

Pensionable pay resources

Background

Historically pensionable pay has been a concern for Fire and Rescue Authorities (FRAs) with regards to what pay constitutes pensionable pay and there have been some landmark High Court decisions on firefighters pensionable pay, notably [Kent and Medway Towns v Pensions Ombudsman and Hopper](#) (more commonly referred to as Blackburne), [Norman v Cheshire](#) and [Booth v Mid and West Wales](#), as well as several [ombudsman determinations](#).

This factsheet has been prepared to summarise the guidance and resources available to FRAs on making pensionable pay decisions.

The factsheet has been agreed by the Firefighters' Pensions (England) Scheme Advisory Board (SAB).

Each FRA should have a process in place which determines how pensionable pay decisions will be made.

Broad Principles

Notably the broad principles on determining pensionable pay are:

1. Each High Court determination and ombudsman case has referenced following the 'Blackburne principles':
 - 1.1. Payment should be calculated in accordance with a firefighter's ordinary rate of pay.
 - 1.2. Payment must be 'pay' for work done under the contract of employment.
 - 1.3. Payment must be regular in nature, i.e. should be pay to which the firefighter is entitled at the rate applicable to rank / role.
 - 1.4. It must not be one-off, as a result of an extraordinary event.
 - 1.5. It must have something of a permanent nature.

2. Pay in relation to a duty system an individual is required to perform is likely to be pay in relation to the performance of the role of a firefighter.
3. Equivalent allowances paid for the same duty should be treated the same way regardless of whether the individual is a regular or retained firefighter.
4. An allowance will be permanent unless it is temporary in the sense of occasional, one-off, irregular and time limited.
5. Just because firefighters can be moved to different stations or different duty systems and an allowance may then terminate does not mean that the allowance is not 'permanent'.
6. A 'permanent' payment does not have to endure for the whole of a firefighter's employment.
7. Must consider the specifics of each contract of employment and any collective agreements.
8. What is pensionable under FPS 1992 is also likely to be pensionable under the later schemes i.e. the inclusion of the words "permanent" and "temporary" in the definition of "pensionable pay" was not intended to limit what could be considered pensionable under the later schemes.

Guidance and Resources

1. Regular [pensionable pay workshops](#).
2. Factsheets have been provided on:
 - 2.1. [Pensionable Pay \(Booth v Mid and West Wales\)](#)
 - 2.2. [Additional Pension Benefits](#)
 - 2.3. [Two pension entitlement and drop of pay in FPS 2015](#)
3. [Monthly FPS bulletins](#) will signpost conversations and resources about pensionable pay. Relevant bulletins can be found in the subject index on the main Bulletin page under the topic heading 'Pay'
4. Consolidated versions of the regulations showing the amendments have also been provided:
 - 4.1. [FPS 1992: Regulation G1](#)
 - 4.2. [FPS 2006: Part 11, Chapter 1, Rule 1 & 2](#)
 - 4.3. [FPS 2015: Rule 17](#)
5. The importance of robust and transparent pensionable pay decision making has been included in scheme manager and governance training.

6. In order to assist FRA pensionable pay decision making, resources have been bought together into one place - <http://www.fpsregs.org/index.php/member-area/pensionable-pay>

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We are aware that pensionable pay continues to be an issue and concern for FRAs. At their meeting of 9 January 2020 the Scheme Advisory Board (SAB) discussed how FRAs could be best supported. One agreed action was to provide a central point of reference for pensionable pay resources.

This page has been developed to hold historic and archived resources to assist authorities in managing the application of pensionable pay and what to consider when making determinations.

For information on case law determinations in relation to pensionable pay visit our dedicated web page <http://fpsregs.org/index.php/legal-landscape/relevant-case-law>.

You can view all articles published on "Pay" in our monthly bulletins by using the subject matter index available on the [Bulletins](#) page. Additionally, any queries on pay related issues can be found on the [Technical queries](#) page - the queries log is updated monthly.

[Regulations](#)

[Resources](#)

[Ombudsman determinations](#)

This factsheet has been prepared by LGA to give some guidance on the rules of the pension scheme and associated legislation using the regulations as they stand at July 2020, however they should be used only as an informal view of the interpretation of the firefighters' pension scheme as only a court can provide a definitive interpretation of legislation. This factsheet should not be interpreted as legal advice

Please address any queries on the content of this factsheet to bluelight.pensions@local.gov.uk