



**HAMPSHIRE
FIRE AND
RESCUE
AUTHORITY**

Purpose: Noted

Date **9 OCTOBER 2019**

Title **LEGISLATION AND LOCAL GOVERNMENT ASSOCIATION (LGA)
UPDATE REPORT**

Report of Chief Finance Officer

SUMMARY

1. This report, together with attachments, provides the framework for the agenda item.

LEGAL UPDATES

2. There are three legal judgements which have been made and may well have an impact on Fire Pensions should legislation be amended.
3. Jane Marshall from Weightmans, legal adviser to the Fire SAB has provided an update on two of these which can be found in APPENDIX A

LANGFORD v SECRETARY OF STATE FOR DEFENCE

4. The Court of Appeal has ruled that it was unlawful discrimination to deny survivor's benefits to the long term partner of a deceased member of the Armed Forces Pension Scheme on the basis that she was still married to another man.
5. The claimant had lived with her RAF partner for 15 years. When he died in service she was denied access to any survivor benefits under his pension scheme on the basis that she had not obtained a divorce from her former husband (although the couple had been estranged for 17 years).
6. The fact that she was still legally married to her former husband means that under current law, she would be entitled to a widows pension from any pension he may have, if they are still married at the point of his death.
7. Most public sector schemes, including Fire Pensions will pay pension to a co-habiting partner, of which part of the definition is that they must be free to marry if they choose and is not the spouse or civil partner of another person.

THE LORD CHANCELLOR & SECRETARY OF STATE FOR JUSTICE v
MCCLLOUD & OTHERS

8. The Government has been refused permission to appeal to the Supreme Court against the Court of Appeal's findings. The Court of Appeal found that the transitional provisions in relation to the 2015 Firefighters Pension Scheme, which intended to protect older firefighters from the impact of compulsory pension reforms, in fact discriminated against younger firefighters on the grounds of age.
9. This ruling also affected judges in the 2015 Judicial Pension Scheme; and HM Treasury have now confirmed in a written statement that remedy will need to be addressed across all public sector pension schemes. HMT estimate that this will add approx. £4bn per annum to the pension scheme liabilities from 2015. The HMT statement can be found in APPENDIX B.
10. Each public sector scheme is having its own case management hearing as remedy will probably vary according to each scheme. The Judges hearing is first on 7 October and the Fire hearing is last on 18 December.
11. Even after the case management hearing it is likely to be some time before it is known how benefits will be affected or be in a position to implement remedy. New legislation will need to be drafted, consulted on and laid before Parliament to enable remedy to take effect; and of course, the relevant software updates to UPM will need to be delivered by Civica.
12. The Court of Appeal's findings in both Langford and McCloud is likely to mean that some pension scheme re-design in the public sector may be necessary in the imminent future, bringing disruption and an increased administrative burden for administering authorities and pension scheme administrators.

O'BRIEN v MINISTRY OF JUSTICE

13. The Court of Justice of the European Union (CJEU) handed down a judgement on 7 November 2018 in a case which concerned discrimination against part-time judges in the calculation of pensions. The issue is whether periods of service as a part time judge prior to the coming into effect of Part Time Workers Directive should be taken into account in calculating the amount of pension to be paid upon retirement.
14. Mr O'Brien started his part-time work on 1 March 1978 and was in post until 31 March 2005, but his pension was only based on service from 7 April 2000, which was when the UK was required to transpose the Part Time Workers Directive into domestic law.
15. The CJEU concluded that part-time work undertaken before the deadline for transposing the Part Time Workers Directive on 7 April 2000 must be taken into account for the purposes of calculating a retirement pension.

16. The judgement will have a significant financial impact on the calculation of pensions for part-time judiciary as well as other part-time workers.
17. As far as Fire Pensions are concerned, this judgement could have an effect with regard to the 2006 Modified Fire Pension Scheme. This scheme allowed retained fire-fighters to backdate their entry of the pension scheme to 1 July 2000, the date that the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 came into effect.
18. HFRA along with 6 other FRAs have provided data to the Home Office so that they can make an informed assessment of how this case could impact the 2006 Modified Fire Pension Scheme.
19. For HFRA, although we wrote to approx. 1,000 retained firefighters who were employed at some point between 1 July 2000 and 5 April 2006, only 170 elected to join the scheme. Depending on changes to legislation it's possible that we may have to revisit all potential affected members again.
20. We are expecting to see some legislation early next year with regard to this judgement, further information will be brought to the Board when it is available.

FPS BULLETINS

21. LGA issue a bulletin at the end of each month; there have been three bulletins issued since the last Fire Pension Board report. The bulletins are emailed out to a variety of contacts but can also be accessed via the www.fpsregs.org website.
22. Bulletins 21, 22 and 23 can be found in APPENDICES C, D & E. There is a lot of information contained within these bulletins; the key items are set out below

CONCLUSION OF FACTOR REVIEWS (BULLETIN 21)

23. GAD have now completed their review of all factors used in the Fire Pension Scheme. All factors have now been issued and Hampshire Pension Services are using all the new factors from the relevant effective date for their calculations.

SAB ADMIN & BENCHMARKING COMMITTEE VACANCY (BULLETIN 23)

24. There is a vacancy on the Administration and Benchmarking committee for an FRA Local Pension Board representative.

25. The main objectives of the committee are to provide guidance to the SAB to understand the value and cost of administration and consider how administrators can best be supported by identifying best practice.
26. The committee are currently involved in considering the recommendations made by Aon in the administration and benchmarking review and how these can be progressed.
27. The required commitment is attendance at three to four meetings per year, generally held in London. If any Board members are interested, please email clair.alcock@local.gov.uk

NEW FACTSHEET (BULLETIN 23)

28. A New factsheet on compensatory ill health pensions paid to retained fire-fighters has been issued.
29. This factsheet has been prepared to give guidance to FRAs on when entitlement to a compensatory ill health pension payable under The Firefighters Compensation Scheme Order 2006 arises; specifically, for a retained firefighter who was employed prior to 6 April 2006 and where the injury occurred before 1 April 2014.
30. It's important to note that whilst this sounds very complicated, and to be fair it is, it does only affect a very small number of people as fortunately HFRS does not have many cases of injury pensions, let alone those for retained firefighters.
31. Prior to 6 April 2006, retained firefighters were not able to join the 1992 Fire Pension Scheme and they were therefore given compensatory provisions under the compensation scheme rules.
32. From 6 April 2006, retained firefighters could join the 2006 Fire Pension Scheme. This was then amended in 2014, when the 2006 Modified Fire Pension Scheme came into effect, allowing eligible retained firefighters to join from 1 July 2000.
33. The injury pension benefits payable to a retained fire-fighter from the 2006 Firefighters Compensation Scheme therefore depend on whether the member joined the scheme and if so which one, the dates of their employment and when the injury occurred.
34. The factsheet can be found in APPENDIX F.

AON ADMIN & BENCHMARKING REVIEW (BULLETIN 23)

35. In 2018 the SAB commissioned an admin and benchmarking review with the aim of establishing how much the scheme costs to run and how effective administration is.
36. The SAB, supported by its three committees, is now considering the recommendations made and will issue a report on the focusing on the actions needed to progress the work.
37. This report was the first attempt to analyse how much the scheme costs to run; some FRAs were not able to provide all the information required. This does mean that the costs cannot be taken to be completely accurate at this stage. It is likely that this exercise will be repeated on an annual basis to build up accuracy and reliable information.
38. The surveys completed by HFRS can be found in APPENDICES G & H and the final report from AON can be found in APPENDIX I.

RECOMMENDATION

39. The Board are asked to note the contents of this report.

APPENDICES ATTACHED

40. APPENDIX A – Weightmans legal update
41. APPENDIX B – HM Treasury statement
42. APPENDIX C - FPS Bulletin 21 – June 2019
43. APPENDIX D - FPS Bulletin 22 – July 2019
44. APPENDIX E – FPS Bulletin 23 – August 2019
45. APPENDIX F – New factsheet compensatory ill health pensions
46. APPENDIX G – HFRS Administration survey answers
47. APPENDIX H – HFRS Employer survey answers
48. APPENDIX I – AON benchmarking report

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