PENSION SCHEMES ACT 1993, PART X
DETERMINATION BY THE PENSIONS OMBUDSMAN

Applicant	Mr Peter Brown
Scheme	Firefighters' Pension Scheme (**the Scheme**)
Respondent	Nottinghamshire Fire & Rescue Service (**the Service**)

Subject

Mr Brown's complaint against the Service is that his retirement date was incorrectly recorded as 18 November 2013 with his lump sum figures also being calculated based on the maximum possible entitlement as at that date. He says he planned his life and finances around this retirement date but now has to wait until December 2015 to take his benefits.

The Pensions Ombudsman's determination and short reasons

The complaint should be upheld against the Service but only to the extent that significant distress and inconvenience has been caused when working out Mr Brown's benefit entitlement. However there is no entitlement to the incorrect figures that were previously quoted.

DETAILED DETERMINATION

Material Facts

1. Mr Brown joined the Scheme on 30 April 1990. He also applied at that time to transfer monies from previous occupational pension schemes into the Scheme. He had an earlier period of pensionable employment from 18 May 1982 to 7 June 1987 with Mansfield District Council and also another with Center Parcs from 8 June 1987 to 27 April 1990. Both were full-time roles.

2. On 17 May 1990 a letter from Nottinghamshire County Council to Mr Brown said that his transfer from the Local Government Pension Scheme (which related to the Mansfield District Council service) could purchase 3 years and 162 days of reckonable service under the Scheme. They asked him to confirm if he wanted to go ahead with the transfer.

3. Mr Brown responded with a letter of 4 June 1990 asking for the transfer to go ahead.

4. On 19 February 1991 another letter from Nottinghamshire County Council to Mr Brown said that, further to previous correspondence, his transfer from the Local Government Pension Scheme had purchased 3 years and 162 days of reckonable service under the Scheme. They added that the period of service from Center Parcs would purchase a further 333 days and they would be grateful if he would inform them in writing if he wished for that transfer to proceed.

5. Mr Brown responded with a letter of 21 February 1991 confirming that he wanted the transfer to go ahead.

6. A further letter in April 1991 (the exact date of the letter on the fiche record is not clear, but is not material to the outcome) said that they had now received the transfer value in respect of the Center Parcs service. This had actually purchased 352 days in the Scheme.

7. Mr Brown says that he and his partner purchased a house in October 2006. They did so by taking out a three year tracker repayment mortgage. He planned to pay off the capital from his pension cash sum.

8. In January 2007 a “pension verification statement” was sent out by the Service. This said that as part of an “Options exercise” statements were being sent to members to help decide their preferred pension choices. A new software system

would hold all pension information relating to firefighters. This would enable the future production of annual pension statements for members and date had already been entered into the system. However in order to ensure that the information held was accurate they were undertaking an initial verification exercise. The statement enclosed outlined the information they held on Mr Brown and they asked that he check the information for accuracy and complete an enclosed slip as appropriate, highlighting anything that he thought was incorrect which would be subsequently checked by them and the system updated if appropriate. If the forms were not returned it would be assumed that the information was accurate.

9. The pension verification statement gave Mr Brown's service up to 5 April 2006 as 22 years and 138 days. His date of retirement was given as 18 November 2013 (this was the date at which he would complete 30 years of service) and a pension of £18,964.39 a year was quoted. Under the "Your membership details" section it recorded 15 years and 341 days as being accrued through service from 30 April 1990 (all of which is recorded as whole-time service). It also noted a single period of "TRANSFER'D IN NON FIRE SERVICE" from 18 May 1982 to 7 June 1987, a calendar period of 5 years and 21 days, for which he had been credited a period of 6 years and 162 days.

10. The 2009 pension benefit statement sent to Mr Brown also gave a retirement date of 18 November 2013. This estimated a standard pension of £20,718.14 a year payable at that time. Alternatively he could take a maximum lump sum of £97,478.75 with a reduced pension of £15,538.61 a year.

11. Mr Brown says that in 2009, when the tracker mortgage was due to end, having taken into account the previous statements he and his partner decided on another three year tracker mortgage to 2012, planning to allow it to switch to variable rate for a year and pay it off in November 2103.

12. There was no pension benefit statement sent in 2010. The 2011 pension benefit statement also gave a retirement date of 18 November 2013. This estimated a standard pension of £20,900.66 a year payable at that time. No commutation figures were given.

13. The 2012 pension benefit statement also gave a retirement date of 18 November 2013. This estimated a standard pension of £20,845.15 a year payable at that time. Alternatively he could take a maximum lump sum of £106,761.95 with a

reduced pension of £15,538.61 a year. These figures were based on a pensionable pay figure of £31,267.73.

14. On 28 January 2013 Mr Brown requested a pension forecast for a retirement date of 18 November 2013. Over the coming months he chased up for the outstanding information a number of times.

15. In March 2013 the Service issued a briefing paper saying that all pension administration was being transferred to Leicestershire County Council. Mr Brown chased the new department for a response in April and May 2013. On 20 May he was told that there was a delay in receiving the data from Nottinghamshire County Council's pension department. Later in May he was told that there was a problem with the transferred pension figures which they were investigating.

16. On 26 July 2013 a response was sent to Mr Brown by Leicestershire County Council highlighting an error that was made. This also included two sets of revised benefit calculations as at 29 May 2013 (see below paragraph) based on corrected figures. They reiterated that they had recently taken over the administration for the Scheme and that they always check the service details they receive to ensure they are correct before they calculate any figures for members. They said that unfortunately they had discovered that the service record for previous transfers gave a credit of 6 years and 162 days whereas all the correspondence and calculations from Nottinghamshire County Council gave a total of 4 years and 149 days for the two transfers. They subsequently requested that Nottinghamshire look into this and they responded to say that they could only identify transfer credits of 352 days and for 3 years and 162 days. Although Mr Brown had been written to and informed of the correct level of service bought by the transfers at the relevant time this had not been correctly recorded on their administration system and so benefit statements produced had been using incorrect information. With the incorrect service credit his normal retirement date would have been 18 November 2013 (when he would be age 51) as this was the point where 30 years' of service would be completed. But with the correct service credit it is 1 December 2015 (just over age 53 for Mr Brown).

17. The first calculation enclosed gave the benefits payable on 18 November 2013 as a standard pension of £19,037.20 a year or a reduced amount of £17,099.02 a year plus a £42,833.70 lump sum. The second set of figures for benefits payable at 1 December 2015, the new date for when 30 years' service would be completed, gave a pension figure of £21,179.76 a year. The alternative was a reduced amount of £16,166.80 a year plus £107,776.66 lump sum.

Summary of Mr Brown's position

18. All the pension statements that he has ever received indicated a retirement date of 18 November 2013. He had only ever received three pension statements since joining the service these being sent 19 years after he joined the service. In July 2013 it was confirmed that the statements were all incorrect and a new revised retirement date given. No explanation was offered or available and his requests for an explanation had been ignored for four months. The error was clearly discovered because of his request for details and not because of the transfer process as another member had received his details within two weeks of asking in February 2013.

19. He was made aware of the details from 1990 and 1991 around the end of May 2013. These details may have been sent to him at the time of the transfers but he does not have them now. He adds that it was strange that the letters concerned were not produced when he made a freedom of information request to the administrators but that these papers were provided to my office when we wrote to them. Given the time that has passed it was reasonable that he be unaware of any discrepancy.

20. The 2007 statement referred to transferred-in non-fire service. He took this to mean it was a combined total and the statement did not refer to either the Mansfield Council or Center Parcs service or differentiate between the two. If he had been aware he would have highlighted the error. In any event they should have checked his figures were correct from the start of his employment.

21. The incompetency and lack of concern by the Service had created a great deal of stress for him and his partner. They had planned their lives around the indicated retirement date which meant that there had been massive financial implications to them. He felt that he was being expected to accept something that was not his fault.

22. Referring to the amended figures, if he retired in November 2013 his lump sum would be only £42,833.70 for 28 years' service. Retiring with 30 years' service in December 2015 the figure would be £107,778.66. Mr Brown and his partner had an outstanding mortgage debt of £80,000 which he had planned to pay off. Retiring in 2013 was not feasible. The amount of the lump sum available was the key consideration in his decision making.

23. For the year up to October 2013 he had been paying a rate of 5.59% on his mortgage due to the expectation of paying it off in November. He had been happy to pay a higher rate for a period of one year at the end of which his mortgage would be paid off. If he had been aware of the error in 2012 and a retirement date in December 2015 he could have re-mortgaged on a two or three year tracker at 1.68% saving him around £3,000 in extra payments. (Mr Brown does not have any evidence that this rate was available to him and says that he recalls this being the rate from memory).

24. He later had to re-mortgage as he has been struggling financially and the dispute process took a long time. The cost of this was a 3% early repayment fee, equating to £2,500, and an additional £6,500 in interest.

25. Mr Brown adds that there were no tracker/fixed rate deals for a one year term. So the decision was made to continue on the variable rate to the anticipated retirement date in November 2013. There was no reason to consider a tracker/ fixed rate for two or three years when he thought he was retiring the following year. He would in that event have had to continue paying the mortgage for an additional one or two years or, if he attempted to pay it off before the end of the deal, incur the early repayment charge.

26. He was due to start a new job on 25 November 2013 which was to pay £11,830 a year. But he felt he could not take the position until his pension figures were clarified – with a difference in the lump sum figures of £65,000 it would have been impossible for him to take the role. The employer concerned had now employed someone else due to the uncertainty of his retirement. Mr Brown has provided my office a letter of 3 June 2013 confirming a start date of 25 November 2013 for a driver's position.

27. He and his partner had also been planning their wedding for the following summer with some of the commutation figure. They were also planning a honeymoon in Australia as well as meeting some of her family. It was more by

luck than judgment that they had not paid any deposits. She had spent the previous 18 months planning this which was upsetting for her. Even their Christmas celebrations were planned using the commutation figure. Saving money was not possible due to the higher amount of pension being paid.

28. His partner had also planned to reduce her hours at work in order to help their son and daughter-in-law with childcare. In turn this would have allowed his daughter-in-law to return to work.

29. To put the matter right he would like to be allowed to retire in line with all the statements that were produced, and so not be put at any financial disadvantage.

30. He also refers to a revenue budget monitoring report of 28 February 2014. In this there is a discussion about errors that have been uncovered as part of a data transfer process between administrators. A taxation issue relating to pensions was resulting in significant sums being paid to HMRC. It had been decided that this would be met from balances and therefore there would be an authorised overspend in the budget. A further issue was raised relating to errors uncovered as part of the data transfer process. There were a number of software related errors within the old payroll system. It had not been anticipated at that time that the costs would fall on the authority but final figures and solutions to the problem were yet to be agreed. Mr Brown says that this shows the Service's finances are being used to correct pension issues.

Summary of the Service's position

31. The delay in responding to Mr Brown's query of January 2013 was largely due to the transfer process of pension documentation between the two authorities to the new pension administrators in Leicestershire. A query over the figures was also referred back to Nottinghamshire County Council's pension department before writing to Mr Brown with revised figures. It was only at this time that they discovered that there was a problem. Before the transfer Nottinghamshire County Council's pension department was acting as an agent for the Service. While this error had been made by their pension administrators they took the responsibility for addressing the complaint.

32. They first started issuing personal benefit statements in 2009. However these did not split out reckonable service between that from employment and that credited due to transfers from other schemes.

33. The verification statement of 2007 asked members to check the accuracy of the information within the statement and highlight any inaccuracies. Having checked the statement Mr Brown did not make any alterations to the verification statement.

34. While the error was no doubt disappointing to Mr Brown they are only able to calculate and pay the benefits to which he is actually entitled under the rules of the Scheme. They were only putting him back in the position that he would have been in had no mistake been made. They did understand the impact this had had on him and had apologised for the oversight but they would be acting outside the rules in offering him the incorrect figures.

35. The large difference in the lump sum figures was due to the use of different calculation methods for the maximum lump sum where a member had 30 years' service and where a member has less than 30 years' service. With 30 years' service the calculation results in a much higher lump sum payment.

36. Payment of the compensation requested by Mr Brown would have to be found from an unknown budget. As a public sector organisation the difficulty found was in making a judgment around appropriate levels of compensation in this case, and the appropriateness of using public finances to do so. This was particularly the case when it was difficult to assess the impact the error may have had on his situation. Mr Brown could anyway have retired in 2013, albeit with reduced benefits.

37. They have been as compassionate and supportive as possible towards Mr Brown, and have fully cooperated during the complaint process.

Conclusions

38. Mr Brown has asked that he should receive what he was mistakenly told that he would receive from the incorrect retirement date of 18 November 2013. However, the provision of incorrect information does not, of itself, create an entitlement for him to be treated as though the information was correct.

39. If Mr Brown would have acted differently had he been told that his full pension rights, with the larger lump sum, was only payable from December 2015, and if the way he has acted has left him in a worse position, then he may be entitled to compensation for the harm. But that could only apply if it was not reasonable for him to be aware that an error had occurred. So was it?

40. In the early 1990s Mr Brown was sent letters showing the amounts of service that he was to be credited with, with the total extra service credit coming to 4 years and 149 days. On 2007 he was sent a statement, and asked to check it, but this gave a service credit of 6 years and 162 days.

41. Mr Brown says that he does not recall receiving the papers in 1990 and 1991. But I think that it is clear that Mr Brown did receive those letters as he needed to respond in order to give his consent to the transfers.

42. He may not have kept the letters in his possession (he says he did not) but I need to then decide whether it was reasonable that he would have had an idea of the amount of service credit that he received when he received the statement in 2007 showing a different credited service amount. In my judgment I would not have expected Mr Brown to have noticed the discrepancy some 16 odd years later after receiving the letters of 1990 and 1991. The period of time concerned is too long for it to have remained fresh in his memory.

43. Even if he had kept the letters I think it would have been reasonable to accept what he was told without seeking them out to check.

44. I accept that Mr Brown will have had his lump sum in mind when he arranged his mortgages. I also accept that he would have expected that he would only have to pay the standard variable rate of approximately 5.6% for about a year. However, I have some difficulty in understanding why he decided to do that if he could have arranged a fixed rate of 1.68% for two years. He would have been making repayments for a year after he retired – but the cost would have been less than variable rate for a year (and slightly further offset by interest on the pension cash sum, pending repayment when the two years was up). In addition, he has no clear evidence of what his options were, in the form of contemporary mortgage quotations or similar – though, as I have said, I do not doubt that he had options.

45. So I cannot find that Mr Brown has suffered a loss based on his mortgage arrangements.

46. Mr Brown was no doubt disappointed to lose the job that he had secured to start after his planned retirement from the Service. But that role was to pay substantially less than the role he has remained in. There is clearly no financial loss, though there may have been a loss of opportunity to take up a similar job in 2015.

47. A number of other submissions have also been made in relation to his plans for a wedding overseas and his partner's work arrangements. But these I view as too remote for assessing any direct financial loss (and in the case of the wedding Mr Brown says that nothing was paid for at the time the error was discovered).

48. However, Mr Brown discovered in July 2013 that his retirement plans for November were built on sand and that he would have to work another two years to attain the position he already thought he had attained. Mr Brown undoubtedly made his mortgage arrangements around his expectations from the Scheme and he had to rearrange his financial affairs. He had also secured alternative employment, which he may not be able to replicate, and expected to leave the employment of the Service. Finally he had started to make plans for his overseas wedding. The combination will have caused very substantial disappointment, for which he should be compensated. The welcome fact that the Service has treated Mr Brown respectfully will not lessen his disappointment – though it has not worsened it either.

49. I have taken into account judicial guidance (in 1998) that only in exceptional circumstances would an award of over £1,000 be appropriate compensation for distress. I consider these circumstances are *highly* exceptional. It is not easy to make comparisons across different cases, but I set the compensation at £5,000 which I consider consistent with previous exceptional awards.

Directions

50. Within 28 days of this determination the Service will pay to Mr Brown £5,000.

Tony King
Pensions Ombudsman

27 November 2014