



**Safest People, Safest Places**

## **Combined Fire Authority**

**29 July 2024**

## **Firefighters' Pension Scheme Update**

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### **Report of Deputy Chief Fire Officer**

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#### **Purpose of Report**

1. To provide Members with an information on changes to the Firefighters' Pension Schemes.

#### **Age Discrimination Retrospective Remedy**

2. In 2015, new laws introduced a new scheme for firefighters – the Firefighters' Pension Scheme 2015 (FPS 2015). These laws included protections which meant that some members of the legacy schemes (FPS 1992 and FS 2006) didn't join FPS 2015 either straight away or at all, depending on their age. After a legal challenge, the courts determined that these protections were age discriminatory.
3. Following consultation, the Public Service Pensions and Judicial Offices Act 2022 (PSPJO Act) came into force on 1 April 2022.
4. Following further consultation, the Public Service Pensions (Remediable Service) Regulations 2023 were laid and came into force on 1 October 2023 to allow for retrospective remedy which covers the period 1 April 2015 to 31 March 2022.
5. All benefits accrued during the remedy period are automatically rolled back to the relevant legacy scheme on 1 October 2023 for eligible active and deferred members. Members will then be able to make a different choice for reformed benefits at their retirement date.

#### **Deferred Choice Underpin**

6. All active and deferred members will receive a combined Annual Benefit Statement/ Remediable Service Statement (ABS/RSS) by 1 April 2025. The ABS/RSS will provide members with the current value of both their legacy final salary benefits (FPS 1992/FPS 2006) and their reformed CARE (Career Average Revalued Earnings) benefits (FPS 2015)

for the remedy period as well as projected benefits to normal pension age for active members.

7. All members who retire from 1 October 2023 will be provided with a Remediable Service Statement (RSS) at retirement. The RSS will illustrate their options to choose to receive either their final salary benefits or reformed CARE benefits for the remedy period.

### **Immediate Choice**

8. Pensioner and beneficiary members that have retired before 30 September 2023 and have service within the remedy period, will be provided with an RSS as soon as reasonably practicable from 1 October 2023.
9. The regulations allow 18 months for pension administrators to complete the remedy exercise (until March 2025). Administrators will be prioritising certain categories of pensioner members, based upon the level of impact of remedy to their benefits, and an indicative timetable for sending out an RSS to pensioner members has been communicated to those affected.
10. An issue has been identified which relates to the calculation required for top-up lump sums and the offsetting of previous tax paid to HM Revenue and Customs (HMRC).
11. It has been confirmed that the Local Government Association's (LGA) understanding of how you would offset the original unauthorised payment made to HMRC does not align with current HMRC policy.
12. Currently there is no provision within HMRC legislation which allows an offset approach for individuals who have made an unauthorised payment through the mandating process.
13. The position, if left without a solution, will mean that a member is liable for more tax which is not currently reclaimable either via HMRC or the compensation mechanism in the PSPJO Act.
14. HMRC and HMT are seeking resolution to this issue. However, there will be a necessity for legislation to address the changes which are needed.
15. The issue identified only affects members who have received an unauthorised lump sum. An unauthorised lump sum occurs when HMRC's commutation limits are breached. This affects members with legacy FPS 1992 membership who when they retired received an unauthorised lump sum and paid a tax charge. However, these do represent a substantial proportion of Immediate Choice members.
16. Ahead of the legislative changes which are needed for existing unauthorised cases, the LGA do believe that there are several cases which can be progressed and have their IC-RSS issued.
17. New legislation will be required for members who at retirement were subject to an unauthorised payment charge, as without it there will be an increased tax liability for the member. HMRC have suggested that the legislation required will take months (expected 2025), not weeks.
18. Ahead of the legislation, HMT were preparing to issue a Written Ministerial Statement, which would instruct Fire and Rescue Authorities and administrators to act in advance of

the necessary legislative changes. However, due to the General Election and the period of Purdah this did not happen.

19. West Yorkshire Pension Fund, our pension scheme administrators, identified members affected by this issue and letters were sent to them.

### **Age Discrimination Remedy – Contingent Decisions**

20. A Contingent Decision is a decision taken by a member, relating to their membership of the Firefighters' Pension Scheme, that would have been different had it not been for the discrimination identified by the courts.

21. The decision will relate to their membership of the Firefighters' Pension Scheme (FPS) during the Remedy Period (1 April 2015 to 31 March 2022).

22. There are two categories of contingent decision in the FPS for which specific provision has been made:

- **Opt-Outs:** A member who would not have opted-out if they had been allowed to remain in the Legacy Scheme (FPS 1992/FPS 2006) beyond their transition date or if protected members had been allowed to join the 2015 Reformed Scheme from 1 April 2015.
- **Additional Service:** Members argue they would have purchased (more) additional service if they were in the Legacy Scheme.

23. Where a member makes a contingent decision, there will have to be an adjustment to benefits, which may involve the member paying extra contributions.

24. A guidance documents has been produced by the LGA which sets out the general position about the process for contingent decisions.

25. Members who wish to make a contingent decision claim are required to complete and submit a claim form which will then be considered by the Scheme Manager.

### **Matthews Second Options Exercise – FPS 2006 Special Members (Modified Scheme)**

26. The original legal settlement under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 only allowed certain retained firefighters with service between 1 July 2000 and 5 April 2006 to become members of the pension scheme. Eligible firefighters were asked whether they wanted to join this scheme in an options exercise which took place in 2014-15. Elections had to be received by 30 September 2015. This was the 'first option exercise'.

27. More recently, this judgement was challenged by the European Court of Justice in relation to fee-paid judges. The court ruled in that case that service going back to the start of employment could be taken into account. The government accepted that the same principles apply to certain retained firefighters, whether they have made a legal claim or not.

28. A Memorandum of Understanding (MOU) was agreed by the government, representative bodies, and Fire and Rescue Authorities on 9 March 2022.

29. The second options exercise will allow eligible retained firefighters to buy pension as a special member of the FPS 2006, backdated to the start of their employment.

30. The regulations required for the Matthews Second Options Exercise came into force on 1 October 2023. The Exercise will run for a maximum period of 18 months (October 2023 to March 2025).
31. The service sent out 241 'expression of interest' letters to eligible members. Approximately 100 responses have been received back requesting further information. Calculations are being worked on for these requests.

### **Recommendations**

32. Members are requested to:
  - a. **Note** the contents of the report.

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