

By Email: May 2020

Internal Dispute Resolution Procedures (IDRPs).

Introduction

1. The matter of IDRPs has been a frequent topic of conversation for the SAB. They have previously discussed¹ the Pension Ombudsman (TPO) recommendation that IDRPs should have one stage only and agreed that was not suitable for a locally administered scheme. This decision was communicated to FRAs in [FPS Bulletin 9 – June 2018](#).
2. At the Board's meeting on 14 March 2019⁴, they agreed that the secretariat should collect data on patterns of IDRPs, to understand if there are any topical or frequent disputes on particular areas, how often a stage one hearing went to a stage two hearing, and the result. This data request was issued in [FPS Bulletin 30 - March 2020](#).
3. Finally, at their meeting of 13 June 2019⁵, members discussed the [Internal Dispute Resolution Procedure paper](#) and agreed that the guidance laid out in [FPSC 1/2009](#) was still fit for purpose and should be re-issued.
4. This paper
 - i. requests Board members to approve the draft factsheet on IDRPs in [Annex One](#) that highlights the guidance in FPSC 1/2009 and SAB recommendations, and
 - ii. provides board members with the results of the first IDRPs data request.

IDRP Data

5. Response rate

We had a good response rate to the survey with 32 FRAs responding. Of those responses, 13 FRAs returned a nil response meaning that they didn't have any IDRPs in 2019/2020.

¹ [Paper 3 - Meeting 20 June 2018](#)

⁴ [Minutes - Meeting 14 March 2019](#) [Paragraph 12.4]

⁵ [Minutes - Meeting 13 June 2019](#) [Item 8]

6. Decision makers

Stage One

The guidance in [FPSC 1/2009](#) set out that Stage One decisions should be heard by the Chief Officer or a delegated senior manager. In Paper 2⁶ to the Board on 13 June 2019, we commented that an appropriate delegation would be the [delegated scheme manager](#) under rule 5 of the 2014 regulations⁸.

The survey results show that the following roles are the Stage One decision maker.

Table 1: Stage One Decision Makers

Role	FRA responses
Chief Fire Officer or Deputy	14
Scheme Manager	2
HR Manager / Director	4
Finance Director	3

We were pleased at this response and felt it appropriately reflected the guidance for the Stage One decision maker.

Stage Two

The guidance in FPSC 1/2009 sets out that the Stage Two decision should be heard by a nominated panel of representatives of the FRA; noting that the panel must obtain relevant advice on technical or legal issues. The panel may include elected members of the Authority or any other suitable representatives. The panel may provide for decisions to be taken by or on their behalf by one or more of their number.

The survey results show that the following roles are the stage two decision maker.

⁶ [Paper 2 - Meeting 13 June 2019](#)

⁸ <http://www.legislation.gov.uk/ukxi/2014/2848/regulation/5/made>

Table 2: Stage Two Decision Makers

Role	FRA Responses
FRA	2
Appeals Panel or Committee	9
Senior Manager Pensions	1
CFO or deputy	3
Head of Finance	1
Scheme Manager	1
PFCC	3
Legal Officer at Council	1
Director of Corporate Services	1

Anecdotally, we understand that the suitability of the Stage Two decision maker being a nominated panel of representatives of the FRA is often the cause of most discussion when deciding who the decision maker should be, as elected members may not be expected to have an in-depth knowledge of the pension scheme.

There are a few roles shown in the results that we would not consider suitable to hear the Stage Two decision. However, in the case where a Stage Two decision would be heard by the senior manager for pensions, the first stage was heard by the Chief Fire Officer and for that Authority no decisions went to second stage.

7. Decision Types

Of most interest to members may be the types of decision that go to IDRP.

Interim [FPS Bulletin 31](#) clarified the meaning of the terms “upheld” and “overturned”. These definitions are the same as those used by TPO:

‘Upheld’ means that the decision maker agreed with the complainant, and ‘Overturned’ means that the decision maker did not agree.

Although care was taken to check that responses were returned in line with these definitions, it cannot be guaranteed, as some Authorities appeared to consider that upheld meant the decision maker agreeing the original determination as correct.

Table 3: IDRP Decisions taken in 2019/2020

Type	Stage One		Stage Two	
	Upheld	Overtured	Upheld	Overtured
Pensionable Pay	1	10	1	6
Ill-Health	3	2		
Injury		3		3
Refund	1			
Transfer	1			
FPS Remedy		1		
Mal-administration	1			
Milne v GAD		2		2
Beneficiary	1			
Widows Pension		1	1	
Commutation		1		
Abatement		2		
Pension Calculations		1		
Refusal to undo opt-out		1		1
Early release of deferred pension		1 ⁹		
Two Pension Entitlement		5	1	4
Pension Linking	1			
Special Member		1		
Surviving Partner	1			
Auto-enrolment		1		
Pension Review (Ill-Health and Injury)		1		1
Total	10	34	3	19
		44		22

The survey only asked FRAs to give numbers of these types of decisions. There was no scope to examine what the decision was and why it went to IDRP so we cannot comment in detail on the decision types.

As we might expect, pensionable pay, ill-health, injury and two pension entitlement saw the most IDRPs, and this might reflect the time spent on developing resources in these areas, which has improved both FRA and member knowledge.

An IDRP on the FPS remedy is surprising, but we have highlighted in the draft factsheet that IDRP cannot be used where –

- (a) proceedings in respect of the dispute have been commenced in any court or tribunal

⁹ A second stage appeal has been lodged

Of the 19 authorities who responded with an IDRPs during 2019/2020 there were 44 stage one decisions, of those 10 were upheld in the members favour.

22 of the 34 overturned decisions went to stage two, and 3 of those decisions were changed at this stage and ruled in favour of the member.

Conclusions

8. With only one year of data it might be premature to draw too many conclusions, nevertheless the data appears to concur with [TPR's survey results](#) and the Board's own [benchmarking survey](#), that IDRPs are relatively low.

The majority of the decisions were overturned, which could show that FRAs' processes for making correct decisions on pension matters are working.

Just under half of all decisions went to stage two, showing that the stage two procedure is still of value, albeit a low number of decisions were changed during the stage two process.

Although there was a greater range of decision makers at the stage two process, the decision makers were largely in line with guidance.

The secretariat recommend noting this data and running the data request each year to see if any patterns emerge.

Board decision

9. The Board are asked to

- i. Agree the draft factsheet in [Annex one](#) for publishing, and
- ii. Note the data provided on IDRPs and agree this data should be provided by FRAs as an annual return.

Board Secretary
May 2020

Annex One



 **Information**

Internal Dispute Resolution Procedure (IDRP)

If a scheme member, prospective member, dependant, or other person with an interest in the scheme, is dissatisfied with a decision made by a Fire and Rescue Authority (FRA), or the failure to make a decision, there are rights of appeal available.

Each set of scheme rules contains arrangements for Internal Dispute Resolution Procedures (IDRP)¹⁰:

Firefighters' Pension Scheme 1992 (FPS 1992)	Rule H3 ¹¹ (as amended by SI 2013/1392)
Firefighters' Pension Scheme 2006 (FPS 2006)	Part 8 Rule 5 ¹²
Firefighters' Pension Scheme 2015 (FPS 2015)	Regulation 163 ¹³
Firefighters' Compensation Scheme 2006 (FCS 2006)	Part 6 Rule 3 ¹⁴

Background

This factsheet has been prepared to update the informal guidance provided in [FPSC 1/2009](#)¹⁵, in respect of who each stage of the appeal should be heard by, and the relevant timescales for each stage.

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 an IDRP will be managed.

¹⁰ Based on the requirements of [Section 50 of the Pensions Act 1995](#) and The Occupational Schemes [Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments\) Regulations 2008](#)

¹¹ <https://www.legislation.gov.uk/uksi/2013/1392/schedule/paragraph/8/made>

¹² <https://www.legislation.gov.uk/uksi/2006/3432/schedule/1/part/8/paragraph/5/made>

¹³ <https://www.legislation.gov.uk/uksi/2014/2848/regulation/163/made>

¹⁴ <https://www.legislation.gov.uk/uksi/2006/1811/schedule/1/made>

¹⁵ <http://fpsregs.org/images/FPSC/1-2009.pdf>

Who is entitled to make a complaint under IDR?

In respect of the Firefighters' Pension Schemes, a person with an interest in the scheme and who may use the IDR would be –

- (a) a member – active, deferred or pensioner;
- (b) a widow, widower, surviving civil partner, surviving cohabiting partner or other surviving dependant of a deceased member;
- (c) a surviving non-dependant beneficiary of a deceased member;
- (d) a prospective member, i.e. a person who is not currently a member and could join at their request or would be automatically admitted unless they opt out, or who may be admitted subject to the consent of the FRA;
- (e) a person who has ceased to be within any of the above categories (a) to (d);
or
- (f) a person who claims to be within any of the above categories (a) to (e) and the dispute relates to whether they are such a person.

As the procedures also apply to disputes relating to the FCS 2006, they are available to employees, prospective employees, and former employees, who may be entitled to benefits under that scheme, i.e. optants-out of the main FPS schemes, and retained firefighters employed before 6 April 2006 with protected rights.

Representation

An application under the IDR may be made or continued on behalf of a person who is a party to the dispute:

- (a) where the person dies, by their personal representative,
- (b) where the person is a minor or is otherwise incapable of acting for themselves, by a member of their family or some other person suitable to represent them, and
- (c) in any other case, by a representative they have nominated.

How does IDR apply to the FPS?

The IDR allows any person mentioned above, who has a complaint relating to the pension that is not covered by the medical appeal arrangements, to have their appeal heard by their employer.

Amendments to the Pensions Act 1995 made in 2008¹⁶ allowed for a single stage procedure, although pension schemes have discretion to make provision for two stages.

¹⁶ <https://www.legislation.gov.uk/ukpga/2007/22/section/16>

The scheme rules do not prescribe what the dispute resolution arrangements should look like or the process to be followed, only that the member should give written notice to the scheme manager/ authority within 28 days of receipt of the determination to require the scheme manager/ authority to deal with the disagreement by means of an IDR. How the scheme manager/ authority then responds is a matter for guidance.

The SAB have proposed that the existing guidance on how to manage this process as set out in [FPSC 1/2009](#) should be maintained on the following basis:

Stage one: the appeal should be considered by the Chief Officer, or a delegated senior manager (“the specified person”), who will make a stage one decision.

An appropriate delegation would be the [delegated scheme manager](#) under rule 5 of the 2014 regulations¹⁷.

Stage two: the stage one decision should be agreed or overturned by the decision of a nominated panel of representatives of the FRA; noting that the panel must obtain relevant advice on technical or legal issues. The panel may include elected members of the authority or any other suitable representatives. The panel may provide for decisions to be taken by or on their behalf by one or more of their number.

Stage one

The application should be made in writing, giving details of the complaint.

The regulations state that applications should be made within 28 days of receipt of the determination giving rise to the dispute.

However, [TPR code of practice 11](#) which comments on the specified reasonable period, gives a period of six months and allows discretion to accept applications made outside of this time period. The guidance in [FPSC 1/2009](#) [paragraph 5.3] gave a timeframe of six months for the application and the SAB consider this to still be an acceptable timeframe.

The specified person must acknowledge receipt of the application as soon as reasonably possible, and:

- (a) inform the applicant that the [Money and Pensions Service](#) (MaPS) is available to assist members and beneficiaries of the scheme in connection with any difficulty with the scheme, and
- (b) give the applicant the contact details for MaPS.

A stage one decision¹⁸ must be provided to the complainant or their representative within two months of receipt of the application or a further letter must be sent explaining the reason for the delay and the expected date of the decision.

¹⁷ <http://www.legislation.gov.uk/ukxi/2014/2848/regulation/5/made>

¹⁸ As per 5.5 of [FPSC 1/2009](#)

Stage two

If the applicant is dissatisfied with the decision at stage one, they can apply in writing for the decision to be reconsidered by the FRA.

The guidance in [FPSC 1/2009](#) [paragraph 6.1] gave a timeframe of within six months of receiving the stage one decision and the SAB consider this to still be an acceptable timeframe.

When an application is received, it should be acknowledged.

A stage two decision¹⁹ must be taken within two months of receipt of the application or a further letter must be sent explaining the reasons for the delay and the expected date of the decision.

When notification of the decision is sent to the applicant, it must include:

- (a) a statement that the [Pensions Ombudsman](#) appointed under section 145(2) of the Pension Schemes Act 1993(4) may investigate and determine any complaint or dispute of fact or law, in relation to a scheme, made or referred in accordance with that Act, and
- (b) the Pensions Ombudsman's contact details.

Exemptions

IDRP cannot be used where –

- (a) proceedings in respect of the dispute have been commenced in any court or tribunal;
- (b) the Pensions Ombudsman has commenced an investigation into a complaint made or dispute referred to him; or
- (c) a notice of appeal has been issued by the complainant in accordance with –
 - i. Rule H2 of Schedule 2 to the Firemen's Pension Scheme Order 1992 (appeal against opinion on a medical issue);
 - ii. Rule 4 of Part 8 of Schedule 1 to the Firefighters' Pension Scheme (England) Order 2006 (appeals against decisions based on medical advice);
 - iii. Regulation 154 of the Firefighters' Pension Scheme (England) Regulations 2014 (appeals against determinations based on medical evidence), or
 - iv. Rule 2 of Part 6 of Schedule 1 to the Firefighters' Compensation Scheme (England) Order 2006 (appeal to medical referee).

¹⁹ As per 6.3 of [FPSC 1/2009](#)

The appeals listed in (c) above relate to a determination made by the FRA in relation to an ill-health or injury award. The FPS and FCS contain special provisions for medical opinions to be considered by the Board of Medical Referees (BMR).

However, the person may still be eligible to make an appeal on a medically-related issue other than the outcome of a medical opinion. For example, if a firefighter believes they are entitled to an ill-health award, but the FRA make a determination of an ordinary award, without seeking a medical opinion, or if the dispute is that the correct processes have not been followed.

Limitations

This factsheet is written for FRAs in England, as devolved authorities may have different guidance or processes in place. However, the rules for each scheme are provided below for completeness.

	FPS 1992	FPS 2006/ 2007	FPS 2015
England	H3	Part 8, Paragraph 5²⁰	Rule 163
Wales	H3	Part 8, Paragraph 5²¹	Rule 173
Scotland	H3	Part 8, Paragraph 5²²	Rule 153
Northern Ireland	Article 67	Article 48	Rule 165

Further resources

IDRP guidance for decision makers [Coming soon]

IDRP guidance for applicants [Coming soon]

[Template letters and forms](#)

[TPR Code of practice 11 Dispute resolution – reasonable periods](#)

The following documents provide useful historic context:

[FPC 28 \[Item 7\]](#)

[FPC\(08\)7](#)

[FPSC 1/2009](#)

²⁰ Amended by [SI 2013/1393](#)

²¹ Amended by [WSI 2014/3254](#)

²² Amended by [SSI 2018/215](#)

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 October 2019, 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

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