

CHESHIRE FIRE AUTHORITY

MEETING OF: LOCAL PENSION BOARD – FIREFIGHTERS PENSION SCHEME
DATE: 17 NOVEMBER 2022
REPORT OF: PENSION SCHEME MANAGER
AUTHOR: JILL SWIFT

SUBJECT: FIREFIGHTER PENSION SCHEME UPDATE

Purpose of Report

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

Recommended: That the Board:

2. Note the content of the update.

Information

Membership Statistics

3. Current membership statistics are detailed in Appendix A. There are currently no significant changes in membership.
4. As part of the statutory re-enrolment process which happens every three years, any members who were not a member of a pension scheme at 1 October 2022, were assessed and enrolled into a pension scheme if they met the necessary criteria.
5. There were 20 operational staff to be automatically enrolled following this assessment process. Of these 20 staff, 12 opted out again straight away.

FPS Bulletin – Actions Arising

6. **FPS Bulletin 59 – Corrective action for deferred special members.**

Some fire and rescue services (FRSs) did not allow special members to continue paying instalments of Modified Scheme contributions for past service if they left employment. This was an error and FRSs have been advised to take corrective action before the commencement of the second options exercise in 2023. CFRS did not stop leavers from continuing to pay their instalments, therefore no corrective action is required.

7. **FPS Bulletin 59 – Process for unpaid leave to be in place**

Some FRSs have not been advising their administrator of periods of unpaid leave for members of the Firefighter Pension Scheme 2015. For transitional members with service in the 1992 or 2006 schemes, administrators still require this information to calculate a member's service correctly. Service in the final salary schemes is linked to pensionable service in the 2015 scheme for the purpose of calculating entitlement to benefits and establishing retirement age.

CFRS have a process in place for this already as we are aware of the link between the final salary and CARE scheme, therefore no correction action is required. We also notify XPS pensions at the point of retirement if the member has had any breaks in service, to ensure this is not missed.

8. **FPS Bulletin 60 – Review Age Discrimination Factsheet**

Following a review of the factsheet produced by the Local Government Association (LGA), we are continuing to work with XPS to establish who is in scope for remedy. Most members have been identified, however some queries still remain. The majority of the outstanding queries relate to members who may have been in another public sector scheme at 31 March 2012 and members who have multiple roles.

9. **FPS Bulletin 60 – Review Cumbria FRS's abatement policy for best practice**

A comparison of the Cumbria and Cheshire policies has been carried out. They both cover the same information and have a similar level of detail, therefore no changes to the Cheshire policy are recommended.

10. **FPS Bulletin 61 – Member communications following eligibility factsheet**

In April 2022, the LGA provided FRSs with a suite of letters to send to members who were in or out of scope for the McCloud remedy.

At that point there were several outstanding queries relating to eligibility, and answers were still pending. Therefore, CFRS did not send in or out of scope letters to avoid confusion if a member's status subsequently had to be changed. Once eligibility has been confirmed, we will ensure the necessary communications are sent to members.

McCloud – Judicial Review

11. As reported to the Board in August, the public sector unions have been granted a judicial review in relation to the McCloud/Sergeant remedy costs inclusion in the control cap mechanism. A date for the hearing has now been confirmed and will take place on 23 January 2023 over 5 days.

McCloud – Data Collection Exercise

12. In preparation for the retrospective remedy exercise which commences in October 2023, the pensions team have been continuing to work on the data collection exercise to ensure XPS pensions have the necessary pay data to recalculate member's pensions and produce remedial service statements.
13. At the Board meeting in August, the team had completed 14% of the calculations. At 31 October the team have now completed 69%. The aim is to complete the work by 31 December. However, timescales may be impacted if other large pieces of payroll and pension related work are required at short notice, such as co-ordinating pay and pension deductions for industrial action.
14. No major issues have been encountered with the data so far, however the time required to complete each calculation is increasing as the team move onto working on the more complex cases.

McCloud – Contingent Decisions

15. Due to the discriminatory element of the transitional regulations and the subsequent legal challenge, there may be some members who will be able to claim that they would have made different financial decisions had they known that they would be able to remain in their legacy scheme until 31 March 2022.
16. These are termed as 'contingent decisions'. The Public Service Pensions and Judicial Offices act, the primary piece of remedying legislation which came into force on 1 April 2022, lays out that schemes will be able to provide remedy to members who are able to evidence that they would have made a different decision.
17. The Scheme Advisory Board (SAB) discussed this further at their June 2022 meeting and noted a number of scenarios where contingent decisions might apply. These scenarios mainly relate to members who opted out; those who chose not to apply for added years or added pension; or those who chose to retire earlier or later than they would have, had they been able to stay in their final salary scheme.
18. The process for contingent decisions has yet to be decided. Ongoing discussions revolve around how members will submit a dispute, who will be responsible for hearing the case and making decisions, and what evidence members will have to provide.
19. The topic was covered on a recent FPS coffee morning and concerns were raised about the standard of evidence that will be needed to support claims and the consistency of decision making as there are 44 FRAs who may all take a different approach. This feedback will be taken into any future discussions between the SAB and Home Office when drafting the Provision Definition Documents which will form the basis of the secondary legislation.

McCloud – Provision Definition Documents

20. In April 2022, the Public Service Pensions and Judicial Offices Act came into force, which is the primary remedy legislation. Secondary legislation in the form of pension scheme regulations will also be needed for each public sector pension scheme to clarify scheme specifics and technical matters.
21. The Home Office and SAB, along with a number of other stakeholders have been taking part in joint engagement sessions since June to consider impact of remedy on the schemes, and this feeds into the production of Provision Definition Documents (PDDs)
22. The PDDs, once completed, will form the basis of the draft regulations. It is anticipated that this work will be completed by December 2022 and draft regulations will be consulted on in early 2023. The consultation is likely to run for 12 weeks.

Pension Dashboard Programme Update

23. The Pension Dashboard Programme (PDP) has now reached a critical milestone, which is that of testing the dashboard and onboarding early participants (Phase 3). These participants will test the new ecosystem and provide feedback prior to the dashboard going live to a wider number of pension providers. A copy of the programme timelines can be found in Appendix B.
24. Staged connection is due to begin in 2023, and public sector pension schemes will be expected to go live by September 2024.
25. The next phase of the programme will see further consultation on design standards and consumer protection. The design and customer journey of the dashboard will be extremely important to ensure it's understandable, engaging and easy to access and use.
26. Consumer protection will also be a vital consideration. There is a risk that members will make financial decisions based on the data that the dashboard provides. Whilst pension administrators will be expected to provide accurate data, for defined benefit schemes those figures will only be a snapshot. The dashboard will need to contain the necessary disclaimers and make it clear to members that they should be approaching each pension administrator who holds a pension for them for up to date and accurate figures.
27. The Pension Regulator will be contacting scheme managers at various points in the lead up to September 2024 to provide reminders about a scheme's duties, staging date and where to go for more information. They will also be publishing their compliance and enforcement policy in Autumn 2023, which will confirm that their aim is to take a pragmatic approach but robust where they have evidence of intentional non-compliance.

28. Whilst XPS pensions and their software provider Heywood will be connecting to the dashboard and data cleansing any data that will be required, the FRA remains responsible for ensuring that the dashboard duties are met. The SAB have written to all Scheme Managers and Local Pension Board chairs outlining the duties and this can be found at Appendix C.

The Pension Regulator Single Code of Practice

29. Following the implementation of the Occupational Pension Schemes (Governance) (Amendment) Regulations 2018, which came into force on 13 January 2019, The Pension Regulator (TPR) are in the process of amending the structure of their code of practice.
30. The TPR code of practice lays out expectations for how schemes should operate. Whilst the code is not a statement of law, a court will take the code into account in any legal proceedings. TPR can also issue enforcement or improvement notices for non-compliance.
31. The regulations place new requirements on certain occupational pension schemes to establish an effective system of governance which is proportionate to the size, nature, scale and complexity of their scheme. TPR advised that their current code of practice was out of date in areas, contained duplications, was not easy to navigate and interactions between different sections were not always apparent.
32. Under TPR's proposals, 10 of the existing codes of practice will be combined into one, containing 51 interlinked modules. This will include code 14 which covers public sector pension schemes.

Matthews Remedy

33. Following the release of the Memorandum of Understanding for the Matthews Remedy in March 2022, the LGA conducted a poll of FRSs for views on how to communicate the second options exercise. The consensus was that generic communications would be most appropriate at this stage as legislation is not yet finalised.
34. Services across the country are in very different positions. Some Services are confident that they can identify all members in scope and have data available from the first options exercise. However, some Services have no access to historic HR data or information from the first options exercise and will need to complete the full scoping exercise again.
35. In the FPS coffee morning on 27 September, the LGA provided 3 options and sought views from services:

Option 1 – Advise members they do not need to take any action and that the Service would be in touch when the second options exercise begins.

Option 2 – As per option 1 but also including a statement asking people to start gathering any historic pay information they may have.

Option 3 - A pro-forma for members to complete and send to their previous service to help the service identify those who are in scope.

36. Services decided that option 3 was the most appropriate and may also help to trace members that couldn't be traced in the first options exercise. This pro-forma is now available on www.fpsmembers.org for members to complete and return to the service where they worked as a retained firefighter.
37. A working group has also been established with members from various FRSs, the LGA, Home Office and the Government Actuaries Department (GAD) to examine technical matters relating to topics such as tax relief, National Insurance and the interaction with the McCloud remedy.
38. The GAD calculator produced in 2014 to carry out the necessary calculations is also being reviewed by this group, with a view to making improvements based on lessons learned from the first exercise. Services have asked for additional functions to be included such as a projection of potential benefits and a clearer breakdown of interest payments.

Potential Industrial Action

39. The Fire Brigades Union are currently balloting members regarding strike action over a dispute about pay. The ballot closes on 14 November.
40. Communications are currently being drafted, in preparation for any potential action, for staff to ensure they are fully aware of the way pay and pension deductions will be calculated and the process and timescales for repaying any contributions for breaks in service.
41. This information will be particularly important for members with linked 1992 or 2006 service who are due to retire in the next 12 months, so that they are aware of the implications on their final salary pension calculation.
42. As final salary pension and eligibility to retire before age 55, is worked out using pensionable service in years and days, any strike breaks would have an impact on the member's pension if they do not repay the pension for the strike break.

General Updates

43. According to Government policy in recent year, Pensions Increase is normally based on the rate of the Consumer Price Index (CPI) for the 12 months to September of the previous year. With the CPI rate of inflation at September 2022 currently sitting at 10.1%, this would lead to pensions being increased by 10.1% from April 2023.

The Pensions Increase order is not normally finalised until closer to the tax year end, therefore we await confirmation from the Government that CPI will apply as normal from April 2023.

44. Commutation provisions in Scotland were changed from 1 April 2022. Prior to these changes, if firefighters in the 1992 scheme retired with less than 30 years service or before age 55, their lump sum was capped at 2.25 times their annual pension. From April this has been changed to remove the cap. The Scottish regulations do not apply in England therefore the cap is still in place for all English schemes. There have been calls to review this policy in light of these changes and the SAB will be monitoring the impact of the changes in Scotland before considering this any further. It would have a significant impact on costs and workforce planning if introduced in England.
45. The Annual General Meeting for the Firefighters' Pension Schemes was held over 2 days on 25 and 26 October in London. Slides from the meeting can be found at [Fire pensions annual conference \(fpsregs.org\)](https://www.fpsregs.org). The key topics covered included an overview of recent case law, updates on the PDP, an FBU presentation about the member perspective of McCloud and an update on the valuation process. There were also two technical workshops covering the compensation scheme and scheme discretions where FRs could share lessons learned and best practice.
46. The statutory deadline to send Pension Savings Statements to any members who have breached the annual allowance is 6 October. All members who breached the allowance for the 21/22 tax year received their statements by this deadline.
47. The Pension Scheme Regulator return, which is a legal requirement, is submitted each year in November. The return contains 'registrable information' which includes the schemes in use and membership of those schemes; the contact details for the scheme manager and pension board and the contact details for XPS and their auditors. The return has been prepared by XPS and approved by the pensions team and is ready for submission in time for the deadline of 18 November.

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BACKGROUND PAPERS:

**LOCAL PENSION BOARD – FIREFIGHTER PENSION SCHEME ON 9TH AUGUST
2022 - ITEM 5 – FIREFIGHTER PENSION SCHEME UPDATE**