



# Firefighter Pension Scheme Age Discrimination Remedy - Remediable powers to reduce or waive liabilities Guidance for Scheme Managers

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## Introduction

1. This document sets out the powers that scheme managers have with regards to waiving or reducing the liabilities in part or in full in respect of the Sargeant remedy.
2. The guidance also sets out where within the [Public Service Pensions and Judicial Officers Act 2022](#) (PSPJOA 2022) [The Firefighters' Pensions \(Remediable Service\) Regulations 2023](#) and the [HM Treasury \(HMT\) Directions](#) the powers are granted to waive a liability. It also sets out what needs to be taken into consideration before using such powers. Examples have also been provided, to help scheme managers understand where they may consider exercising this discretion.
3. It is important that scheme managers do not use a blanket approach to waiving any liability, and they should consider each case on its own merits before establishing whether it is appropriate to exercise their discretion.

## Legislation

4. [Section 18](#) of the PSPJOA 2022 provides the overarching power to reduce or waive a liability, which has occurred because of remedy. This sets out that where there are corrections to lump sum, pension benefits and/or pension contributions adjustments, for immediate choice or deferred choice members, that there may be cases to waive or reduce liabilities.
5. [Direction 4](#) of the HMT Directions provides the specific discretionary powers to enable liabilities to be reduced or waived.
6. [Regulation 63](#) of the Remediable Service Regulations provides the power to scheme managers of the Firefighters' Pension Scheme to exercise their discretion to reduce or waive a liability. This regulation also links back to both the PSPJOA Act and HMT Directions.

## Considerations of exercising the power to reduce or waive a liability

7. There are several things that a scheme manager should have regard to when exercising any discretionary power.
  - a. The Pension Ombudsman determination in case [PO-25374](#) warns against making blanket decisions or policies with no opportunity to consider the particular merits of an individual case. Whilst it is accepted that due regard to previous decisions in similar circumstances should be considered, it is important that each case, is determined on a case-by-case basis.
  - b. HMT's guidance [Managing Public Money](#) sets out what is expected of public sector organisations and how they should have regard for the public purse. Annex 4.11 discusses that although in principle, public sector organisations should seek to recover overpayments that have occurred, there will be both practical and legal limits as to how cases should be handled and that each case should be dealt with on its own merits.
  - c. In the [Home Office consultation response, paragraph 6.148](#) Home Office said:

*“On scheme managers having discretion, this is a consequence of the complexity and variety of individual circumstances. Scheme managers need to be able to consider individual cases when making certain decisions, rather than a blanket set of rules applying.”*

8. Each document in its own way highlighting the importance of considering the circumstances of each case on its own merit.

## Decision making

9. The scheme manager, is determined under [regulation 4](#) of the [Firefighters' Pension Regulations 2015](#).
10. The [PSPJOA 2022](#) and the [directions](#) require the scheme manager to make decisions about the power to reduce or waive a liability as a result of remedy.
11. Whilst the outcome of a decision is important, particularly to a member or dependant who owes the scheme money, the most important part of the process is the reasoning that the scheme manager used to make their decision, which should be justifiable and robust, and evidenced appropriately.
12. Whilst consistency is key, it is possible that there will be different decisions made depending on the nature and circumstances of the case.

## Record keeping

13. Robust record keeping procedures should be in place to record all cases where a decision to reduce or waive a liability has been made.
14. You should record details of each case including, but not limited to:
  - a. The member/dependent
  - b. The type of liability
  - c. The reasons for reducing or waiving the liability
  - d. Relevant evidence
  - e. When the decision was made and by whom
15. Details of the relevant amounts that have been reduced or waived should also be recorded, along with any other important information, this is because where a discretionary power is used to reduce or waive a liability the amount waived does not have to be paid by the member or scheme.
16. Where a scheme manager uses their discretionary power to reduce or waive a liability, this information will need to be formalised with relevant details being passed to the pension administrator to ensure that the pension records are updated and maintained accordingly.
17. Scheme managers will need to consider GDPR requirements and where relevant discuss with administrators who will be responsible for storing records.
18. Data retention policies may also need to be amended to ensure that the information can be held for as long as is felt relevant in line with GDPR requirements.

19. Local Pension boards will want to consider how they expect to be updated on any cases that have been reduced or waived.

## **Example scenarios where waiving could be considered**

20. There are scenarios where scheme managers could consider their powers to waive a liability.

21. [Direction 4\(3\)](#) sets out particular circumstances that may be relevant to waiving.

- a. whether the liability has arisen as a result of an election by virtue of section 6 or 10 of PSPJOA 2022;
- b. whether the liability has arisen as a result of an election that is treated as having been made by virtue of section 8 or 12 of PSPJOA 2022;
- c. whether the member has remediable service in an employment or office that is mixed service;
- d. whether the member is deceased;
- e. whether, in the reasonable opinion of the scheme manager, payment of the liability in full or in part would result in unreasonable hardship; and
- f. whether, in the reasonable opinion of the scheme manager, there are any other exceptional circumstances which mean the liability should not be paid in full or in part.

22. Examples of these circumstances where scheme managers may use their discretion have been set out below. This is not an exhaustive list, and LGA do not advise that you automatically agree to these types of cases as it is important to remember that each case must be assessed individually, and all decisions will need to be recorded.

23. Example scenarios include (but are not limited to): -

- a. Waiving of interest that accrues for deferred choice members on their contribution adjustment, on an annual basis, for the period of three months after publication of the member's Annual Benefit Statement Remediable Service Statement (ABS-RSS). This would be because it is uneconomical to recalculate the interest to the specific date of payment.
- b. Waiving of overpaid pension and or lump sum amounts for an immediate choice tapered protected member, where both their legacy and reformed scheme remedy options provide lower amounts than the benefits that have been in payment. This would only be for the overpaid retrospective

benefits, the prospective benefits from date of election must change to the lower amount.

- c. Where under remedy a different beneficiary is identified, waiving of previously paid amounts, in part or full, to beneficiaries of deceased members, in respect of either death grant lump sum and or children's pensions.
- d. Waiving of overpaid pension or lump sum in part or full, paid to a deceased immediate choice member, in order for an eligible decision maker, to make a choice for different benefits to be paid to a beneficiary.
- e. Waiving of liabilities in part or in full may also be considered in cases of severe ill health, hardship cases or other exceptional cases.

24. If you have a case where you are in any doubt as to whether you are able to exercise the discretion to reduce or waive the liability, please contact the LGA [bluelighpensions@local.gov.uk](mailto:bluelighpensions@local.gov.uk) or seek your own legal advice.

This guidance note has been prepared by LGA using the regulations as they stand in November 2024.

This note will be reviewed, referencing any changes to the scheme regulations and policies that might be needed.

This note should not be interpreted as legal advice.

Please address any queries on the content of this factsheet to [bluelightpensions@local.gov.uk](mailto:bluelightpensions@local.gov.uk)

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