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[REDACTED]
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[REDACTED]

Our Ref: PO-19150

13 March 2019

Dear Mr C [REDACTED]

Firefighters' Pension Scheme

I have looked at your complaint and all the information provided by you and Lancashire Fire and Rescue Service (**LFRS**). I now enclose my Opinion on your complaint. A copy of this is also being sent to LFRS.

Please be aware that our Opinions are often published on The Pensions Ombudsman website, therefore, for confidentiality purposes, your name has been anonymised. The system used is to refer to the applicant by their title, and the last letter of their surname.

If you and LFRS tell me that you agree with my Opinion, or I do not hear from you by 27 March 2019 the investigation will come to an end on the terms explained in my Opinion. Your complaint will be treated as withdrawn, in line with our withdrawal procedures, because all parties have accepted the proposed outcome.

If you disagree with my Opinion, please write to me by 27 March 2019 providing any additional facts or reasons that you think support a different decision from mine. There is no need to repeat arguments already made or send information already provided.

LFRS is being given the same opportunity to comment on my Opinion.

When I have received all the comments I will look at the complaint again. I might need to make further enquiries. If my view is materially changed as a result of comments or further enquiries, I will issue a revised Opinion.

If you or LFRS contest my Opinion it can be referred to an Ombudsman to issue a final and binding decision. Please note: if I have said in my Opinion that an Ombudsman is unlikely to reach a different decision or make a different award, and you decide to ask for an Ombudsman's decision, it is possible that no award will be made by the Ombudsman, and any offer previously made to you by a party might be withdrawn by that party.

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The letter accompanying this document explains what your options are depending on whether or not you accept my opinion. Please read the letter carefully and take action by the date given, or the investigation might come to an end.

Opinion by adjudicator for the Pensions Ombudsman

Applicant Mr N
Scheme Firefighters' Pension Scheme (**the Scheme**)
Respondent Lancashire Fire and Rescue Service (**LFRS**)

Outcome

1. I am authorised by the Pensions Ombudsman to give an opinion on the merits of complaints, whether or not they can be upheld and, if applicable, what should be done to put matters right.
2. I do not agree that this complaint should be upheld and, in my opinion, no further action is required by LFRS.
3. My reasons for reaching this view are explained in more detail in the section, "My findings".

Complaint summary and background

Complaint

4. Mr N has complained that since he was retired on the basis of ill health, he has been paid a B1 Ordinary Pension rather than a B3 Ill-Health Pension. He says this is specifically prohibited by the terms of the Scheme, The Firemen's Pension Scheme Order 1992 (**the Order**).

Background

5. In July 1998, Mr N was retired on the basis of ill health from his employment with LFRS. As a result, he was entitled to an ill-health award set out under B3 of the Order (see Appendix below).
6. In 2016, Mr N considered the pension he was receiving and took the view that his pension was being incorrectly paid. His position is that since 1998, his pension has

been paid on the basis of a B1 Ordinary Pension, as opposed to the B3 Ill-Health Pension he ought to have been entitled to. Mr N highlights that if an individual is entitled to an ill-health pension, they are prohibited from receiving a B1 Ordinary pension.

7. Part B (B1) of the Order states:

"B1 Ordinary pension

(1) Subject to paragraph (2), this rule applies to a regular firefighter who retires if he then—

...

(c) does not become entitled to an ill-health award under rule B3."

8. The complaint was considered by LFRS under the Internal Dispute Resolution Procedure but not upheld. LFRS was satisfied that Mr N is being paid the correct pension. Subsequently, Mr N referred the matter to us.

My findings

9. The sequence of events is not in dispute, so I have only set out the key points in my Opinion. I acknowledge there were many other exchanges of information between all the parties.
10. Mr N is concerned that his pension has been underpaid quite considerably over a significant period of time. His position is that he is being paid a B1 Ordinary Pension, when in fact the Order, quoted above, prohibits this. He considers that he should be in receipt of a pension calculated on the basis of B3 (4). However, I disagree.
11. Mr N is entitled to a B3 pension. This is not under dispute. To establish Mr N's B3 pension, LFRS has compared the benefits payable under B3 (4) against a notional pension equivalent to the benefits that would have been payable under a B1 Ordinary Pension. This comparison test is set out in B3 (5), which goes on to direct that where the B3 (4) pension exceeds the notional pension, it is the notional pension that is payable. It is this notional pension that is being paid to Mr N.
12. B3 (5) states:
- "the amount of the ill-health pension is that of the notional retirement pension."
13. In my view, this means that Mr N is still being paid a B3 Ill-Health Pension, albeit it is equivalent to the B1 Ordinary Pension.
14. I understand Mr N's argument that the notional payment is effectively a B1 Ordinary Pension, which by way of being retired on ill health grounds, he is prohibited from receiving. But that does not preclude the B3 Ill-Health Pension from being capped at

- the same level as the B1 Ordinary Pension, and I am not persuaded by his argument that the pension being paid is incorrect.
15. For the avoidance of doubt, my view is that the pension being paid to Mr N is not a B1 Ordinary Pension as he asserts. He is receiving a B3 Ill-Health pension calculated on the basis of B3 (5), which, whilst equivalent to a B1 Ordinary Pension, is not a B1 Ordinary Pension.
 16. I have considered the legal opinion Mr N has presented, but I do not agree with its analysis. B3 (5) provides a cap on the level of pension an individual receives so that it does not exceed the level that an individual would have received had they retired under ordinary circumstances. In my view this makes sense, particularly given that in addition to the pension, the Regulations allow for an Ill-Health Gratuity and, if the disablement is attributable to a qualifying injury, an Injury Award Gratuity and Injury pension. This range of awards, in my view, provides benefits that recognise the loss of future earnings and the loss of future earnings growth that Mr N suggests should in fact be provided by an Ill-Health Pension paid in excess of the B3 (5) cap. I cannot see how it would be appropriate for these awards to be made in addition to an enhanced B3 Ill-Health Pension that exceeds what a member would otherwise have received had they achieved full service.
 17. In summary, I do not agree that a B3 Ill-Health Pension provides an avenue to a pension in excess of what would have been received under the B1 Ordinary Pension.
 18. Mr N has also suggested that some allowance ought to be made for lost future increases in salary from the pay scale or promotions that he may have achieved, by increasing his average pensionable pay in line with what he could expect to receive, had he continued employment to the point of compulsory retirement. This argument has already been determined by a former Ombudsman of this Office, and I understand Mr N has had sight of that determination. The Ombudsman found that the notional retirement pension is based on the actual average pensionable pay, not a hypothetically increased average. Nothing in what Mr N has submitted causes me to reach a different view on this issue.
 19. I would add that the use of actual in the context of the average pensionable pay, in my view, serves to distinguish between the notional elements of the calculation of the notional retirement pension (i.e. the years to compulsory retirement) and the actual amounts (i.e. the actual average pensionable pay).
 20. It is therefore my opinion that this complaint should not be upheld.



Thomas Coutts
Senior Adjudicator

13 March 2019

Appendix

The Firemen's Pension Scheme Order 1992

Part B

B1 Ordinary pension

- (1) Subject to paragraph (2), this rule applies to a regular firefighter who retires if he then—
- (a) has attained the age of 50, and
 - (b) is entitled to reckon at least 25 years' pensionable service, and
 - (c) does not become entitled to an ill-health award under rule B3.

Schedule 2 Personal Awards

Part III

Ill-Health Pension

Rule B3

- 1 (1) Paragraphs 2 to 5 have effect subject to Parts VII and VIII of this Schedule, and paragraphs 3 and 4 have effect subject to paragraph 5.
- (2) In paragraphs 2 to 4, A is the person's average pensionable pay.
- 2 Where the person has less than 5 years' pensionable service, the amount of the ill-health pension is—

$$\frac{A \times B}{60}$$

where B is the greater of one year and the period in years of his pensionable service.

- 3 Where the person has at least 5 but not more than 10 years' pensionable service, the amount of the ill-health pension is—

$$\frac{2 \times A \times C}{60}$$

where C is the period in years of his pensionable service.

4 Where the person has more than 10 years' pensionable service, the amount of the ill-health pension is the greater of—

$$\frac{20 \times A}{60}$$

and

$$\frac{7 \times A}{60} + \frac{A \times D}{60} + \frac{2 \times A \times E}{60}$$

where—

- D is the period in years of his pensionable service up to 20 years, and
- E is the period in years by which his pensionable service exceeds 20 years.

5

(1) Where—

(a) if the person had continued to serve until he could be required to retire on account of age, he would have become entitled to an ordinary or short service pension ("the notional retirement pension"), and

(b) the amount calculated in accordance with paragraph 3 or 4 exceeds the amount of the notional retirement pension,

the amount of the ill-health pension is that of the notional retirement pension.

(2) The notional retirement pension is to be calculated by reference to the person's actual average pensionable pay.

Please respond by the date shown above. I will consider reasonable requests for extensions to the deadline so if you need more time to reply, please let me know as soon as possible, explaining why.

Yours sincerely



Thomas Coutts
Senior Adjudicator

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