

Ombudsman's Determination

Applicant	Mr B
Scheme	Firefighters' Pension Scheme (the Scheme)
Respondent	West Midlands Fire Service (WMFS)

Outcome

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

Complaint summary

3. Mr B's complaint is that WMFS had a duty to inform him that he had reached 30 years' service and therefore could have opted out of the Scheme. He is asking for a refund of the contributions he has paid since reaching the maximum level of service.

Background information, including submissions from the parties

4. Mr B joined the Scheme on 9 January 1984. The Scheme is a final salary arrangement, meaning that benefits are based on the amount of service accrued and salary. For every year of service, the Scheme provides 1/60th of the member's pay. To calculate this, total pensionable service is divided by 60 and then multiplied by average pensionable pay. Once the member has achieved 20 years' service, pensionable service is accelerated and doubled for every year thereafter. The member's benefits are capped at a maximum of 40/60ths multiplied by average pensionable pay. The Scheme's normal retirement age is 55, but a member may retire from age 50 if they have accrued 25 years' service. Mr B reached the maximum level of 40/60ths when he accrued 30 years' service on 9 January 2014.
5. Over the years, Mr B received annual benefit statements providing details of his entitlement under the Scheme. In relation to this complaint, Mr B provided benefit statements and estimates for 2011, 2014 and two in 2015. Each statement/estimate showed the amount of service accrued and the 2015 statements/estimates showed no change in the amount of benefits accrued (i.e. the annual pension was for the same amount). Mr B had continued to pay contributions into the Scheme after he

reached maximum service, even though this no longer enhanced his retirement lump sum and annual pension.

6. Following an enquiry through his union in late 2016, Mr B received information that he could have stopped paying contributions from the time he reached maximum service and deferred his benefits to age 60. The advice was to ask WMFS if it was its responsibility to have informed him of this.
7. Mr B raised a complaint with WMFS under the Scheme's internal dispute resolution procedure (**IDRP**). His complaint was that he had unnecessarily paid additional contributions into the Scheme and WMFS ought to have made him aware that he could opt out of the Scheme. This was not upheld by WMFS under both stages of the IDRP. It argued that The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 (the **Regulations**) does not require it to provide such information to members. Also, that Mr B had been provided with information through other formats (notably scheme member guides) during his employment concerning maximum service and opting out of the Scheme.
8. Mr M remained unhappy with the response and made a complaint to this office. Part of Mr B's discontent is that he does not understand why a member would continue to pay into the Scheme if they could not continue to accrue retirement benefits. Both parties also mentioned legal action brought by Mr B's union in relation to members who joined between the ages of 18 and 20 and accrued 32 years' service up to age 50, and, as a result, had the additional two years of contributions refunded to them.

Adjudicator's Opinion

9. Mr B's complaint was considered by one of our Adjudicators who concluded that no further action was required by WMFS. The Adjudicator's findings are summarised briefly below:-
 - While it is correct that members who continue to contribute after reaching the maximum level of service do not accrue additional benefits at retirement, there are other benefits provided by remaining an active member of the Scheme. Active Scheme members are entitled to receive a death in service lump sum grant, and ill health retirement benefits are more generous when compared to those given to deferred members. For some members, it can be beneficial to retain these benefits, even though they do not accrue additional benefits at retirement.
 - WMFS is correct that there is nothing within the Regulations (or any guidance issued by The Pensions Regulator) stating that it must make members aware that they can opt out once they reach maximum service. It could also be argued that this can be construed as financial advice, which WMFS are not regulated to provide.
 - WMFS did provide adequate information to members during Mr B's employment regarding the option to opt out of the Scheme and details about maximum service.

Mr B was also provided with statements/estimates showing that he had reached the maximum amount of service and it was therefore his responsibility to decide if it was in his best interests to have continued paying contributions.

- In relation to the legal proceedings taken by Mr B's union concerning other members, referred to in paragraph 8 above, those proceedings do not apply to Mr B's case, as his circumstances are different. However, the issue was well known to union members and therefore ought to have made Mr B aware of his own situation. Again, it was up to Mr B to decide whether it was in his own interests to continue to be an active Scheme member.
- Mr B also asked for a refund of his contributions, which is not possible under the Scheme rules as his membership exceeded the two year service limit for such refunds.

10. Mr B did not agree with the Adjudicator's Opinion and says:

"I would like to draw your attention to information sent to you by ... confirming that he knew that at midnight on 8th of January 2014, I attained 30 years pension contributions in my 30 year pension scheme, therefore he would have known that I could not have had any benefit by paying any further payments into the scheme, yet continued to deduct them from my salary without any thought of contacting me to discuss the situation.

By arriving at your decision you clearly condone this action which I believe is unfair, I have only ever asked for the contributions that have in my opinion been wrongly taken from me, to be returned and nothing else."

11. As Mr B does not accept the Adjudicator's Opinion, the complaint was passed to me to consider. Mr B's further comments do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr B for completeness.

Ombudsman's decision

12. While I appreciate that Mr B believes that the situation in which he now finds himself is unfair, this does not automatically mean that WMFS have done something wrong. The Adjudicator is correct that there is nothing within the Regulations, or any other guidance or legislation, that compels WMFS to inform members of their options once they have reached the maximum level of service. I agree that WMFS would have known when Mr B reached his maximum level of service, as this is also shown in the statements/estimates sent to Mr B, but there is no obligation on WMFS part to act on this information. To do so can be considered to be giving financial advice, which scheme managers and administrators are not regulated to provide. It is therefore the responsibility of individual members to assess their own financial position and decide whether they wish to retain some benefits of active membership, such as death lump sum grants and more generous ill health early retirement benefits, or to forgo those

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benefits in order to save on paying further contributions. Fortunately, Mr B has not needed to access these more generous benefits throughout this period but nevertheless the cover was in place as a result of remaining as an active member of the Scheme.

13. Therefore, I do not uphold Mr B's complaint.

Anthony Arter

Pensions Ombudsman
22 March 2018