

Ombudsman's Determination

Applicant	Mr S
Scheme	Firefighters' Pension Scheme 1992 (1992 FPS)
Respondents	London Pensions Fund Authority (LPFA) London Fire and Emergency Planning Authority (LFEP A)

Outcome

1. I do not uphold Mr S's complaint and no further action is required by LPFA or LFEP
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr S's complaint is that in 1998, he decided to remain a member of the 1992 FPS based on incorrect information. He was told that it was a guaranteed 30 year final salary scheme with only two parameters that could change: the lump sum tax status and the potential for his employee contributions to increase up to 15%. Based on this information, he decided not to pursue an investment choice in property.
4. Following changes to the 1992 FPS, when Mr S tried to transfer out in 2015, he was not given an opportunity to withdraw the full value of his accrued benefits before the 6 April 2015 deadline. He is unhappy about the valuation of his benefits as an unprotected member.
5. Mr S says that in the current scheme, the value of his fund at age 55 is forecast to be worth around £80,000 to £100,000 less than what his promised 1992 FPS would have been worth at that point. He has also lost flexibility and guarantees.

Background information, including submissions from the parties

6. Mr S started employment as a fire fighter with the LFEP
7. The 1992 FPS closed to new members from April 2006 but continued in effect for existing members.
8. Further regulations and orders were made between, 15 February 2015 and 24 March 2015, by the Department for Communities and Local Government (**DCLG**), and laid

before Parliament by the Secretary of State. The Respondents say they were not responsible for any of the regulations or orders but they did respond to various government consultations.

9. On 31 March 2015, the 1992 FPS and the 2006 new FPS closed. From that date, no benefits are payable under those schemes except those provided for by transitional provisions.
10. Members of the 1992 FPS, employed in pensionable service on 31 March 2015, automatically became active members of the 2015 FPS and began accruing benefits under the 2015 FPS from that date. Such members continued to be entitled to payment of a pension under the 1992 FPS on retirement in respect of pensionable service completed in that scheme prior to 31 March 2015.
11. On 22 June 2015, Mr S complained to the LFEPA under stage one of the internal dispute resolution procedure (**IDRP**). In September 2015, the LFEPA responded to the complaint but did not uphold it. The LFEPA confirmed that it had complied with its statutory obligation to offer membership of both the 1992 FPS and the 2015 FPS but that it was not a decision maker in relation to the changes made to the legislation.
12. The LFEPA dealt with Mr S's complaint as follows:-
 - Mr S complained that he was told the 1992 FPS was 'guaranteed' and the use of this word was misleading. The LFEPA responded to say that only benefits accrued within the benefits structure and not the future value of benefits could be guaranteed. The guarantee applied to the defined benefits specified within the scheme regulations which guarantees those benefits at the time the pension is paid.
 - Mr S complained about the way the 1992 FPS was described to him at a seminar he attended in March 1998. The LFEPA said that due to the length of time that has passed, it has been unable to determine which individuals facilitated the seminar and there is no evidence of what was said at the time.
 - Mr S has complained about the timing of the consultation for the FPS 2015 in that it only lasted for 3 weeks. The LFEPA says it was not responsible for that consultation document, the DCLG was.
 - Mr S also complained that his accrued benefits were devalued as a result of pension reforms. Specifically, he said he was not given the opportunity to withdraw from the 1992 FPS in the run up to its closure on 1 April 2015. He says the CETV calculation was punitive, that there were no scheme rules governing cash transfers from the 1992 FPS and the application of existing CETV rules was inappropriate.
 - The LFEPA says it was not responsible for the content, timing, making or implementation of the FPS 2015, the DCLG was. The LFEPA says it has simply effected the changes to the FPS as required by law. Mr S was not precluded from transferring his 1992 pension but was dissatisfied with the CETV and did not wish to become a deferred member. The authority followed the rules in relation to deferred

members. Any complaint about the scheme rules should be referred to DCLG. The LFEPA says the use and calculation of CETVs is governed by sections 93-101 of the Pension Scheme Act 1993.

13. Mr S appealed the stage one decision on 5 November 2015. The Respondents sent their stage two appeal decision to Mr S on 3 December 2015.
14. The Respondents made the following points in response to the appeal:-
 - In 1998 they could not reasonably have been expected to predict that in 2015 the government would implement pension reforms. The government decided to close the 1992 and 2006 schemes.
 - Mr S received a leaflet at the time which made a number of things clear:-
 - Firefighters' pensions are governed by legislation.
 - The legislation has changed a number of times (and thus, it should reasonably be inferred, may change again).
 - Nothing in the booklet (or, it should reasonably be inferred, nothing said orally) can override the terms of the legislation. The leaflet highlights that changes may be made by legislation.
 - They did not know and could not have known at that point that legislation would change in the way that it has done and could not sensibly have made a pension forecast on the basis of anything other than the legislation at the time. They say Mr S still has the option of opting out of the scheme and transferring his pension to another occupational scheme both under the 1992 FPS and the 2015 FPS.
 - They are not responsible for the recent changes to firefighters' pension schemes and say they have acted in accordance with the relevant legislation at all times.
15. Mr S says that he would like the Ombudsman to speak with the relevant authorities to have the legislation and scheme rules changed.

Adjudicator's Opinion

16. Mr S's complaint was considered by one of our Adjudicators who concluded that no action was required by LPFA or LFEPA. The Adjudicator's findings are summarised briefly below:-
 - The Adjudicator confirmed that it is not the role of the Pensions Ombudsman to act as a regulator. The Pensions Ombudsman considers complaints about maladministration and disputes about fact or law.
 - Furthermore, the Pensions Ombudsman does not have lobbying powers to change legislation or scheme rules. If Mr S remains unhappy about the legislative changes

or the scheme rules, he or his MP should approach the DCLG and enquire as to any complaint processes that may be available to him.

- Mr S has complained that he decided to join the 1992 FPS based on incorrect information. He says he attended a presentation and was told that the scheme was guaranteed for 30 years and that only two parameters could change. The Respondents say that due to the passage of time, they are unable to determine which individuals facilitated the seminar and are not therefore able to ascertain what was said at the time. They have also explained that any guarantee would only apply to the benefits accrued and not the future value of benefits. In the absence of any evidence relating to what was said at the presentation, it is not possible to verify what Mr S was told in 1998. However, it is quite usual for an employer to describe accrued benefits as guaranteed as they are protected, in law, up to the date of any change in legislation. The Adjudicator did not therefore consider that this complaint could be upheld.
 - The Adjudicator considered the booklet which was provided to Mr S and which includes details of the scheme. The booklet includes a disclaimer which says: “nothing in this booklet can override legislation.” As the changes to Mr S’s pension were made as a result of legislation, the Adjudicator did not consider that this part of Mr S’s complaint could be upheld.
 - Secondly, Mr S has complained that when he tried to transfer out of the 1992 FPS in 2015, he was not given the opportunity to withdraw the full value of his accrued benefits before the 6 April 2015 deadline. He is unhappy about the valuation of his benefits as an ‘unprotected member’. As explained by the Respondents, transfer values are calculated in accordance with legislation. Although Mr S is unhappy with the transfer value he received, the Respondents must calculate transfer values by applying the relevant legislation and actuarial guidance. The Adjudicator did not consider that this part of the complaint could be upheld.
 - Finally, Mr S is unhappy with the current scheme, the FPS 2015, as he says the value of his fund at age 55 is forecast to be less than what the promised pension from the 1992 FPS would have been worth. He says he has lost flexibility and guarantees. However, the changes to the scheme were made by Parliament and not by the Respondents. The Respondents were obliged to apply the rules and their actions do not amount to maladministration.
17. Mr S did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr S provided his further comments which do not change the outcome. I agree with the Adjudicator’s Opinion, summarised above, and I will therefore only respond to the key points made by Mr S for completeness.

Ombudsman's decision

18. Mr S has sent in his detailed comments which I have read. While I do not propose to address all of the comments made, I will address those which I consider to be key in reaching my decision. Mr S's comments have been summarised below:-
- The Adjudicator has made no reference to the legality of all three fire service pensions with regard to the treatment of short term benefits under section 72 (1) of the PSA 1993.
 - The Adjudicator has not considered a point of law that is critical to the illegal reduction in the value of the deferred pensions in all three pension schemes. Although the illegal pension contracts were ultimately the responsibility of the DCLG, LFEPA are currently administering the pension schemes with some illegal conditions and therefore the Pensions Ombudsman should have jurisdiction to make a ruling as it concerns a matter of law.
 - Mr S questions whether his accrued benefits are guaranteed or legally protected. He also reiterates that the booklet he was provided with in 1998 was inaccurate and out of date.
 - Mr S disagrees with the Adjudicator's choice of words when stating that the Opinion was written in the absence of any evidence relating to what was said at the presentation. He says it is the Respondents who have been unable to identify the individual who gave the presentation or provide any evidence of what was said. Mr S says he has given clear evidence of what was said at the presentation based on his recollection and his actions.
 - The CETV would have been substantially higher if the deferred benefit age had correctly been 55 instead of 60.
 - His complaint has never been about contesting the ability of Parliament to change the pension scheme. He says his complaint concerns the provision of misinformation and maladministration with regard to the incorrect and misleading information provided about the 1992 FPS throughout the pension contract.
19. As set out in the Adjudicator's Opinion, the Respondents are obliged to implement the changes to the scheme brought about by changes in legislation. The Pensions Ombudsman does not have lobbying powers to change legislation or scheme rules. If Mr S remains unhappy about the legislative changes or the scheme rules, he or his MP should approach the DCLG and enquire as to any complaint processes that may be available to him.
20. As the Respondents were not responsible for the changes to the scheme and therefore, the reduction in any pension, I cannot make a finding against the Respondents for simply administering the scheme. The Respondents' actions do not constitute maladministration.

PO-12836

21. In relation to the guarantee given to Mr S, even if this was given, it is the benefits and not the actuarial value of benefits which are guaranteed. In relation to the Pensions booklet, the Respondents have confirmed that although the name of the chief fire officer named in the booklet was incorrect, this had no bearing on the pension information contained in the booklet which was accurate and correct. As the remainder of the information in the booklet was correct and up to date, no loss or detriment has been caused to Mr S.
22. I agree with the Adjudicator that there is no objective evidence of what was said at the pension presentation in 1998 and due to the passage of time, and unfortunately, it is not possible to confirm the accuracy of Mr S's recollection of what he was told almost 20 years ago.
23. The information provided to Mr S about his pension benefits throughout the pension was correct and relevant at the time it was given before the changes came into force.
24. Therefore, I do not uphold Mr S's complaint.

Anthony Arter

Pensions Ombudsman
21 July 2017