

LOCAL PENSION BOARD

FIREFIGHTER PENSION SCHEMES



The McCloud/Sargeant Case Remedy

Background

1. In 2015, the government introduced new laws which resulted in a new pension scheme for firefighters - the Firefighters' Pension Scheme 2015 (FPS 2015). These laws included protections which meant that some members of the existing schemes (FPS 1992 and FPS 2006) didn't join FPS 2015 either straight away or at all, depending on their age. Following a legal challenge known as Sargeant, the courts determined that the protections given to members were age discriminatory.
2. On 15 July 2019, the government made a written statement accepting the court's decision. They confirmed that they would engage with the Employment Tribunal to agree how to fix the discrimination. The written statement confirmed that this fix, or remedy, would apply across all public sector schemes.

Future Discrimination (prospective)

3. The changes to remove future discrimination were brought into force on 1 April 2022.
4. To remove future discrimination from the scheme and ensure equal treatment, all remaining protected members who were not current members of FPS 2015 transferred into this scheme on 1 April 2022.
5. This means that all future service from 1 April 2022 for all members accrues (builds up) in the FPS 2015. Benefits already accrued in either of the previous schemes (FPS 1992, FPS 2006, FPS 2006 Special Members) are fully protected.

Past Discrimination (retrospective)

6. The changes to remove past discrimination came into force on 1 October 2023.
7. Members who moved into FPS 2015 within the remedy period will have their benefits converted to their legacy final salary scheme (either FPS 1992 or FPS 2006) for the

whole of their service in the remedy period. This is known as roll back. The benefits built up in FPS 2015 will be kept as a reformed FPS 2015 'underpinned' record.

Scope of Remedy

8. 'The Remedy period' is the period from 1 April 2015 to 31 March 2022.

Active & Deferred Members

9. All active and deferred members should receive a combined Annual Benefit Statement/Remediable Service Statement (ABS/RSS) by 1 April 2025; however, where possible this has been included in their ABS by 31 August 2024. The ABS/RSS provides members with the current value of both their legacy final salary benefits and their reformed FPS 2015 benefits for the remedy period as well as projected benefits to normal pension age for active members.
10. All members who have retired or will retire after 1 October 2023 are provided with an RSS at retirement. The RSS illustrates their options to choose to receive either their legacy final salary benefits or reformed FPS 2015 benefits for the remedy period. This is known as Deferred Choice Underpin (DCU).

Pensioner Members

11. Pensioner members that 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. This is known as Immediate Choice (IC).
12. It is important to note that the regulations allow 18 months for employers to complete the remedy exercise (i.e. until March 2025) and cases will be prioritised, based upon the level of impact of remedy to their benefits.

PROGRESS UPDATE

ABS-RSS Issuance

13. The Statutory Deadline for the issuance of Annual Benefit's Statements (ABS) for all active and deferred members was 31st August 2024.
14. In the lead up to this deadline CFA worked closely with XPS to ensure that they had all the required data to be in a position to issue a combined ABS-RSS to all members by this date
15. Of the 389 due to be issued, 277 were issued by 31st August 2024, this is 71.21%.
16. With regards to the members who were not issued an ABS-RSS, there are several different reasons for this, and we are working closely with XPS who are conducting a more in-depth analysis of the reasons which will be shared with us once complete, this will allow us to understand how they can be remedied so the remaining ABS-RSS can be issued.

17. As we have failed to meet this Statutory Deadline a breach assessment will be undertaken to determine whether the breach should be reported to the Pensions Regulator.
18. On receipt of an ABS-RSS members can choose whether to repay their contribution adjustment before retirement, this must be done within 12 weeks from being issued with their ABS-RSS.
19. To date CFA have had 2 members that have chosen to pay within the 12-week window.

IC-RSS Issuance

20. On 25th March 2024 the LGA provided guidance to Scheme Managers on the current position of the rollout of IC-RSS and identified a number of complications that were being worked on.
21. On 29th March 2024 HMRC released newsletter 159 which confirmed that interest on authorised payments would be authorised however interest on unauthorised amounts remained unauthorised.
22. 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.
23. This position means that a member is liable for more tax which is not currently reclaimable either via HMRC or the compensation mechanism.
24. The issue identified only affects member who have received an unauthorised lump sum; these are members with legacy FPS 1992 membership who when they retired received an authorised lumps sum and paid a tax charge.
25. Ahead of legislative changes which are needed for existing unauthorised cases, the LGA identified that some cases could be progressed and have their IC-RSS issued.
26. 17 cases fell into this category and these IC-RSS were issued in July 2024.
27. We await further confirmation of the tax issue resolution before proceeding with the issuance of the remaining.

Contingent Decisions

28. Following the implementation of the McCloud Remedy, and changes to legislation, members of the Fire Pension schemes, dependent on their circumstances, may make a claim to their Scheme Manager to revisit various decisions that were made relating to their scheme membership during the period 1 April 2015 to 31 March 2022.
29. This is referred to as applying for a Contingent Decision, where members claim that they would have made different decisions had it not been for pension reform in 2015 (and remained in their legacy scheme) and the discrimination identified by the courts in the McCloud case.

30. There are two main types of Contingent Decisions.

Opt out cases

- Members claim that they would not have opted out of their legacy scheme had they been able to remain in the scheme after their taper date. Or, alternatively, members who opted out of their legacy scheme as they would have wanted to join the CARE scheme in April 2015.

Purchasing additional service/added years

- Members claim that they could have elected to purchase additional service/more service had they remained in their legacy scheme.

31. Members can request to make a Contingent Decision claim to their Scheme Manager within 12 months of receipt of their Immediate or Deferred Choice Remedial Service Statement (RSS).

32. To date CFA has received 6 applications for Contingent Decision, all relate to opt outs. These now need to be considered by the Scheme Manager

33. XPS has provided a proposal for carrying out this piece of work, which includes a task list and action form. This proposal will be considered by the Scheme Manager in due course and then the work can commence on processing these applications.