

CHESHIRE FIRE AUTHORITY

MEETING OF: LOCAL PENSION BOARD – FIREFIGHTERS PENSION SCHEME
DATE: 5 DECEMBER 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, and to provide an update on progress for the McCloud and Matthews remedies.

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 71** – There have been reports of third-party organisations contacting members of public sector pension schemes offering services for a fee to help people claim their remedy benefits. Members will automatically be offered their remedy benefits without the need for a third party to request this. Information about this potential scam has been added to the intranet to raise awareness.
4. **FPS Bulletin 71** – The Local Government Association (LGA) provided Services with 'warm-up' template letters to send to members in scope for the pension remedy and, working with Aon, have produced a member video. Warm up letters and link to the member video were sent to all active, deferred and pensioner members at the beginning of October.
5. **FPS Bulletin 71** – As per Bulletin 69, ill health assessments needed for the remedy have all been completed and the outcomes passed to XPS Pensions to allow work to commence on recalculating pensions for immediate choice members.

6. **FPS Bulletin 71** – In order to correct Annual Allowance and Lifetime Allowance for members in scope for the remedy, HMRC have set up a portal through which amended tax charges can be reported. This requires Services to register for the portal and provide HMRC with details of specific contacts in each Service. Contact has been made with HMRC and further instructions on how to register for the portal will be sent to Services by HMRC in due course.
7. **FPS Bulletin 72** – From 1 October 2023, retirees who are in scope for the McCloud remedy should receive a deferred choice remediable service statement (DC-RSS) outlining their benefits in the legacy and reformed schemes to allow them to make an informed choice. Due to the volume of expected retirements in early October and the fact that software is yet to be updated, some administrators were proposing to provide members with legacy scheme figures only. The LGA advised against this, although the regulations do allow it. To date, Cheshire have had 2 retirements. In both cases XPS pensions have provided the members with both legacy and reformed benefit options.
8. **FPS Bulletin 73** – Where members transfer between Services, known as inter-brigade transfers, if a member has a break in service between those employments or an overlap in employment it can mean that their periods of pension service can't be combined. The LGA advised Services to remind members of this when they are transferring. This will allow the member to agree leave and start dates that will not impact their pension. Information about this has now been added to our transfer in starter letters and resignation letters to ensure members are made aware.

McCloud Remedy – Update

9. On 1 October 2023, all primary and secondary legislation to implement the McCloud Remedy came into force.
10. Services had to complete several key tasks in readiness for the remedy. An update of progress against these deliverables is provided at Appendix B, along with a summary of the next group of key deliverables which need to be completed between October 2023 and March 2024.
11. The Government Actuary's Department (GAD) has now released a calculator to be used for the calculation of tax relief, compensation, and interest. Although the calculator has been tested, Services are still finding issues and the inputs required are complex. As a result, work to complete this calculator will be undertaken in phases which are outlined in Appendix B. In addition, the calculator doesn't cover all scenarios that will require a compensation payment or interest. This means manual interest calculations may be required in some cases.

12. The Home Office has recently clarified that any costs incurred by Services in relation to additional pension liabilities and compensation will be fully funded and this will be dealt with through the AME top up grant process.
13. Administrators are aiming to provide active members with an Annual Benefit Statement (ABS) and RSS by 31 August 2024. Due to the complexity and volume of cases, this will be a challenging task. Where ABSs are not provided on time, or are inaccurate, this could constitute a breach of the law which needs to be reported to the Pension Regulator. The Pension Regulator has advised that they are mindful of the challenges that administrators will face and will be taking a practical and risk-based approach to enforcement action where ABS breaches of the law are reported in 2024 or 2025.
14. Letters were sent to all active, deferred and pensioner members at the beginning of October. These letters confirmed whether members were in or out of scope for the remedy and contained information about next steps for pensioners and details of when active and deferred members can expect to receive their first RSS. The letters also clarified how contribution adjustments would be dealt with and the timescales for these activities. A dedicated pension remedy inbox has been created for member to send queries to and both the intranet and external website now have pages dedicated to the remedy.

McCloud Remedy - Contingent Decisions

15. Contingent decisions are decisions which members would have made differently had it not been for the discrimination. These decisions may relate to opt outs, purchase of added years or transfers in and out of the scheme.
16. The LGA has now published an employer guide on contingent decisions which outlines the process to be followed, the relevant legislation and evidence requirements. Members will need to submit a claim within 12 months of receiving their initial RSS. For most members this will be in August 2024.
17. The current guidance only covers opt outs and added years. Further information on the process for claims relating to transfers will be published in due course.
18. For those wishing to purchase additional service or rescind opt out notices, they will need to pay the outstanding contributions. These contributions will also have interest added. Members purchasing opted out service will be able to repay this over a 14 year period. At present the GAD calculator does not support the calculations for this scenario. Discussions are ongoing about how this will be implemented by Services.
19. There are some areas of potential challenge with regards to opt outs. The regulations only cover the remedy period. Therefore, if the member opted out before the remedy period, this may have implications for how much service they can purchase, and which scheme they will be eligible to rejoin.

20. There will be varying requirements for members to provide evidence with their claims. In some circumstances, evidence will be required that their decision was due to the discrimination caused by the transitional provisions.
21. Alternatively, there will be scenarios where no evidence is required. For example, where a member opted out within the remedy period, or within 6 pay periods of them being moved to the 2015 scheme. These claims will be automatically accepted.
22. Any claims for members who opted out before 12 March 2012, will not be upheld. Information about the public sector pension reforms was not available before this date, therefore no claim could successfully argue that they opted out because of the changes to the scheme.
23. Claims will be reviewed by the Scheme Manager. In cases, where a claim is not upheld, members will be able to appeal by following the current Internal Dispute Resolution Procedure.
24. If a member's claim is upheld, they will be provided with a Contingent Decision RSS. After this, they will have 12 months to decide if they want to purchase the service or added years.

Matthews Remedy – On Call Firefighters

25. 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 retained firefighters with service between 1 July 2000 and 5 April 2006 access to a modified version of the Firefighters' Pension Scheme 2006. This modified scheme provided similar benefits to the 1992 scheme. The case was brought as a result of the introduction of Part-Time worker regulations. Prior to 6 April 2006, retained firefighters could not join a pension scheme.
26. The exercise only allowed members to backdate their membership to 1 July 2000, as this was when the part-time workers regulations took effect. However, a further court case brought by judges in 2018 (O'Brien v MoD) ruled that the part-time judges should be allowed to backdate their service to their start date of employment, even if this was before July 2000.
27. It has since been agreed that the date of implementation should have been 7 April 2000 instead of 1 July 2000. This means that anyone who left retained service between 7 April and 30 June 2000 will now also be in scope.
28. As a result of this ruling, the Firefighters' Pension Scheme 2006 has been amended to allow members to backdate their pension service to their start date. The Firefighters' Pension Scheme (England) (Amendment) Order 2023 took effect from 1 October 2023. These regulations bring into force changes that allow Services to commence a second pension options exercise.

29. Services will need to write out to eligible members with information about the scheme and invite them to express an interest in receiving a quote. This initial letter must be sent by 31 December to ensure compliance with disclosure regulations, which require Services to notify members of any material change to the scheme within 90 days.
30. The options exercise must be concluded by 31 March 2025. The Home Office have provided an indicative timeframe for each stage of the options exercise, but this is not mandated in the legislation, therefore Services are able to tailor this where appropriate. The suggested timeframes are:
 - Stage 1** – Expression of Interest Letters to be sent **by 31 December 2023**
 - Stage 2** – Members will have **6 months** to return their expression of interest
 - Stage 3** – On receipt of an expression of interest, Services to complete quotations **within 3 months**
 - Stage 4** – Members will have **6 months** to elect to join the scheme
31. Member's expectations will need to be carefully managed during stage 2. Quotations will be completed by the internal pensions team who will also be working concurrently on the McCloud Remedy. Therefore, pinch points in workload may mean that these indicative timeframes may have to be adapted.
32. The quote provided to members will outline how much service they are entitled to purchase, the cost of purchasing the service and a projection of pension benefits they are entitled to. In some cases, service goes back as far as the 1960's therefore obtaining pay data for these cases will not be possible. The regulations allow Services to make assumptions about pay and rank in order to complete the quotes. In Cheshire, full or partial pay data is available from 1992. For any years prior to this, assumptions will be used.
33. Some members will be in scope for both the Matthews and McCloud remedies. In these cases, the Matthews remedy will need to be actioned before McCloud, and these cases will be prioritised.
34. In the 2014 options exercise, attempts were made to trace leavers using the electoral register. However, a large number were not traceable. For the second options exercise, additional steps have been taken including posters for stations and liaison with retirement associations. Details of the options exercise have been posted to the Intranet and external website and a tracing agency has been engaged to locate any remaining members that cannot be traced through other means.
35. GAD have developed a calculator to allow Services to carry out the necessary calculations. This is due to be released on 6 November. However, due to the variety and complexity of scenarios for the cases involved, the calculator will be released in 2 phases, with the second version being released in January 2024. Some of the most complex cases will be referred directly to GAD as it has not been possible to programme the calculator to cover every scenario.

36. The calculator incorporates 20% tax relief and interest on contributions. For those who can take their pension benefits immediately, the calculator also works out the pension back pay due. Members will be able to repay the contributions in a lump sum or in instalments and the calculator will also provide this breakdown. Any cases where members can evidence that they were 40% taxpayers will be handled separately by GAD.

Revaluation Rate Correction

37. On 6 July, the Home Office advised 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. These rates are based on the Average Weekly Earnings index and are set in law annually in Treasury Revaluation Orders.
38. Unfortunately, when rates were set in 2021 and 2022, provisional rates were used instead of finalised rates. The revaluation rates should have been higher. This means that any 2015 scheme pensions that have been put into payment since 2021 will need to be corrected, and active and deferred member records will need to be updated with the correct rates.

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

39. HM Treasury now intend to consult on the changes that will be needed to legislation to make this correction, but in the interim have advised Services to make the necessary administration changes with immediate effect, in advance of regulatory changes being made.
40. XPS pensions are aware of this instruction and are currently reviewing any affected cases and scoping the work that may be needed to make these corrections. This may involve liaison with third party software providers to ensure systems are updated with the correct rates.

Pension Tax Updates

41. Under normal circumstances, members who incur an Annual Allowance or Lifetime Allowance charge, and who use Scheme Pays to pay the charge, would report this to HM Revenue and Customs (HMRC) using the Self-Assessment process. However, when the McCloud remedy is applied to member's pensions it may result in a change to charges already reported for years during the remedy period (1 April 2015 – 31 March 2022).
42. Rather than using the Self-Assessment process, HMRC have provided a separate reporting framework for any tax charges which arise, or change, because of the remedy. There are various actions a member, or the Service,

will need to take if there is an increase or decrease in the charges due, and different deadlines to adhere to. A summary of this is provided at Appendix C.

43. Information signposting members to the calculator and guidance has been provided on the intranet, and XPS options paperwork will also be updated with these links. The LGA are engaging with tax experts to produce further guidance on this topic.
44. Pension Savings Statements are usually provided by 6 October for the previous tax year. For tax year 2022/23, the PSS should have been provided by 6 October 2023. However, legislation allows this to be deferred until October 2024 as it is likely that any figures provided would be liable to change following rollback and would therefore be inaccurate.
45. Members who are likely to have received a PSS in October 2023 have been informed about this deferment, along with details of the new reporting framework.

General Updates

46. A Private Members' Bill introduced in the House of Commons to remove the lower earnings limit and age for auto-enrolment has been granted Royal Assent. The Department for Work and Pensions will now consult on the changes needed to implement the new measures. Currently employees who earn under £6240 per year or are under age 22 do not have to be automatically enrolled into a pension scheme. These changes are designed to increase the number of people saving into a pension scheme.
47. In the public sector, most employees are contractually enrolled into a pension scheme when they commence employment, therefore these changes will have minimal impact on current processes.

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BACKGROUND PAPERS: NONE