

CHESHIRE FIRE AUTHORITY

MEETING OF: LOCAL PENSION BOARD – FIREFIGHTERS PENSION SCHEME
DATE: 15 AUGUST 2023
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.

Information

Membership Statistics

2. Current membership statistics are detailed in Appendix A. There are currently no significant changes in membership.

FPS Bulletin – Actions Arising

3. FPS Bulletin 67 – Following the announcement in the spring budget about the removal of the Lifetime Allowance, HM Revenue and Customs (HMRC) provided a summary of the changes to provide to scheme members. This information has been communicated in the Green Bulletin and on the staff intranet.
4. FPS Bulletin 68 – The Local Government Association (LGA) communications team provided a template poster for services to use to publicise the Matthews remedy options exercise for on call firefighters. Work is underway in our communications team to personalise this poster for Cheshire Fire. Once complete this will be sent out to stations to be placed on their notice boards. This will help raise awareness of the options exercise and aide in tracing any ex-employees that existing staff might still be in contact with.
5. FPS Bulletin 68 – The LGA have provided suggested wording for retirement letters to ensure that members are aware of certain implications for their pension payments and tax if they are re-employed by another fire service after retirement. This information will be included in our new Step Away retirement guide which will be launched soon.

6. FPS Bulletin 69 – Members in scope for the McCloud remedy who were ill-health retired will need to have their cases reassessed in advance of October to ensure they will qualify for ill-health benefits in their alternative scheme and to confirm what level of benefits they will be entitled to. The LGA have provided Services with template letters both for members and for the independent doctors who will be required to re-assess the cases. All members in this cohort were contacted for their consent to carry out the re-assessment and most have now responded.
7. FPS Bulletin 69 – As part of the McCloud remedy, data about pay and contributions is needed for the full 7 years of the remedy period. In some cases, members may have transferred in or out of Cheshire during this period. Therefore, administrators will need to liaise with other services for the missing data. At present the data collection exercise is ongoing but should be complete by the end of August. Any data for transfer cases will then be sent to the necessary administrators.

McCloud – Retrospective Remedy Consultation Response

8. The primary legislation (the Public Service Pensions and Judicial Offices Act) lays out how the remedy should be implemented. From October 2023, members in scope will be ‘rolled back’ to their legacy scheme for the remedy period. However, further regulations were needed to amend Firefighters’ Pension Scheme specific rules to allow this rollback to occur.
9. On 28 February, the Home Office launched a consultation on the amendments to the pension scheme regulations to enact the second phase of the McCloud remedy, known as retrospective remedy. The Government’s response to this consultation was published on 20 July and the final regulations were laid in Parliament on 20 July. These regulations come into force on 1 October 2023.
10. Whilst the scheme specific regulations have now been finalised, there are several outstanding elements still needed for the remedy. The Government Actuary’s Department (GAD) are in the early stages of developing a calculator for Services to use to calculate tax relief, compensation, and interest.
11. Further tax regulations, The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) (No. 2) Regulations 2023, were consulted on in May and June. The consultation sought views on several outstanding technical issues covering annual allowance, lifetime allowance, unauthorised payments and the processes that need to be followed, by both members and administrators, to report tax adjustments and claim refunds for tax charges. A response is expected in August.
12. HM Revenue and Customs are currently developing guidance on the processes to be followed and these will be published in the Autumn.

McCloud – Project Update

13. Services must complete several key tasks in readiness for retrospective remedy in October. An update of progress against these deliverables is provided at Appendix B.
14. XPS pensions have also provided information about the project plan to implement the Heywoods software solution for remedy calculations, and a proposed order of prioritisation for retirement cases post October. This is provided at Appendix C.
15. Alongside these tasks, regular communications will be sent out to active members and any members who were in scope for immediate detriment to ensure they are kept informed of any important changes and to distribute member guides when they are published.
16. A communication was sent to immediate detriment members in June to update them on the ongoing consultations and provide details of the retirement process for anyone wishing to retire from October onwards. It also outlined how the Service will prioritise immediate choice cases for those who have already retired and are awaiting remedy to be applied to their pensions.
17. Whilst it is appreciated that immediate choice members would hope to receive any options and backpay as soon as possible after October, the remedying regulations allow administrators up to 18 months to complete this work. Whilst XPS have a dedicated project team for the McCloud remedy, immediate choice cases will have to be calculated manually which therefore means cases will take some time to work through.
18. Priority will be given to those cases involving deaths, ill health retirement or where members have tapered or no protection.

Matthews Remedy

19. On 31 March 2023 the Government published a consultation seeking views on further remedy for those individuals who were employed as retained firefighters between 7 April 2000 and 5 April 2006 by providing retrospective access to the modified section of Firefighters' Pension Scheme 2006 (referred to as 'the Modified Scheme'). This consultation closed on 19 June and a response is expected in late summer.
20. In 2014 an options exercise was carried out to provide members in scope with the opportunity to join the Modified Scheme, which provides benefits broadly equivalent to the 1992 scheme and a normal retirement age of 55. Members could backdate their membership to 1 July 2000. However, a subsequent legal challenge in 2018, means that members will now have a further option to backdate their membership to their service start date where this was before 1 July 2000.

21. Legislation will be required to enact the scheme changes that are needed. This is expected to be in place by October and the options exercise will run for 18 months until March 2025.
22. Although the options exercise process will be similar to 2014, the 2023 options exercise is likely to be made more difficult due to the timeframes involved. Some members have service going back as far as 1964. Services are unlikely to hold pay, tax or rank information for this period, therefore a number of assumptions will have to be used to complete the calculations.
23. An added complication is that some members will be in scope for both the Matthews and McCloud remedies. The proposal is that the Matthews remedy will need to be actioned before McCloud, and these cases should be prioritised for the purposes of the Matthews options exercise.
24. It has been difficult to locate pay scales going back further than the 80s. Information has recently been obtained going back to the early 60s, however this was before decimalisation and some of the pay is listed in shillings.
25. In the 2014 options exercise, attempts were made to trace leavers using the electoral register. However, a large number were not traceable. A similar tracing exercise will need to take place for the 2023 options exercise, however further steps will be taken including posters for stations, liaison with retirement associations and possibly the use of a tracing agency.
26. GAD is currently developing a calculator to allow Services to carry out the necessary calculations to determine how much service members can buy and how much this will cost. The calculator will incorporate interest on contributions and pension payments due and will provide the member with details of the cost on a lump sum or instalment basis. The 2023 options calculator will also include a benefits projector to provide members with an indication of how much pension the service could buy.
27. A small number of members may have been retained firefighters and, before April 2006, left their retained role and became wholetime firefighters with access to the 1992 scheme. In the first options exercise these members were not able to aggregate their Modified service with their 1992 service. However, the Fire Brigades Union are currently challenging this through the Employment Tribunal. If their challenge is successful, further remedy may be needed for these members.

SCAPE Discount Rate Changes

28. On 30 March the Government announced a change to the Superannuation Contributions Adjusted for Past Experience discount rate (SCAPE rate). The SCAPE rate is used to set various factors used in pension calculations including the commutation factors used to calculate lump sums in the 1992 scheme.

29. The commutation factors were updated with effect from 3 April 2023. The factors have increased, meaning any members who have retired from 3 April will have a larger lump sum than anticipated.
30. The SCAPE discount rate is used alongside other factors such as earnings changes, changes to life expectancy and demographic assumptions to determine employer contribution rates in the Firefighters' Pension Scheme. When the SCAPE rate decreases, as it has during this review, it often results in employer contribution rates being increased.
31. The final position of the 2020 valuation will be published later this year and new employer contribution rates will apply from April 2024. The employer rate is expected to rise significantly. HM Treasury have indicated that Services will receive funding in 2024/25 to cover any part of the employer rate increase that is specifically linked to the SCAPE rate changes.

Pensions Dashboard Programme

32. On 2 March 2023, the Department for Work and Pensions (DWP) announced a reset of the Pension Dashboard Programme (PDP). In their statement they confirmed that they would be unable to meet the connection deadlines originally set as the development of the digital architecture had proven to be more challenging than anticipated.
33. On 8 June, a ministerial statement was made announcing amending legislation had been laid to replace the original phased timeline with a single connection deadline of 31 October 2026. However, the regulations will still allow the Department for Work and Pensions to set out a staged timeline for individual schemes. Further guidance will be released later in the year.
34. Due to ongoing the volume of work for both administrators and Services due to the McCloud and Matthews remedy, this delay is welcomed. However, administrators and software providers should utilise the additional time to continue to prepare for the dashboard.

Revaluation Rate Correction

35. On 6 July, the Home Office made a statement advising that there had been an error with the revaluation rate which has been set for 2021 and 2022 in the Armed Services and Firefighters' Pension Schemes.
36. Each April, public sector career average pensions earned in the previous year are revalued. The index used to determine the revaluation rate varies between public sector pension schemes. In the armed services and firefighter schemes the index used is the Average Weekly Earnings index (AWE).
37. The rates are set out in legislation each year. Unfortunately, when the rates were set in 2021 and 2022, provisional rates were quoted instead of final rates. The revaluation rates should have been higher, therefore any 2015

scheme pensions that have been put into payment since 2021 will need to be corrected. This may also affect any transfer calculations that have been done during this period.

	Provisional Rate	Final Rate
2021	2.4%	2.6%
2022	4.1%	4.5%

38. Active and deferred member accounts will also need to be corrected to ensure they have accrued the correct pension accrual from 2021 onwards
39. As these rates are set in law in the form of Treasury Orders, it will be difficult to correct this in future years or through scheme regulations, therefore HM Treasury will need to carry out further work to resolve this, which may require amending legislation. The Home Office have advised administrators not to take any action yet and they will provide further instructions in due course.

Pension Tax Updates

40. The government announced that from 6 April 2023 the lifetime allowance charge would be removed. The lifetime allowance will be fully abolished from the 2024 to 2025 tax year, through a future Finance Bill. The lifetime allowance framework therefore remains in place from 6 April 2023, and it is just the lifetime allowance charge that has been removed at this stage.
41. As a result of the changes to the lifetime allowance, the maximum amount which a member can take as a lump sum will be frozen at £268,275, which is 25% of the current standard lifetime allowance of £1,073,100. Members with a protected right to take a lump sum higher than this amount, will continue to be able to access this right, but any excess lump sum above this cap will be taxable at the member's marginal tax rate through the PAYE tax system i.e. income tax. Previously excess lump sums were taxed under the pensions tax framework rather than PAYE.
42. HM Revenue and Customs have now provided further details on how to process these payments. To ensure income tax is calculated, deducted, and reported correctly, payments should be processed through a PAYE compliant payroll system.
43. As a result, changes will be needed to the current payment process for lump sums. At present, lump sums are paid in one payment, usually the day the member retires. Going forwards, any member who receives a lump sum over £268,275 will receive the payment in two parts. Up to £268,275 will be paid as usual the day the member retires. The excess lump sum will be processed through the next available payroll.
44. XPS pensions will be updating their options pack to ensure this is clear for members and will provide estimated lump sum figures based on the

assumption that the member will pay 45% income tax on the excess lump sum.

General Updates

45. As reported to the Board in November, in 2022 public sector unions were granted a judicial review in relation to the McCloud/Sergeant remedy costs inclusion in the 2016 control cap valuation. The hearing was held between 30 January and 3 February 2023.
46. On 10 March, the High Court ruled that HM Treasury's decision to include the McCloud remedy in the cost cap mechanism was not unlawful. The judge ruled in favour of HM Treasury on all grounds and refused permission to appeal. However, the unions were able to apply for permission to appeal directly to the Court of Appeal.
47. The cost control mechanism has since been amended so that only 2015 scheme costs will be considered for the 2020 valuation onwards.
48. However, the unions argue that the same approach should have been taken with the 2016 valuation. If legacy scheme costs had been excluded, the cost of the scheme would have reduced below the floor threshold, meaning that members would have benefited from lower contribution rates or higher accrual rates for the period April 2019 to March 2023.
49. They have now been granted permission by the Court of Appeal to appeal the ruling. The date of the hearing is yet to be confirmed.

**CONTACT: DONNA LINTON, GOVERNANCE AND CORPORATE PLANNING
MANAGER**

TEL [01606] 868804

BACKGROUND PAPERS: NONE