

# CESHIRE FIRE AND RESCUE SERVICE

**MEETING OF:** LOCAL PENSION BOARD – FIREFIGHTERS PENSION SCHEME  
**DATE:** 9 AUGUST 2022  
**REPORT OF:** PENSION SCHEME MANAGER  
**AUTHOR:** JILL SWIFT

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**SUBJECT:** FIREFIGHTER PENSION SCHEME UPDATE

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## **Propose of the Report**

1. The purpose of this report is to provide the Pension Board with an update on current issues relating to the Firefighters' Pension Schemes and the local governance arrangements in place to ensure effective administration of the schemes.

## **Information**

### **Membership Statistics**

2. Membership statistics are detailed in Appendix A. When comparing the data from Q3 with Q2 there do not appear to be any significant trends.

### **McCloud – Immediate Detriment Update**

3. On 8 October 2021 the Local Government Association (LGA) and Fire Brigades Union (FBU) introduced the Memorandum of Understanding (MOU) and the Immediate Detriment Framework (IDF). This built on the Home Office guidance released in June 2021, but provided a more detailed approach which aligned with the remedying legislation and a description of how immediate detriment cases should be dealt with. It was expected that all FRSs would adopt the framework and follow the processes for payment. On 8 November, the Fire Authority elected to adopt the IDF.
4. However, on 29 November, HM Treasury and the Home Office released a statement advising that in the course of drafting the McCloud Bill, it had become clear that there were a number of gaps and uncertainties in current legislation, which posed significant risks to operating the remedy smoothly and predictably for both members and schemes. These risks are predominantly related to taxation and may result in members receiving unforeseen tax bills or having their case reviewed multiple times in the future.
5. The Home Office confirmed that they had withdrawn their immediate detriment guidance, and advised services not to proceed with immediate detriment cases prior to the remedy legislation being

finalised. They also concluded that due to the complexity of the issues, it is reasonable to expect more issues to emerge as they continue their work drafting secondary legislation.

6. In addition, they advised that they would not be able to provide additional funding for any immediate detriment costs incurred by any services who opted to continue processing cases. Costs will need to be borne by the service's operating account and will include any compensation payments, scheme sanction charges or interest payments.
7. Whilst the withdrawal of the Home Office guidance did not impact the MOU or IDF, it did raise concerns for services who had elected to adopt the IDF and further legal advice was sought from the LGA. As a result of the uncertainty for members and schemes, the immediate detriment has been paused until further clarification is received on the potential risks. Anyone in scope for immediate detriment will therefore retire under the current rules and their case will be reviewed and recalculated in the future.
8. The Scheme Advisory Board wrote to the HM Treasury in December requesting further detail on the risks but has not yet had a response. The legal opinion received in December confirmed that services can continue to utilise the IDF as a mechanism to progress immediate detriment retirements but it was not able to provide full clarity on taxation matters or provide assurances on the funding position.
9. FPS Bulletin 54 confirmed that there are no further changes in the current position. Therefore at this time, the IDF process remains paused.
10. The FBU has indicated its intention to bring claims against services who do not proceed with the IDF. This may take the form of complaints to the Pensions Ombudsman where compensation would be sought for the distress and inconvenience caused by late payment or non-payment, or possibly test cases in court.

### **McCloud – Prospective Remedy**

11. The McCloud Remedy will be implemented in two phases, prospective and retrospective, delivered through primary and secondary legislation. The first phase of remedy is to make changes to the scheme regulations, in line with the Public Service Pensions & Judicial Offices Bill (PSP&JO Bill), which will close the legacy pension schemes to future accrual from 1 April 2022 and ensure all members who remain in service from 1 April 2022 do so as members of the reformed scheme (the 2015 Scheme). This will ensure future equal treatment.
12. In November, the Home Office launched a consultation on the draft regulations needed to enact this phase of remedy. From 1 April 2022

any remaining members with full protection will be moved to the 2015 scheme.

13. The Local Government Association (LGA) Fire Communications Working Group developed a suite of letters for services to use to communicate the changes to affected members. All remaining fully protected members received notification in March to advise them of the changes to their scheme from April, and for all other members a communication was published in the Green Bulletin and on the Firefighter Pensions hub on the intranet.
14. The consultation also sought feedback on the implications where ill health cases commence whilst members are still in their legacy scheme, but conclude after they have been moved to the 2015 scheme. The proposal was to implement a protection to ensure these members are not at a detriment. There were no pending ill health cases in Cheshire that were affected by this change.
15. All fully protected members were moved into the 2015 scheme from 1<sup>st</sup> April 2022 and in June, those who were members of the 1992 scheme, also received a follow up letter providing important information about the differences between the 1992 and 2015 scheme that they needed to be aware of such as death grant nominations and transfers.

#### **McCloud – Data Collection Exercise**

16. In October 2023, the retrospective remedy exercise will commence. This will involve placing all affected members back into the 1992 or 2006 scheme for the remedy period, which is 1 April 2015 to 31 March 2022.
17. A data collection exercise will be required in advance of this, to gather data on breaks in service, pensionable pay and contributions for each member and for each year of the remedy period. As the definition of pensionable pay varies across the 3 schemes, it will also involve calculating what the pensionable pay would have been in the different schemes, therefore as well as gathering actual data, a number of additional calculations will be required.
18. The LGA have provided guidance and templates for services to use to carry out this exercise, and they hosted a payroll workshop in May 2022. This workshop identified that some services would struggle to collect data where there had been a change in payroll providers during the remedy period, and most services highlighted that due to the number of members involved, it would be a significant project requiring additional resource and approximately 6 months to complete.
19. In Cheshire, a new payroll provider was appointed in July 2019. However, access to previous years pay data is only available in the form of pdf payslips, meaning that all work to collate this data will be manual. XPS will provide a copy of the information available in their

systems to allow the Service to carry out reconciliation and fill in any gaps in the data.

20. The pension team have already commenced work on this exercise. To date, 72 out of 514 cases have been completed which is 14%. There are some outstanding queries with regards to eligibility for remedy. Once answers to those queries have been received, the total cases in scope could potentially increase to 616.

### **McCloud Remedy Self-Assessment Survey**

21. In May 2021, the LGA launched a self-assessment survey to gather information on the readiness of the fire sector to deal with the McCloud remedy. The survey looked at a number of key areas such as current administration arrangements, data quality and availability, business processes for calculations, legal and finance matters, member communications and levels of knowledge, capability and capacity. Cheshire's response is at Appendix B and C.
22. In the area of administration, a large proportion of services are administered by West Yorkshire Pension Fund. Whilst LLP and XPS have a smaller market share. There are only 2 services who administer pensions 'in-house'. It was noted that the marketplace for firefighter pension administration is shrinking, namely due to the time and expertise needed to deal with what is a very complex scheme and the number of administrators is likely to shrink further.
23. The survey highlighted issues such as availability of pay and contribution data where services have changed HR systems or payroll providers since 2015 and the resources required for the data collection exercise. Most services indicated that they would need additional resource to obtain and assess data for McCloud and also the remedy for the Matthews case, which is likely to commence in 2023.
24. Services indicated concerns about the processes that will be needed to recalculate pensions, in particular for taxation. It is also clear that services are struggling to identify the potential costs of remedy and therefore the majority did not have an allocated budget for direct and indirect remedy costs.
25. In the area of communications, most services felt that the LGA should provide information such as FAQs at key points during the remedy process and there was an appetite for modellers or online tools to allow members to project benefits. The majority felt that services should provide information to the workforce on timescales and next steps. Most services had a remedy project team or working group and that included input from administrators.
26. Responses on knowledge, capability and capacity were mixed but on average services rated their internal knowledge and capacity as 5.67 out of 10. Most had identified this as a risk on their corporate risk

register and were looking to access additional training and some indicated that they would seek external expertise to help.

27. The key risks highlighted for Cheshire Fire related to data and internal knowledge. Since the survey launch, further work has been completed to identify members impacted by McCloud and a Pensions Manager role is in place to increase knowledge and capacity within the team.

### **Retained Firefighters Modified Pension Scheme - Matthews Remedy**

28. Following the Matthews v Kent and Medway Town case in 2006, fire services undertook a time-limited options exercise in 2014 and 2015 to give all firefighters who had retained service between 1 July 2000 and 5 April 2006 access to a Modified version of the 2006 Firefighters' Pension Scheme. The Modified version of the scheme provided broadly the same benefits as the 1992 scheme.
29. This case came about due to the introduction of the Part-time Workers regulations in July 2000. Prior to 6 April 2006, retained firefighters did not have access to a pension scheme.
30. The options exercise was limited in scope only to those members with relevant service and members could only backdate their service to 1 July 2000, even if they had service going back further than this.
31. In 2018, a further case concerning part-time workers pension provision (O'Brien v Ministry of Justice) ruled that the Part-time Workers Directive should have been implemented from 7 April 2000 rather than 1 July 2000 and it also concluded that part-time work undertaken before 7 April 2000 must be taken into account for the purposes of calculating a retirement pension.
32. In March 2022, a Memorandum of Understanding (MoU) was agreed between the government, the Fire Brigades Union, the Fire & Rescue Services Association, and FRA employers.
33. The MoU outlines that there will now be a second options exercise to provide those included in the first exercise the opportunity to backdate their pension to their start date, where this is before 1 July 2000. It also requires that any members with retained service between 7 April and 30 June 2000 are now given the opportunity to join the scheme.
34. The second options exercise will not include anyone with a start date of 1 July 2000 or after who was given the opportunity to join in the first options exercise but didn't elect to join, or elected to join after the deadline specified in the regulations had passed.
35. The Government has agreed that they will work towards having regulations in place within 18 months, which will be approximately September 2023. The options exercise will take place over an 18

month period from the point the regulations come into force, meaning it should be concluded by March 2025.

36. As per the LGA's request for data on affected members in FPS Bulletin 55, work has been completed to identify affected members for the second options exercise. This initial assessment confirms that there will be 260 members in scope.

### **Changes to Pensions Tax Legislation**

37. The Finance Act 2022 received Royal Assent on 24 February 2022 and comes into force on 6 April 2022.
38. As part of the McCloud remedy, some members may need their annual allowance to be recalculated if they elect to take their legacy scheme benefits for the remedy period. If the member incurred a tax charge and used Scheme Pays to pay that charge, their annual allowance (AA) and scheme pays debits will need to be recalculated and amended figures reported to HMRC.
39. AA and Scheme Pays deadlines are outlined in legislation. Section 9 of the Act extends the deadlines for reporting and paying over of tax for certain members impacted by the McCloud remedy to ensure retrospective adjustments are possible back to tax year 2015/16.
40. Section 11 provides HM Treasury with powers to make regulations to address tax impacts that arise as a result of implementing the McCloud remedy. The regulations will have retrospective effect to 6 April 2022.
41. Secondary legislation will be needed to bring about these changes and this is expected later in 2022. These regulations will contain provisions such as:
  - providing an exemption to a tax charge on the compensation
  - allowing an individual to protect their pension rights from lifetime allowance charges
  - additional annual allowance to ensure individuals are not worse off than they would have been if they had accrued their chose benefits in the relevant tax year
  - allowing for scheme pays paid under one scheme, to be deemed as being paid under the other scheme
  - allowing 'late payments' of pension and lump sum to be deemed to be authorised payments, and therefore not subject to a tax charge

### **Cost Cap Mechanism**

42. Every four years, two valuations are carried out for the firefighter pension schemes. The main valuation determines the employer contribution rate and the other is called the 'employer cost cap' valuation which assesses how much it costs to run the scheme. If the costs exceed +/- 2% action needs to be taken. In the 2012 valuation,

the cost cap was set at 16.8%.

43. If the scheme is more expensive, benefits may be altered to bring the costs down such as accrual rates being altered, or contribution rates increased. If the scheme is cheaper to run, benefits may be improved such as changes in early retirement factors or a reduction in contribution rates.
44. Following the 2016 valuation, the main valuation costs went up meaning employer contribution rates would rise. However costs went down for the cost cap valuation meaning that benefit improvements were needed. This was not how the cost cap mechanism was designed to work and the Government Actuaries Department described it as a “perverse outcome”. They subsequently consulted on ways to improve the mechanism to ensure this is more stable and fair in the future.
45. Following this valuation, changes to benefits should have been implemented from April 2019. However the Government paused the cost cap mechanism due to the ongoing McCloud case, and any potential impact the outcome of the case could have on the cost cap.
46. In July 2020 the cost cap process was recommenced. HM Treasury advised that the costs associated with the increased value of schemes as a result of the McCloud ruling, would be taken into account as they are ‘member’ costs. In March 2022, HMT confirmed that the cost cap ceiling had been breached by 14.6% but that members would not suffer a reduction in benefits.
47. In December 2021, a number of unions including the FBU issued formal proceedings for a judicial review. Unions have made it clear that they do not think costs for remedy should be passed to members and that the benefits improvements that would have applied following the initial 2016 valuation should stand. This is currently ongoing.

### **Pension Dashboard Programme**

48. The Department for Work and Pensions (DWP) are currently undertaking a project to create pension dashboards which will allow anyone with a pension scheme to view all their pension information in one place, alongside information about their State Pension.
49. Statistics show that on average people have 11 different pension pots by the time they reach retirement age. The dashboards will help people get a consolidated picture of their pension savings and allow them to make more informed financial decisions. It will also encourage people to save for their retirement.
50. Whilst the concept of pension dashboards is widely viewed as a positive step, there will be a number of challenges for public sector pension administrators in providing the data in the necessary format

and within the timescales proposed in the draft legislation.

51. Due to the McCloud remedy, projections of member's benefits will be more complex to report as they will have two options of benefits.
52. The proposed go live for public sector defined benefit schemes is April 2024. However due to the fact administrators are likely to be in the middle of the retrospective McCloud remedy exercise and the Matthews Remedy at this time, these timescales may be difficult to achieve.
53. There is the added challenge that data is currently only provided to XPS on an annual basis, therefore any information provided to the dashboard will not be real-time. However, XPS are exploring the potential to provide services with the facility to report on a monthly basis in the future.
54. In January 2022, the Department for Work and Pensions published a consultation seeking views on a range of policy questions relating to the creation of the dashboards. The LGA and Scheme Advisory Board responded to this consultation to advise that April 2025 may be a more realistic date for public service pension schemes to work towards.
55. The consultation response was published on 14 July. The DWP agreed to extend the staging date for public sector pension schemes to 30 September 2024. The response also clarified that administrators will need to provide both accrued and projected benefits values as well as providing alternative values for those members in scope for the McCloud remedy.

### **XPS Business Continuity**

56. In light of the pandemic and ongoing fears around cyber attacks, XPS have provided an update on their business continuity plans to provide assurance that the necessary processes and tests are in place to protect member's data and maintain business critical functions in the event of a major operational disruption (Appendix D).

### **Pension Abatement**

57. Following a recent Pension Ombudsman ruling regarding abatement in the Firefighters Pension Scheme, services have been advised to review their abatement policy. The Ombudsman ruled that the service in question did not follow a reasonable process when exercising their discretion under rule K4 of the FPS 1992 in making its decision whether to abate or not, as abatement was applied on a blanket basis.
58. The informal legal opinion from the Scheme Advisory Board's legal advisor is that services should ensure policies do not imply that abatement will be applied on a blanket basis. It is enough for policies to state that only in exceptional circumstances would abatement not

apply. They also advised that there should be a documented process to show that every case has been considered on its merits.

59. The current Cheshire Fire re-employment policy states “A decision not to abate can only be taken by Members, in cases where exceptional circumstances may apply.” Therefore our policy is already compliant.
60. However, decisions aren't currently documented for every re-employment case, only those where abatement won't apply. A report was taken to Senior Management Team on 18 July proposing a new governance process to ensure we are able to justify and evidence all decisions on abatement. Going forwards the CFO, Treasurer and Pension Scheme Manager will have sight of all re-employment cases this assessment and any associated decisions will be documented and logged.
61. Where the panel feel there may be exceptional circumstances which warrant abatement to be waived, this will be referred to Members as per the current policy.

### **Managing Pension Schemes Online**

62. HMRC have introduced a new platform for pension administrators to submit statutory pension tax returns such event reports and accounting for tax returns. The first stage of the implementation was to register for the new service and, from 11 April, to migrate their existing pension schemes from the old platform to the new platform.
63. All three Cheshire Fire schemes have now been successfully migrated and XPS pensions will now be able to submit accounting for tax returns on our behalf through the new portal. The event report functionality is due to go live later in the year.

### **General Updates**

64. The LGA issued two surveys in February 2022. The first sought feedback on what the current position is in each service in respect of how they're processing immediate detriment cases. This information will aid the LGA to better understand the current landscape, and will help in their discussions with other parties to identify any necessary solutions. The second is an administrator self-assessment survey which has been sent directly to administrators with a closing date of 18 March 2022.
65. Public service pensions were increased by 3.1% from 11 April 2022. CARE scheme pensions were revalued by 4.1% on 1 April 2022.
66. Employee and employer contribution rates will remain the same for the 2022-23 financial year. Any changes to the employer rate as a result of recent valuations will be implemented from 1 April 2024.

67. As part of the LGA's McCloud project plan, a suite of member tools and communications has been produced including a mythbuster document and member benefit illustrations to assist members to better understand the remedy and how it might impact them. These tools are all available on the staff intranet and also on [www.fpsmembers.org](http://www.fpsmembers.org) and have been widely communicated through the Green Bulletin.
68. The Internal Dispute Resolution Procedure has recently been reviewed and updated. Only minor amendments were required including the insertion of references to the 2015 scheme regulations, updated Pension Ombudsman contact details and amended references to the Government's pension advisory service which has now been renamed MoneyHelper.

**CONTACT: DONNA LINTON, CLEMONDS HEY, WINSFORD  
TEL: [01606] 868804**

**BACKGROUND PAPERS:**

**Firefighter Pension Scheme Update Report – Local Pensions Board –  
Firefighters Pension Scheme on 10<sup>th</sup> November 2021 (Minute 5 refers)**