relevant authority required the firefighter to remain in a retained role, post 6 April 2006, while also taking up a wholetime role.
25. The Cheshire Service could not offer him the option to include his wholetime service in the Modified Scheme, as it did not employ him as a retained firefighter. It was the Staffordshire Service that employed him as a retained firefighter.
26. The circumstances of the colleagues, who were offered to aggregate their wholetime service into the Modified Scheme, were substantially different to Mr T's own circumstances. This was because: he did not meet the eligibility requirements for this option; he did not elect to undertake this option before the deadline of 30 September 2015; and he was employed as a retained and wholetime firefighter by different authorities.
27. The Staffordshire Service employed him as a retained firefighter, so it was responsible for informing him of his eligibility to join the Modified Scheme as a retained firefighter special member, which it did. The Cheshire Service only ever employed him as a wholetime firefighter, and treated him the same as any other wholetime firefighter as he was offered the opportunity to join the 2006 Scheme.
28. The Staffordshire Service provided copies of the information that would have been made available to him in 2014. On the assumption that he received this information, it appeared that the Staffordshire Service had informed him of his options within the Remedy Period.
29. The Scheme's IDRP policy said that complaints should be submitted within six months of the date the individual could reasonably have been aware of the matter in dispute. It believed that he had been aware of the matter in dispute for more than six years, since 2014.
30. The Staffordshire Service provided him with relevant information in 2014, which allowed him to join the Modified Scheme. At this time, the Cheshire Council also provided information on the Modified Scheme via its "green bulletin". There was also information on the staff intranet under a section titled "Modified Firefighters' Pension

Scheme (RDS)". This contained copies of relevant guidance about the Modified Scheme.

31. Based on the exercises undertaken by the relevant fire authorities, and the information available to Mr T between 2014 and 2015, it was reasonable to conclude that he was well aware of the matter in dispute in 2014/2015. Consequently, he was technically out of time for his IDRP to be investigated; however, given the severity of the matter his case was fully investigated and responded to.
32. On 24 May 2021, Mr T emailed the Deputy and asked him if the Cheshire Service was "unwilling" or "unable" to action his request.
33. On 28 May 2021, the Deputy responded to Mr T and said that his position was made clear in the IDRP response. He added that it was clear that the deadline for transferring wholetime pensionable service into the Modified Scheme needed to be actioned before 30 September 2015. There was no available discretion to facilitate a request after this deadline.

Mr T's submissions

34. He believed that the Cheshire Service had interpreted Part 11, regulation 5A(2b)(iii) of the Amendment Order incorrectly. It did not state that a firefighter's retained and wholetime employment had to be under the same fire authority for that authority to exercise the discretion available to aggregate an individual's pensions into the Modified Scheme.
35. He believed that the Cheshire Service held the necessary discretion, as provided by the Amendment Order, to aggregate his wholetime pensionable service in the 2006 Scheme into the Modified Scheme.
36. He provided witness statements from two colleagues who both confirmed that he was asked to stay on as a retained firefighter, for the Staffordshire Service. This was after he accepted his wholetime role with the Cheshire Service. This evidence mirrored the rationale used for two other colleagues who were also asked to stay on in their retained roles alongside their wholetime roles, whose wholetime pensionable service was aggregated into the Modified Scheme.
37. He noted that the Cheshire Service claimed that they could not have known about his previous service with the Staffordshire Service. However, the Cheshire Service required all employees who held secondary roles to confirm this on an annual basis. So, the Cheshire Service would have known about his retained role with the Staffordshire Service and should have informed him of the right to aggregate his wholetime service with his retained service under the Modified Scheme.
38. The Cheshire Service seemed to infer that it was within the Staffordshire Service's ability to allow him to aggregate his wholetime pensionable service into the Modified Scheme. However, the Staffordshire Service was not his primary employer, the

Cheshire Service was. None of the information provided by the Staffordshire Service to the Cheshire Service covered his individual circumstances or his /request.

39. Denying his request for all of his wholetime pensionable service to be aggregated into the Modified Scheme meant that it was “costing [him] tens of thousands of pounds”. His normal pension age was currently 60, instead of 55. The 2006 Scheme, where the majority of his benefits were held, attracted a less favourable accrual rate and less favourable commutation rates. A number of his colleagues had less wholetime service, but were entitled to substantially greater pensions.
40. The Cheshire Service was actively discriminating against him by not allowing him to aggregate his wholetime service into the Modified Scheme.

The Cheshire Service’s submissions

41. Mr T did not meet one of the four conditions under part 2, regulation 1A(1)(b), of the Amendment Order, namely (1)(b)(iii). Mr T remained in his role as a retained firefighter post 6 April 2006 up until 2022. This was alongside his role as a wholetime firefighter from 16 April 2007 with the Cheshire Service. Mr T had two concurrent periods of service, whereas to meet the requirements of the Amendment Order he was required to leave his retained role and immediately take up his wholetime role.
42. Part 11, regulation 5A(2b)(iii), of the Amendment Order, provides the employing authority with the discretion to allow a firefighter with concurrent retained and wholetime service to become a special member of the Modified Scheme, in regard to their wholetime service. This was on the provision that the employing authority required the firefighter to remain in their retained role alongside their wholetime role.
43. It sought an informal review from the Home Office and the Local Government Authority (**LGA**) on its understanding of the Amendment Order and the relevant regulations. Specifically, the intention of part 11, regulation 5A(2b)(iii) and its wording. In response to their request, the LGA said:

“By way of update, I have spoken with [the Home Office], and they have confirmed that this regulation should only apply where the individual is [wholetime] and [retained] at the same FRA, hence why the regulation is drafted the way it is...”
44. It believed that this discretion was only available to the authority who employed, and asked the firefighter to remain in a retained role as well as their wholetime role. The Cheshire Authority did not have the discretion to aggregate Mr T’s wholetime service into the Modified Scheme as it had only ever employed him as a wholetime firefighter.
45. It was unaware of any instances whereby a firefighter was able to aggregate their wholetime pensionable service into the Modified Scheme, in regard to concurrent wholetime and retained service between different authorities.
46. Mr T had provided eight examples of colleagues whose circumstances were similar to his own and who had been able to have their wholetime service included within the

Modified Scheme. Having reviewed each of the cases there were differences between Mr T's circumstances and those of his eight colleagues.

47. Six out of the eight colleagues that Mr T referenced left their retained role and immediately started wholetime roles. So, they all met the four conditions under part 2, regulation 1A(1)(b). The remaining two colleagues referred to were asked by their employing authority to remain in retained roles alongside their wholetime roles with the same fire authority. Consequently, the fire authority responsible for these two colleagues was able to exercise the discretion available under part 11, regulation 5A(2b)(iii). This was different in Mr T's case as he was employed by two different fire authorities.
48. The Cheshire Service did not identify Mr T as eligible for special membership in the Modified Scheme during the Remedy Period as he was employed by them in a wholetime role, and a member of the 2006 Scheme. The LGA provided guidance to the local fire authorities about what actions needed to be undertaken during the Remedy Period. The guidance outlined the eligibility criteria for membership in the Modified Scheme, which the Cheshire Service adhered to.
49. Part 11, regulation 5A(4) of the Amendment Order required the local fire authorities to "use reasonable endeavours to notify all those existing employees and former employees who may be eligible to join this Scheme as a special member". This required the authorities to directly write to a firefighter's last known address, this was also in addition to more general information available to capture anyone that might have been missed.
50. The Cheshire Service provided regular bulletins that signposted firefighters to the dedicated Modified Scheme website that was setup on 26 June 2014. The Staffordshire Service wrote directly to Mr T about his eligibility to join the Modified Scheme. So, ample information about the Modified Scheme was sent to him and available to him. Further, when he completed his expression of interest form to join the Modified Scheme, he was required to give details of his retained and wholetime employment.

Adjudicator's Opinion

51. Mr T's complaint was considered by one of our Adjudicators who concluded that no further action was required by the Cheshire Service. The Adjudicator's findings are summarised below between paragraphs 52 and 69.
52. Mr T worked as a retained firefighter with the Staffordshire Service from 16 December 2002 until 18 November 2021. From 16 April 2007, he worked as a wholetime firefighter, for the Cheshire Service, alongside his role as a retained firefighter with the Staffordshire Service. On 6 April 2006, Mr T joined the 2006 Scheme as a retained firefighter, and then as a wholetime firefighter from 16 April 2007.

53. The outcome of the *Matthews v Kent and Medway Towns Fire Authority* [2006] court case ruled that the way in which retained firefighters were treated, compared to wholetime firefighters, was discriminatory. Once an agreement was reached with the Government, the Amendment Order was introduced, applying a number of changes to the 2006 Order in response to *Matthews v Kent and Medway Towns Fire Authority*.
54. The principal reason for the Amendment Order was to correct the discrimination in retained firefighters not being eligible to join the 1992 Scheme between 1 July 2000 and 6 April 2006. Consequently, the Modified Scheme was established, and all employing fire authorities were tasked with contacting and asking all eligible firefighters if they wished to buy back service in the Modified Scheme.
55. Part 11, regulation 5A(4) of the Amendment Order provided fire authorities with two months from the “initial date”, which was 1 April 2014, to identify, and contact, all firefighters who were eligible to join the Modified Scheme as a “special member”. The criteria for “special membership” was outlined under part 2, regulation 1A(a) and (b) of the Amendment Order.
56. The Staffordshire Service identified that Mr T met the eligibility requirements under regulation 1A(a) to join the Modified Scheme as a special member. It notified Mr T of his options, and Mr T agreed to pay backdated contributions to buy back pensionable service in the Modified Scheme in respect of his service as a retained firefighter between 16 December 2000 and 5 April 2006. Mr T also elected to have his post 5 April 2006 retained pensionable service transferred into the Modified Scheme.
57. In 2020, Mr T became aware that a number of his colleagues, who also joined the Modified Scheme as special members, had been afforded the opportunity to have their wholetime pensionable service included in the Modified Scheme. When he approached the Cheshire Service about this he was informed he was unable to aggregate his wholetime service as the Remedy Period was over. It also said that because his retained and wholetime pensionable service were between two different fire authorities, it held no appropriate discretion to combine his benefits into the Modified Scheme.
58. The Adjudicator noted that part of the Cheshire Service’s response to Mr T was that he did not fulfil all of the criteria outlined under regulation 1A(b), in particular, regulation 1A(b)(iii). This is because, Mr T did not immediately leave his retained role when he started his wholetime role. So, during the Remedy Period, the Cheshire Service has said that there was no requirement to contact him.
59. The Adjudicator took the view that the Cheshire Service acted in accordance with the relevant regulations and that there was no requirement for it to contact Mr T, during the Remedy Period, as it was only responsible for his wholetime service, for which Mr T was already a wholetime member of the 2006 Scheme. During the Remedy Period, it was the Staffordshire Service’s role and responsibility to contact Mr T about the Modified Scheme and special membership, which it did.

60. Part 11, regulation 5A(2)(b)(iii), of the Amendment Order provided discretion to an employing fire authority to allow a member to pay backdated contributions to buy back service in the Modified Scheme for wholetime pensionable service. This particular regulation states:
- “with the agreement of the authority, as a regular firefighter, but not as a retained firefighter, where he had been employed by an authority as a retained firefighter and then required by that authority after 5th April 2006 to remain in employment as a retained firefighter whilst taking up employment as a regular firefighter”
61. It was noted that there is some contention surrounding the interpretation of this regulation with Mr T disagreeing with the Cheshire Service’s interpretation. According to the Cheshire Service, regulation 5A(2)(b)(iii) does not apply as his retained and wholetime service was between two different fire authorities.
62. Particular attention should be paid to “with the agreement of the authority” and “that authority” within regulation 5A(2)(b)(iii). The Adjudicator took this to mean that the regulation was only applicable if the wholetime employing fire authority, was also the same employing authority for the retained role. The Cheshire Service’s interpretation of the regulation was in line with the general intention of the regulation.
63. While it was agreed that, on the surface, Mr T’s circumstances were such that regulation 5A(2)(b)(iii) could be applicable Because Mr T was asked by the Staffordshire Service to stay on in his retained role, alongside his wholetime role with the Cheshire Service. However, the main difference was that the retained and wholetime service were between two separate authorities, not the same authority, as required by 5A(2)(b)(iii). In the opinion of the Adjudicator, the Cheshire Service did not hold the necessary discretion to allow for Mr T to aggregate his wholetime service into the Modified Scheme.
64. Mr T provided examples of eight colleagues whose circumstances he believed were the same as, or similar, to his own. However, in each of their cases, they were able to aggregate their wholetime service into the Modified Scheme.
65. The Cheshire Service explained that six out of the eight examples all started their wholetime roles the day after their retained roles ended. The other two examples had discretion applied under regulation 5A(2)(b)(iii) as their retained and wholetime roles were under the same employing authority who asked them to remain in their retained role, alongside their wholetime role.
66. Mr T’s circumstances were appreciated, and they might have appeared similar to the eight other individuals he referred to; however, there were substantial differences in their circumstances compared to his own, which meant that regulation 5A(2)(b)(iii) was not applicable, or relevant.
67. It was understood that Mr T believed that not allowing him to aggregate his wholetime service into the Modified Scheme amounted to discrimination. This was due to the

requirement for him to remain in a retained role with the Staffordshire Service. For Mr T to have a valid discrimination case, he needed to demonstrate that he was treated less favourably than a member in a comparable position to him. There was insufficient evidence put forward by Mr T to suggest that he was unfairly treated.

68. Mr T's circumstances compared to those of his eight colleagues had varying levels of differences. The Cheshire Service said that it is unaware of any such cases like Mr T's that had been accepted in the way that he wished for his wholetime pensionable service to be aggregated. Mr T had not suffered any direct discrimination; he was just unable to combine his benefits in the way in which he had hoped to.
69. The Cheshire Service was not permitted to act in any other way unless expressly stated by the relevant Order/regulations. The Cheshire Service interpreted the Amendment Order appropriately, while also seeking advice from the Home Office and the LGA on its understanding of regulation 5A(2)(b)(iii), which was appropriate.
70. Mr T did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mr T provided his further comments which do not change the outcome. I note the additional points raised by Mr T which are:-
- He disagreed with the interpretation of regulation 5A(2)(b)(iii). He was asked to remain in his role as a retained firefighter, by the Staffordshire Service. At the same time, he was a wholetime firefighter with the Cheshire Service. So, he had two concurrent roles.
 - Regulation 5A(2)(b)(iii) did not state that his wholetime and retained service could not be aggregated due to the fact each was derived from a different fire authority.
 - He did not understand how he could terminate his retained service, once he started his wholetime service, when the Amendment Order and membership in the Modified Scheme were implemented retrospectively.
 - All firefighters, both full-time and part-time were contracted under the same terms and conditions of employment. There was no divergence or difference from employer to employer.
 - He was never given the option to aggregate his wholetime service into the Modified Scheme. This was despite his primary employer, the Cheshire Service, conducting a widescale exercise and contacting his colleagues with the option to aggregate their membership. He believed that he should have been contacted by the Cheshire Service about this, but he was not.
 - It could not be said that the Cheshire Service did not agree to him remaining in his retained role, with the Staffordshire Service, when he started his wholetime role. He had to formally request approval for his secondary employment which he received in writing.
71. The Cheshire Service accepted the Adjudicator's opinion and did not provide any additional comments.

Ombudsman's decision

72. Mr T's complaint is that he is unable to transfer his wholetime service built up in the 2006 Scheme, into the Modified Scheme. Consequently, he believes that he is being denied the more advantageous benefits of the Modified Scheme in respect of his wholetime service with the Cheshire Service.
73. It appears to me that this case turns on the correct interpretation of the 2006 Order as amended by the Amendment Order and whether the Cheshire Service and the Staffordshire Service have duly complied with its provisions, having regard to the purpose of its provisions to address the less favourable treatment of retained firefighters in respect of pensions as determined in the case of *Matthews v Kent and Medway Towns Fire Authority* [2006].

Background

74. It is worth noting the substance of his complaint and the potential financial loss or detriment that results from not being able to aggregate his post 2006 wholetime pensionable service with his pensionable service in the Modified Scheme. The 1992 Scheme provides pension benefits for persons who started service as regular firefighters (i.e. in wholetime service) with an English fire and rescue authority before 6 April 2006. Normal pension age for regular firefighters is age 55 and the benefits payable are, broadly, 1/60 of average pensionable pay for each year of pensionable service up to 20 years with further pensionable service counting double up to a maximum of 40 years.
75. As referred to above, the 1992 Scheme was closed to new joiners in April 2006 by the 2006 Order but continued to have effect for existing members. As such, persons starting employment as regular firefighters after that date could not join the 1992 Scheme. Instead, they could join the 2006 Scheme. The benefits were less generous in that normal retirement age for retirement directly from service is 60 and pension benefits are 1/60 of final pensionable pay for each year of pensionable service. A full comparison of the benefits is not required for present purposes. It is sufficient to note that the 1992 Scheme was more generous and that had Mr T been permitted to join the 1992 Scheme when he started service as a retained firefighter (i.e. part-time service) for the Staffordshire Service, he would have remained entitled to participate in the 1992 Scheme on joining the Cheshire Service.
76. The provisions of the 1992 Scheme, the 2006 Scheme and the Modified Scheme apply equally to service with different Fire Authorities and such service is treated as continuous.
77. As referred to above and set out in the Explanatory Note to the Amendment Order, following the *Matthews v Kent and Medway Towns Fire Authority* [2006] ("**Matthews**") case the Modified Scheme was established (as a section of the 2006 Scheme) by the Amendment Order to remedy the discrimination between wholetime or regular firefighters and retained firefighters. It provides benefits that, albeit different in some details, are likely to be broadly equivalent in value to those provided by the 1992

Scheme including, in particular, normal pension age for retirement directly from service is age 55 and pension accrual is 1/45 of pensionable pay for each year of pensionable service.

78. Retained firefighters who were denied access to the 1992 Scheme suffered less favourable treatment not only in respect of their service as retained firefighters in the period prior to 6 April 2006 when the 1992 Scheme was open to new members but also in respect of any service including later service as regular or wholetime firefighters after 6 April 2006 that qualified only for the 2006 Scheme but could have qualified under the 1992 Scheme had they not been wrongly denied access to the 1992 Scheme prior to its closure to new members on 6 April 2006.
79. Hence, as explained in the Explanatory Note to the Amendment Order, to provide full redress for the less favourable treatment, the Amendment Order provides not only for benefits in respect of service as a retained firefighter between the coming into force of the Part-time Workers Regulations on 1 July 2000 and the closure of the 2006 Scheme to new joiners on 6 April 2006, subject to payment of contributions, but it also allows “eligible members” to convert existing service in the 2006 Scheme to service in the Modified Scheme.
80. The interpretation of these provisions is what is in issue. As Mr T discovered in 2019, retained firefighters who became regular firefighters after 6 April 2006 with the same Fire Authority were permitted to convert their 2006 Scheme service to Modified Scheme service but he was not invited to do so and has been denied the right to do so as his service as a regular firefighter after April 2006 was with the Cheshire Service whereas his service as a retained firefighter before April 2006 was with the Staffordshire Service.

Principles of statutory interpretation

81. There are many authorities on the principles of statutory interpretation including *R v Secretary of State for the Environment, Transport and the Regions, ex parte Spath Holme Ltd* [2001] 2 AC 349 at 396-8 per Lord Nicholls, *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13, [2003] 2 AC 687 (“**Quintavalle**”) at [8] per Lord Bingham, *R (O) v Home Secretary* [2022] UKSC 3, [2023] AC 255 at [28]-[31] per Lord Hodge DPSC, and *R (PACCAR Inc and others) v Competition Appeal Tribunal* [2023] UKSC 28, [2023] 1 WLR 2594 (“**PACCAR**”) at [40]–[41] per Lord Sales JSC as recently referred to in the case of *Virgin Media Ltd v NTL Pension Trustees* [2024] 049 PBLR (035). In that case, Nugee LJ summarised the approach as follows:

“As Lord Sales said in the most recent summary we were referred to, that in PACCAR, the basic task for the Court interpreting a statutory provision is clear, namely, to identify the meaning of the words in question in the particular context (at [40]). He went on at [41] to refer to the numerous authoritative statements in modern case law which emphasise the central importance in interpreting any legislation of identifying its purpose, concluding as follows:

‘The purpose and scheme of an Act of Parliament provide the basic frame of orientation for the use of the language employed in it.’

The same point was made even more forcefully in one of the passages which he cites, namely the statement by Lord Mance JSC in *Bloomsbury International Ltd v Department for Environment, Food and Rural Affairs* [2011] UKSC 25, [2011] 1 WLR 1546 at [10] as follows:

‘In matters of statutory construction, the statutory purpose and the general scheme by which it is to be put into effect are of central importance. They represent the context in which individual words are to be understood. In this area as in the area of contractual construction, “the notion of words having a natural meaning” is not always very helpful (*Charter Reinsurance Co Ltd v Fagan* [1997] AC 313, 391C, per Lord Hoffmann), and certainly not as a starting point, before identifying the legislative purpose and scheme.

These statements were made in the context of interpretation of primary legislation, but there was no dispute that the same principles apply to the interpretation of secondary legislation, with the added consideration that delegated legislation must be interpreted in light of the enabling Act, the legislative purpose of delegated legislation being assumed to be the purpose of that Act: see Bennion, Bailey & Norbury on Statutory Interpretation (8th edn, 2020) §3.17. 68. So (...) I consider, in accordance with the guidance from the Supreme Court, that we should first orientate ourselves by reference to the legislative purpose and scheme before considering the meaning of the words to be construed. As Lord Bingham said in *Quintavalle* at [8] this not only means construing the words in the context of the statute as a whole, but reading the statute as a whole “in the historical context of the situation which led to its enactment.””

82. Having regard to the above, I will direct my interpretation of the 2006 Order and the Amendment Order by reference to the legislative purpose of the Amendment Order. Having regard to the Explanatory Note and the decision in *Matthews*, which is referred to in the Explanatory Note, I consider that the legislative purpose was to provide redress and remove the breaches of the Part-time Workers Regulations in respect of pensions identified in the *Matthews* case. I do not see that I can attach any material weight to the views provided by the LGA or the HO.
83. While the Explanatory Note is not specific as to which retained members are eligible members when it states that the Amendment Order is to provide “the ability for eligible members to convert existing 2006 Scheme service to the Modified Scheme”, having regard to the mischief that the Amendment Order was to correct in allowing such conversion, namely the less favourable treatment suffered by firefighters in respect of their post April 2006 service qualifying only for 2006 Scheme benefits and not 1992 Scheme benefits as would have been the case had they been permitted to join the 1992 Scheme as retained firefighters before April 2006, I must interpret the amended 2006 Order so far as possible to give effect to that legislative purpose.

84. It is accepted by all parties that pre-April 2006 retained firefighters who became regular firefighters with the same Fire Authority and joined the 2006 Scheme after April 2006 were entitled to convert their standard pensionable service to special pensionable service and were notified accordingly. This would be necessary to address the less favourable treatment they would otherwise suffer since firefighters who had been wholetime firefighters before April 2006 were permitted to remain in the 1992 Scheme in respect of their firefighting service after 6 April 2006.
85. The distinction that is made in respect of Mr T is that his service as a regular firefighter after 6 April 2006 had been with a different Fire Authority to the one that employed him as a retained firefighter. It is difficult to see how that is a relevant difference. It is a feature of the 1992 Scheme, the 2006 Scheme and the Modified Scheme that they apply equally to service with different Fire Authorities and that service with different Fire Authorities is treated as continuous. In particular, the right to continue in the 1992 Scheme in respect of firefighting service after April 2006 is not limited to those who continue in firefighting service with the same Fire Authority (see Article 3(4) of the 2006 Order). A regular firefighter who joined the 1992 Scheme before 6 April 2006 would have been permitted to continue in the 1992 Scheme when transferring to a different Fire Authority and, within the meaning of the 2006 Order and the 1992 Scheme, would have been treated as in the same “employment” if continuing to work as a regular firefighter.
86. As such, from the perspective of legislative intent and the mischief that the Amendment Order was intended to address, it does not appear that the fact that Mr T was employed as a regular firefighter with a different authority to the one that employed him as a retained firefighter should be material. More than that, if the 2006 Order is construed so that a retained firefighter can only convert standard pensionable service to special pensionable service if he was in employment with the same Fire Authority as a retained firefighter before April 2006 and as a regular firefighter after April 2006, the less favourable treatment will not have been fully addressed since a member in Mr T’s position’s will have been treated less favourably than a person who was a regular firefighter with one Fire Authority before April 2006 and took up employment with another Fire Authority after April 2006. So far as possible, the 2006 Order should be interpreted to give effect to the legislative intent of removing the less favourable treatment.

Relevant provisions of the 2006 Order as amended by the Amendment Order

87. It is accepted that Mr T qualifies as a special firefighter member under Rule 1A(1)(a) of Part 2 of Schedule 1 to the 2006 Order as he is a firefighter member who meets the description of being:

“(a) a person who—

(i) having taken up employment as a retained firefighter before 6th April 2006;

(ii) having continued in such employment until the date of his election; and

(iii) having elected, within the period required by rule 6B(1), or 6B(12) as the case may be, of Part 11, to pay the mandatory special period pension contributions”.

88. What is in issue is whether he had a right to convert his pensionable service as a standard member (i.e. service accrued as a regular firefighter in the 2006 Scheme) to special pensionable service for the purpose of the calculation of his benefits. As discussed above, the full purpose of the legislation will not have been achieved if he did not have such a right because he will still have suffered less favourable treatment compared to a person who was a wholetime or regular firefighter in the period up to April 2006 and therefore could accrue 1992 Scheme benefits in respect of their service after April 2006.
89. Rule 2A of Part 10 governs the calculation of special pensionable service and provides under sub-paragraph (1)(g) that special pensionable service includes: “where the person was a standard member of this Scheme and converted the pensionable service accrued as a standard member of this Scheme to his membership of this Scheme as a special member, the special pensionable service that person is treated as having accrued under rule 17 or 18 of Part 12”.
90. Rule 18 of Part 12 applies to pensioner members and only rule 17 (Converting membership from standard membership to special membership) is relevant. Rule 17 of Part 12 provides at paragraph (1) that:
- “(1) This rule applies—
- (a) to a person who is a special firefighter member (...) and who is a standard member of this Scheme;
- (b) in respect of pensionable service which he would be entitled to treat as special pensionable service.”
91. There is no doubt that at the time the Amendment Order came into force Mr T was a standard member and a special firefighter member and met the conditions of (1)(a). The issue is what pensionable service as a standard member he would be “entitled to treat as special pensionable service” and the effect of not having made an application under rule 17 at the time of his application under rule 5A(5) or rule 5A(9). There is no further clarity as to what pensionable service he would be entitled to treat as special pensionable service in those provisions. “Special pensionable service” is defined by reference to rule 2A of Part 10 which as referred to above includes service converted under rule 17. Rules 17 of Part 12 and 5A and 5B of Part 11 deal with the determination of the amount of service that can qualify as special pensionable service by conversion or otherwise and the words “entitled to treat as special pensionable service” must be construed in a manner consistent with those other provisions of the 2006 Order.
92. Having regard to the legislative intent, it seems that Mr T must be entitled to treat as special pensionable service any pensionable service completed as a standard

member, which could have qualified under the 1992 Scheme had retained firefighters been permitted to join the latter prior to 6 April 2006, subject to making the relevant application and paying any contributions required as provided under rule 17 and rule 5A or 5B.

93. The remaining paragraphs of rule 17 of Part 12 provide that a person to whom paragraph (1) applies may apply to the authority for a statement of the amount of service he would be entitled to treat as special pensionable service if he converted his standard membership to special membership, that such application must be made in writing at the same time as an application under rule 5A(5) or rule 5B(9) (purchase of service during the limited period) of Part 11 and then provides for the Fire Authority to provide details of the amount of service to be treated as pensionable service and the amount of payments required and to do so at the same time as giving notice under rule 5A(13) or rule 5B(13) of Part 11. In effect, they provide for the mechanics of conversion including the calculation and payment of additional contributions and interest. Given the legislative purpose, it would not seem right for the administrative requirements to be treated as restrictions on the conversion rights, rather than as the practical means of giving effect to such rights.

94. Rule 5A(5) of Part 11 provides that:

“Within two months of receiving the notification in paragraph (4), or if no notification has been received, within four months of the initial date, a person may apply to the authority by which he was employed in service falling within paragraph (2) above for a statement of the service in respect of which he may become entitled to pay contributions under this rule and the mandatory special period pension contributions which he would be required to pay in respect of it.”

95. So, Mr T should have received a notification from, and needed to make an application to, the Fire Authority by which he was employed in respect of service falling within rule 5A(2). Rule 5A(2) provides:

“The conditions are that—

(a) the person is entitled to join this Scheme as a special member;

(b) the service is—

(i) as a retained firefighter; or

(ii) as a regular firefighter where he took up employment after 5th April 2006 as a regular firefighter immediately after the termination of his employment as a retained firefighter; or

(iii) with the agreement of the authority, as a regular firefighter, but not as a retained firefighter, where he had been employed by an authority as a retained firefighter and then required by that authority after 5th April 2006

to remain in employment as a retained firefighter whilst taking up employment as a regular firefighter.”

96. Mr T was in employment as a retained firefighter with the Staffordshire Service within rule 5A(2)(b)(i). He was also in employment as a regular firefighter with the Cheshire Service under rule 5A(2)(b)(iii). I do not see any reason to interpret this provision as requiring the special member’s employment as a retained firefighter and as a regular firefighter to be with the same authority: if that had been the intent, - and there seems no reason why that should have been the intent given the legislative purpose and the fact that employment with different Fire Authorities is otherwise treated as the same employment for the purposes of the 1992 Scheme, the 2006 Scheme and the Modified Scheme - , it would have been more apt for the words “an authority” to be replaced with the words “that authority” or “the authority”; the use of the indefinite suggests that the employment as a retained firefighter could be employment with a different authority to the one employing him as a regular firefighter with the only restriction being that the authority employing him as a retained firefighter before April 2006 must have been the same one that required him to continue as a retained firefighter when he took up employment as a regular firefighter (which could be with a different authority). This would be coherent because sub-paragraph (ii) covers the situation where there is continuity of firefighting employment but where the firefighter moves from a retained firefighter role to a regular firefighter role (whether or not with the same authority) and sub-paragraph (iii) covers the situation where there is overlap; if it does not matter whether the successive roles are with the same authority or not it is difficult to see why it would matter if the overlapping roles are with the same authority or not.
97. I should also address the meaning of the words “with the agreement of the authority” in sub-paragraph (iii). Given the structure of the provisions, the words relate to the service and do not constitute an independent condition. In other words, service will only qualify under rule 5A(2) if the authority employing the special member as a regular firefighter had agreed to employ him as such while he was also continuing in employment as a retained firefighter (whether with that authority or another). This would exclude service as a regular firefighter where the employing authority had not consented to the firefighter having a second albeit part-time firefighting role at the same time.
98. To interpret this provision as granting a discretion to a Fire Authority over whether to allow special members in this dual employment category to have their service as a regular firefighter qualify as special pensionable service would clearly undermine the legislative purpose. It would allow such firefighter’s rights to equal treatment with those who were regular firefighters throughout their service to be denied at the option of their employing Fire Authority. Such an interpretation would be contrary to the legislative intent and is not necessary since the words “with the agreement of the authority” can be read as suggested above.
99. Mr T should therefore have received notification from both the Staffordshire Service and the Cheshire Service under rule 5A(4) and could make his application for

conversion of his standard pensionable service to special pensionable service under rule 17 of Part 12 to either or both.

100. It appears that this did not happen. While it would have been appropriate for the Staffordshire Service to make Mr T aware that he could have his standard pensionable service converted to special pensionable service when it issued its notification to him and that in failing to do this its notification may have been incomplete and misleading, the Cheshire Service was also required to notify him, and I find that it failed to do so. I find that the Cheshire Service was aware that he was in standard pensionable service under the 2006 Scheme (as it was itself the employing Fire Authority in respect of such service) and also knew that he was and had been a retained firefighter and it had given its agreement to such dual service, so that his service with the Cheshire Service fell within rule 5A(2)(b)(iii) of Part 11. As such, the Cheshire Service had a statutory obligation to issue a notification to him under rule 5A(4) and failed to do so.
101. Rule 5A(14) provides that “Where it is not reasonably practicable to comply with any requirement set out in this rule within the period specified, the authority or applicant as the case may be shall comply with that requirement as soon as reasonably practicable after the end of that period”. While I consider that the Cheshire Service was in breach of its obligation to notify Mr T in accordance with rule 5A(4) and I note the time-limits provided for conversion of standard pensionable service, the possibility of notifications and conversion applications being made out of time has been anticipated by the Amendment Order and it must therefore be the case that such conversion can be made out of time.
102. The most practical solution to remedying the breach of the statutory requirements, misleading information and failure to invite or allow and implement an application for conversion of Mr T’s standard pensionable service to special pensionable service is for the provisions to now be complied with under rule 5A(14). The alternative would be for me to direct compensation for breach of statutory duty.

Conclusion

103. For the reasons set out above, I do not agree with the Adjudicator. I find that the Cheshire Service breached its statutory duty to Mr T in failing to issue a notification to him under rule 5A(4) of the 2006 Order and failed to give him an opportunity to convert his standard pensionable service under the 2006 Scheme to special pensionable service as required by the 2006 Order and as required to fully remedy the breach of the Part-time Workers Regulations identified in Matthews in relation to the less favourable treatment of retained firefighters.
104. I uphold Mr T’s complaint.

Directions

105. Within 28 days of the date of this Determination, as the 2006 Order provides for late compliance under rule 5A(14), Cheshire Service will:-

- Issue to Mr T a notification in accordance with rule 5A(4) and an application form informing him as to his rights to convert his standard pensionable service under the 2006 Scheme to special pensionable service in accordance with rule 17 of Part 12 of the 2006 Order and inviting him to apply accordingly.
- On receipt of any completed application form from Mr T within 2 months, or if later, as soon as reasonably practicable, comply with the other provisions of the 2006 Order in respect of the conversion of Mr T's standard pensionable service to special pensionable service.
- Take all such steps as are necessary to ensure Mr T is put in the same position as if he had been invited to convert his standard pensionable service to special pensionable service at the time he was invited to pay contributions as a special member in respect of his service as a retained firefighter.
- Pay Mr T £500 in recognition of the significant distress and inconvenience he will have suffered.

Camilla Barry

Deputy Pensions Ombudsman

19 June 2025

Appendix

Extracts of the Firefighters' Pension Scheme (Amendment) (England) Order 2014

Amendment to part 2 of the Order:

“Special membership

1A.—(1) Subject to paragraphs (2) to (5) and (15), a firefighter member of any of the following descriptions is also a special firefighter member of this Scheme—

(a) a person who—

(i) having taken up employment as a retained firefighter before 6th April 2006;

(ii) having continued in such employment until the date of his election; and

(iii) having elected⁽³⁾, within the period required by rule 6B(1), or 6B(12) as the case may be, of Part 11, to pay the mandatory special period pension contributions;

(b) a person who—

(i) having taken up employment as a retained firefighter before 6th April 2006;

(ii) having continued in such employment until a date on or after 6th April 2006;

(iii) having, immediately after the termination of such employment, taken up employment as a regular firefighter and continued in that employment until the date of his election; and

(iv) having elected, within the period required by rule 6B(1) of Part 11, or 6B(12) as the case may be, to pay the mandatory special period pension contributions”

Amendment to part 11 of the Order:

“Purchase of service during the limited period

5A.—(1) A person member who satisfies the conditions specified in paragraph (2) may, in accordance with the following provisions of this Chapter, elect to pay pension contributions in respect of his service during the limited period.

(2) The conditions are that—

(a) the person is entitled to join this Scheme as a special member;

(b) the service is—

(i) as a retained firefighter; or

(ii) as a regular firefighter where he took up employment after 5th April 2006 as a regular firefighter immediately after the termination of his employment as a retained firefighter; or

(iii) with the agreement of the authority, as a regular firefighter, but not as a retained firefighter, where he had been employed by an authority as a retained firefighter and then required by that authority after 5th April 2006 to remain in employment as a retained firefighter whilst taking up employment as a regular firefighter.

...

(4) Within two months of the initial date, the authority shall use reasonable endeavours to notify all those existing employees and former employees who may be entitled to join this Scheme as a special member that they may be so entitled."

Amendment to part 1 of the Order, definitions:

"initial date" means 1st April 2014

...

"special member" means a special firefighter member, a special deferred member or a special pensioner member

...

"special firefighter member" has the meaning given in rule 1A(1) to (4) of Part 2"