

# Firefighter Pensions Technical Community

## Minutes 16 February 2016 Held at Greater Manchester Fire Training Centre

Note: On the 1<sup>st</sup> April 2016 responsibility for Fire policy (including pensions) transferred to the Home Office. Therefore all references to 'DCLG' at this meeting should be taken as references to the 'Home Office Fire Team' (formerly DCLG)

### 1) Apologies for Absence

Due to a train accident which prevented them from completing their journeys, the following had to give their apologies.

David Golding	Essex
Rachael Salisbury	Oxfordshire

### 2) Introduction

- a) A warm welcome was given to Annemarie Allen, who was attending to present on changes to Annual Allowance and Life Time Allowance.

### 3) Minutes of last meeting

- a) Point 4k) transfer restriction – this was queried, DCLG confirmed that this met the criteria in the regulations. One fund confirmed that they have not refunded a members contributions.

### 4) Regional Fire Pension Office Groups Update

- a) James Durrant updated from the Eastern Group. They hosted a training day at Essex Fire in January which was very well received. It was attended by board members, senior officers from Essex Fire & Rescue, Clair Alcock & Jayne Wiberg from LGA and Daniel Kanaris from Aon Hewitt. Their next regional group meeting will be next week. James stated that the emails and collaboration on working practices generated by the regional group had been invaluable.
- b) Stephen updated from the North West Group, they had their last meeting a few weeks ago. He felt it was very useful to meet to discuss current issues.
- c) Karen Gibson updated from the South West Group. They were due to have their next meeting soon. Wales have joined the South West Group, making it the South West and Wales Group. The sharing of resources and advice has been helpful and well received.
- d) Vanessa updated from the North East Group. They found the meetings useful and informative and agreed that it was good to share ideas.
- e) Nicola Daniel updated from the Midlands Group. They haven't had a meeting for a while, but have training coming up 1 March. Their group have found it very positive for sharing ideas and practices.
- f) Rachael Salisbury from the South East Group had been delayed on the way to the meeting and was unavailable to feed back.

- g) For a small charge there is training available from the LGA on technical details for regional groups; Clair asked if groups are interested to please get in touch.

## 5) Review of Action Summary

### a) National meeting

- i) The National Fire Meeting was held in October last year and good feedback has been received.
- ii) This year's meeting is due to be held on 11 October 2016. At the time of the meeting, LGA House was due to closed due to refurbishment, however the refurbishment has now been delayed to next year.
- iii) Please save the date for the 10<sup>th</sup> October 2016 for the Fire technical group meeting and the 11<sup>th</sup> October for the AGM
- iv) Item closed on the agenda.

### b) GMP Reconciliation

- i) Guidance was sent out by the cross-Government working group for Public Service Pension Schemes (PSPS) dated 2<sup>nd</sup> February 2016:
- ii) The advice on overpayments is to wait until evidence from the reconciliation exercise is obtained. It was suggested that overpayments should be collected, which is contrary to previous occasions. Karen Gibson suggested that any overpayment should be stopped, but not collected.
- iii) The group commented that there was past precedence set on reclaiming GMP overpayments for a case against Tameside Pension Fund. The ombudsman found in favour of complainant and said overpayment should not be collected.
- iv) However, if payments should not be collected what is the scheme funding position, can the deficit to the scheme be claimed back by government through the top up grant arrangements or is this an authority cost? Clair said she will ask DCLG for clarity.
- v) Clair Alcock checked that everyone has registered and received their data. She also asked whether now that the guidance has been received, will funds be starting or are they waiting for a more convenient time. The LPFA confirmed that they have started working on the queries.
- vi) HMRC have a potential resourcing issue; currently they are receiving 10% of queries and this is resourced for. When all funds begin sending their queries this may cause issues with not enough resources to respond.
- vii) There is still uncertainty regarding how much budget will be required for this project. It was asked whether all Fire and Rescue Authorities have been made aware of the financial implications. Currently it was felt that it is difficult to quantify the cost.
- viii) There were concerns raised about tolerances; £2 per week could be a high proportion of a small GMP. Clair Alcock said she thought this was an industry standard and has been used as a tolerance on other exercises.

### c) Earnings cap

- i) The 1992 scheme, [Rule G1, paragraph 2b](#) has a reference to the earnings cap, however the earnings cap was repealed from April 2006 under the [Finance Act 2004](#).
- ii) Following the expiry of the five year window for adopting post 6th April 2006 schemes rules HMRC no longer publish the earning cap. The last Earnings Cap was set by HMRC as £123,600 for the 2010/11 tax year.
- iii) There is small risk that DCLG could decide to amend regulation G1, paragraph 2b1 to apply a notional earnings cap.

- iv) Helen Scargill raised concerns that DCLG could make a retrospective decision about earning caps, which will require action dating back to 2011.
  - v) Clair Alcock will speak to DCLG and ask for a more firmly worded decision on earning caps.
  - vi) This item will stay on the agenda until confirmation is received from DCLG whether there is any risk of this being changed.
- d) Scheme pays guidance
- i) David Golding has confirmed the issue in question, is where a scheme pay debit applies and is increased by PI, but PI is not applied to the pension. This has the effect of reducing the scheme pension.

Illustration

- At the implementation date (April 2013) the debit is £1,987.00
  - Member retires on 31<sup>st</sup> March 2014 with gross pension of £30,000 p.a.
  - PI order becomes due on 7 April 2014
  - The member's gross pension is unincreased, as it began payment less than a month from the PI order
  - The pension debit is increased by 2.7% to £2,040.65 per year, as there is a full year between the implementation date and the PI order
  - The net pension is therefore reduced to £27,959.35 per year.
- ii) Police issued some guidance on increasing the net pension to negate the effect and Anthony has passed to GAD to consider. Clair will press GAD and DCLG to provide guidance.
  - iii) Clair asked whether this is a problem for funds. LPFA replied that they have a few cases each year. Annemarie Allen stated she had seen a number of scheme pays calculations each year.
  - iv) This will only affect members who are aged over 55 in the first year of pension; therefore should only affect a few people.
- e) DWP contracting out regulation and lump sum
- i) The relevant regulation is regulation 18 of SI 2015/1677 - <http://www.legislation.gov.uk/ukxi/2015/1677/regulation/18/made>  
**18.—(1) A relevant scheme(1) may not provide for the payment of a lump sum instead of a pension that is attributable to section 9(2B) rights, unless the payment to be made is authorised under section 164 of the Finance Act(2) (authorised member payments) and the payment is—**
  - ii) Section 9(2B) rights are post 97 contracted out rights, which is all service built up between 1st April 1997 and 31st March 2016.
  - iii) So any service of a firefighter that is all post 1997 would be considered section 9(2B) rights, and a strict interpretation is you cannot pay an unauthorised lump sum on any pension arising from service built up from 1997.
  - iv) Clair has discussed with DCLG and is satisfied that this will not be a problem; for age retirements there would always be a proportion of service that is contracted in (i.e pre 1997 service)
  - v) However, there was a risk that for ill health retirements, these would be entirely post 1997 service (all Section 9(2B) rights)

- vi) The risk is with the relevant authority (i.e. DCLG) and the risk is the contracted out status of the scheme would be removed. Therefore it was decided that making these payments does not constitute a risk to the authority, and that lump sums should continue to be quoted at the maximums.
  - vii) Item closed and taken off the agenda.
- f) EE/ER contributions for APB
- i) Guidance is clear that Ill health was to be included in employer costs. FRAs are to follow initial guidance and increase ERs conts in line with increases. It was raised whether FRA are actually doing this. Clair Alcock said that this information and guidance needs to be passed to FRA and emphasised.
  - ii) Catherine Carruthers said this forms part of the pay settlement and therefore ill health cannot be removed.
  - iii) Item closed and taken off the agenda.
- g) Loss of PPA
- i) Clair Alcock informed the meeting that there has been no appetite from Fire Authorities to fund a joint legal challenge.
  - ii) FRAs are the sponsoring employer for income tax purposes. South Wales engaged a QC and concluded that this payment still applies. Clair will contact Phil Haynes at South Wales Fire, and ask if she can share the report, as it is publically available. Martin Reohorn from HWFR stated that he felt the previous advice and guidance wasn't clear and this is a historic issue.
  - iii) Item closed and taken off the agenda.
- h) Payment holiday for >30 years and under age 50
- i) DCLG have agreed to provide a contributions holiday.
  - ii) Regulations will be amended in due course.
  - iii) Phillip Perry said that this amendment will take some time, months not weeks.
  - iv) The original consultation may be of interest - [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/205716/Amendments\\_to\\_the\\_Firefighters\\_Pension\\_Scheme\\_1992\\_and\\_New\\_Firefighters\\_Pension\\_Scheme\\_2006\\_-\\_Summary\\_of\\_responses.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/205716/Amendments_to_the_Firefighters_Pension_Scheme_1992_and_New_Firefighters_Pension_Scheme_2006_-_Summary_of_responses.pdf)
- i) Annual Benefit Statements
- i) Clair will provide an update in the next section.
- j) Transfer restrictions
- i) The issue originally raised asked if a member with 1992 or 2006 transitional service could transfer pension into the 2015 scheme on joining the 2015 scheme.
  - ii) This query had arisen as a result of the question on whether a refund could be paid within three months of joining the 2015 scheme.
  - iii) Clair said there are 3 transfer areas to be treated differently; Club, occupation and non-occupational transfers.

### **Club transfers**

- iv) Club transfers have a restriction as stated in the club memorandum, paragraph 4.1
  - (1) An individual must arrange for an election to proceed for a Club transfer to be received in writing to the receiving scheme within 12 months of becoming eligible to join, or, subject to (i) below, re-join the scheme. (A request for an estimate of a transfer value should not be regarded as an election to proceed.) The election to proceed should be copied to the previous scheme. Elections to proceed should not be accepted where either:
    - (i) an individual resigns from employment or opts out of membership of the scheme and rejoins the same scheme within 6 months, except during any period after rejoining which falls within 12 months of first becoming eligible to join the scheme; or
    - (ii) an individual has joined the Club scheme from another Club scheme as a consequence of a compulsory transfer of employment, or of pension scheme (see 2.6).
- v) Catherine Carruthers explained that no transfers were allowed on a compulsory change (rule 2.6 of the Public sector club memoranda updated in December). A club transfer can only be transferred on a non-club basis.

### **Non Club Transfers**

- vi) For occupation transfers there is no restriction but it remains a scheme manager discretion. Catherine Carruthers suggested referring members to the FRA.
- vii) All non-occupation transfer requests are restricted by regulations [\[reg 141\(3\)\]](#); this limits transfers from non-occupational schemes to a period of 12 months on becoming an active member, however it allows scheme manager discretion to allow a longer period.
- viii) A new 12 month transfer can be provided on scheme manager discretion. However, guidance cannot be provided as this is an individual scheme management discretion. It was asked whether this should be publicised. Anne-Marie Allen said that if this is a permitted discretion it should be made transparent and information provided. Some administrators said they would prefer a consistent approach.
- ix) Clair said that the each pension board should be made aware of this discretion.
- x) Move to close with recommendation that it is 12 months of 2015 scheme date

## **6) Changes to Annual Allowance and LTA**

- a) Annemarie Allen from Barnett Waddingham provided a presentation on Annual Allowance and Lifetime Allowance.
- b) This presentation can be found at [https://khub.net/group/thefirefighterspensionsdiscussionforum/forum/-/message\\_boards/message/18464631](https://khub.net/group/thefirefighterspensionsdiscussionforum/forum/-/message_boards/message/18464631)
- c) Clair stated that the ombudsman's recent decision placed requirements upon schemes for additional notification to members.
- d) Annual Allowance will not be able to be included on Annual Benefit Statements as the year is now not synced with the Scheme Year.

- e) The change in the pension input period to 5<sup>th</sup> April XX, means that a decision needs to be made on whether to ask for a separate year end return as at 5<sup>th</sup> April to calculate the pension savings statements.
- f) The pragmatic decision was that as per LGPS, administrators should use the pay provided in the year end return, and if someone appeared to be near breaching, the accurate figures should be requested in order to calculate the pension savings.
- g) Clair has started to draft some basic guidance for employers and for members. Pension boards also need to be informed about this. There is some tax office guidance around this.
- h) Transitional members retiring within the Lifetime Allowance period members benefits will become unauthorised if they haven't applied for protection. Neil Lewin from LPFA stated to ensure members benefits are crystallised before the change if they retire at the end of March. It is a member's responsibility but it is important that they are notified.
- i) Clair Alcock asked for this to be put on the agendas for the regional groups.

## 7) Public Sector Transfer Club

- a) Catherine Carruthers provided a useful presentation on transfers. This presentation can be found at [https://khub.net/group/thefirefighterspensionsdiscussionforum/forum/-/message\\_boards/message/18464631](https://khub.net/group/thefirefighterspensionsdiscussionforum/forum/-/message_boards/message/18464631)
- b) The club guidance on club transfers annual allowance should change before the triennial valuation. The link is on the bottom of the handouts insert link . We may not be notified of the change in the memorandum.

## 8) Update:

- a) Modified Retained (residual issues)
  - i) Clair has received a lot of queries about late admission of members to the modified scheme.

[Part 11, Rule 6B, paragraph 12](#) confirms an election to join the scheme may not take effect after 31st March 2015

*[6B(12)] Where it is not reasonably practicable to comply with the requirement in paragraph (1) within the period specified, the election shall be given by written notice as soon as reasonably practicable after the end of that period but in any event may not take effect after 31st March 2015.*

This was then extended to 30th September 2015 by [Part 11, Rule 6C, paragraph 5b](#) which provisionally enrolled a member in the scheme if they had not made an election up until 30th September 2015. This had the effect of extending the deadline for election to 30th September 2015.

*[6C(5)] Subject to rule 6B(12) of this Part, if a provisionally enrolled member—  
(b) does not give the authority written notice on or before 30th September 2015 of their election to pay mandatory special period pension contributions in respect of their service during the mandatory special period under rule 6A of this Part, the person ceases to be a provisionally enrolled member of this Scheme.*

Clair confirmed it is her opinion (bearing in mind only a court can give a definitive interpretation of regulations) that there is no legal vires to the scheme for elections after 30<sup>th</sup> September 2015.

If the member wanted to pursue a course of action, they would have to appeal under [Part 8 rule 5](#) and require the authority to instigate an Internal Dispute Resolution Procedure, on the grounds that the authority did not use all 'reasonable endeavours' under paragraph 4 of rule 5A to notify all members that they had an entitlement. If the IDRP was unsuccessful, potentially the member could take the case to the Ombudsman.

[Part 11 Rule 5A, paragraphs 4, 5 & 14](#)

*(4) Within two months of the initial date, the authority shall use reasonable endeavours to notify all those existing employees and former employees who may be entitled to join this Scheme as a special member that they may be so entitled.*

*(5) Within two months of receiving the notification in paragraph (4), or if no notification has been received, within four months of the initial date, a person may apply to the authority by which he was employed in service falling within paragraph (2) above for a statement of the service in respect of which he may become entitled to pay contributions under this rule and the mandatory special period pension contributions which he would be required to pay in respect of it.*

*(14) Where it is not reasonably practicable to comply with any requirement set out in this rule within the period specified, the authority or applicant as the case may be shall comply with that requirement as soon as reasonably practicable after the end of that period*

Crucially the point still remains that even if an IDRP or Ombudsman did rule that reasonable endeavours were not used, as there is not legal vires for entry to the scheme, the only course of action would be for the authority to provide alternate means of redress.

- ii) NICO have contacted Clair and DCLG to say that they haven't had the amount of queries expected with regards to seeking National Insurance contribution refunds. They are happy to receive these in a bulk spreadsheet; the address to which this should be sent is on the Knowledge Hub at the following link - [https://khub.net/group/thefirefighterspensionsdiscussionforum/forum/-/message\\_boards/message/18369062](https://khub.net/group/thefirefighterspensionsdiscussionforum/forum/-/message_boards/message/18369062)

Please send details to

NIC and EO  
HM Revenue and Customs  
BX9 1AN

Putting Jayne Thackeray, Multi Refunds 2, 'Preston', [PAYE number] as the reference.

Clair Alcock asked the meeting to check with all Authorities to see if this has been done. Scotland reported that they have found fewer members have taken out this option than expected.

A big issue identified is getting the records sorted in time for the valuation / ABS. Clair said that for members who paid by instalments she is writing a guide. It covers the mandatory service, the accrued service, the converted service and anyone who has converted extra 45ths. Clair will circulate this when it is checked.

b) GAD v Milne (residual issues)

- i) Clair has received queries regarding making payments to the representatives of deceased members, where the estate has been wound up.

Paragraph 1.15 of the GAD guidance confirms that “Payments should be made to the relevant members if still living. Where a member is deceased, payments should be made to the member’s estate. If the estate has been wound up, legal advice should be sought.”

The situation, is therefore clear on payments for deceased members where the estate is still open.

With regards to whether a estate has to be formally re-opened to allow payments, is a matter for probate law rather than pension law.

FRAs should consider each case individually and contact the administrators of the estate in order to make payment.

c) DCLG update

- i) Phillip Perry explained that DCLG is in the process of moving responsibility to the Home Office. Anthony Mooney, Mark Sherratt and Phillip Perry are transferring to the Home Office. It is expected they will be working alongside Police Pensions. The formal transfer will take place on 1 April but logistics will need sorting. The minister in charge is Mike Penning who is an ex firefighter with connections to trade unions.
- ii) Miscellaneous amending SI for minor amendments to the 2015 scheme have been delayed by legal issues and then by the change in ministers. This should be received in the next couple of weeks, in a consultation wrapped up with survivor’s benefits.

d) Annual Benefit Statements and Valuation

- i) The communications group have been working on a template for Annual Benefit Statements.
- ii) Some funds would not send out a document including all the personal details in the post, so would remove some fields on the front page.
- iii) Benefit projections was subject to discussion, Projection to Statutory Normal Retirement Age – Age 60 for transition members has been agreed. The notes contained should confirm their options. The following table, therefore lays out the normal retirement age for projection of each type of member.



	Protected	Tapered	Unprotected
1992 Scheme	55 or 30 years	60	60
2006 Scheme	60	60	60
Modified Scheme	55	60	60
2015 Scheme	X	X	60

- iv) Retained Modified, use the same calculation for prorating Added Years.
- v) Clair Alcock will send the finalised agreed template to the nominated representatives of the Fire Scheme Advisory Board, this would be for information only, rather than inviting comments it was also agreed that a set of words would be agreed to send a consistent message to boards on the format of the ABS.

e) Scheme Advisory Board

- i) The Scheme Advisory Board chair and employee and employer representatives need to be appointed by the minister before the board can officially meet.

f) Local Pension Boards

- i) Not discussed due to timing

g) LGA Firefighter Pensions Support

- i) Clair's post is still in place and is not affected by the move to the Home Office. Clair's post is funded by subscription from the Fire Authorities.

**9) Technical Discussions**

a) Annual Allowance: Examples to calculate annual allowance for retained modified members and double accrual members

- i) The pension for annual allowance purposes should be as per Part 2A of Schedule 2 of the 1992 regs but with the exception that rather than calculating A & C up to the normal retirement age, you calculate these to the 5th April of the annual allowance year.

So for annual allowance the formula is still  $(A \div 60) \times (B \div C) \times FS$

But with A & C calculated to the annual allowance date rather than the retirement date

A = the maximum 60ths the member could have accrued as at the annual allowance date 5th April XX

B = 1992 service up to 31st March 2015 or taper date

C = Calendar years in 1992 & 2015 scheme up to the annual allowance date 5th April XX

- ii) Clair will issue the guidance with the minutes.
- b) Revaluation
- i) A full year's revaluation should be applied regardless of the start date, in line with LGPS.
  - ii) The earnings order has now been laid at 2%, this should be applied to CARE accounts at a minute past midnight on 1<sup>st</sup> April.
  - iii) For leavers during the year, a different approach is taken, as per regulation 24 which determines how the in-service revaluation should apply to the active part of the year Revaluation at an active to date of leaving. DCLG have confirmed the appropriate method is to calculate using complete months, if number of days exceed 15 then the number of complete months is rounded up by 1.
- c) Split pensions
- i) Linda Ford asked the group how they were dealing with split pensions. Neil Lewins from LPFA said he would contact her directly. Helen Scargill explained when a member is identified WYPF write to the member informing them this applies and adds a flag to system. Regulations say that pension number 1 is calculated to the date of drop, and that pension number 2 is calculated at the lower pay. The best of last three years should not be used as well as split pension.
- d) Scheme Pays implementation date
- i) Pension Input Periods ('PIPs') for calculation of Annual Allowance charges are to be aligned with the tax year from 2015-16.
  - ii) There is no requirement to implement Annual Allowance tax charge debits on the last day of the PIP, and it is recommended administrators continue to implement Annual Allowance tax charge debits on 31 March.
  - iii) This recommendation was agreed by the group.
- e) Ill-health – 2015 Scheme Transition member with APBs
- i) Ill health pensions are paid under the 'one-pot' system where the direction for the calculation is all under the 2015 scheme regulations, and the pension at retirement is all is paid from the 2015 scheme. At normal pension age of the 1992/2006 scheme the 'equivalent amount' is then moved back to the 1992/2006 scheme.
  - ii) However, there is no direction from the 2015 scheme under [\[65\(4b\)\]](#) to pay APB benefits as an equivalent amount under B5B or B5C of the 1992 regs.
  - iii) Therefore B5B and B5C are still payable under the 1992 regs, which seems at odds with the policy intention of the one pot ill-health directions.
  - iv) DCLG have considered whether an amendment to the regulations is needed. They are content for administrators to follow the regulations as currently drafted and are not looking to make a change.
- f) Pensionable Pay – Is a temporary change in duty system treated as APB or as Final Pay
- i) A query was raised regarding firefighters who begin to receive a flexi-duty allowance because of a change in the duty system (on a temporary basis), how are other FRS treating this for pension purposes – as APB or including in APP?
  - ii) The group said they would treat as APB if after 2013

- g) Can an APB for temporary pay be later retracted if pay made permanent
- i) It was asked if a decision has been made to treat temporary payments which start after 1/7/13 as pensionable (and accruing an APB), could this decision be changed at a later date to make such payments non-pensionable for all?
  - ii) This is an FRA discretion and can be changed moving forward, but not retrospective. An APB cannot be taken away.

10) AOB

- a) Catherine Carruthers enquired whether Annual Pension Statements for deferred, are calculated to 31 March or PI date.
  - i) The response from administrators varied, with no consistent date determined.
- b) Public Sector Exit Payment reform, queries have been given to DCLG. GAD advice is being sought for how this would be calculated. There was uncertainty, whether the discretion in the 1992 scheme on uplifting commutation to  $\frac{1}{2}$  of pension would class as an exit payment. This will be clarified at a later date.
- c) Injury retirements and DWP payments, Helen Scargill asked whether other funds were finding issues with DWP not giving information despite a signed form.
  - i) The response from administrators was that they ask the member and use the NFI reports.

11) Date and place of next meeting:

- a) June - Clair asked for offers to host.