

FPS Bulletin 1 – July/ August 2017

Welcome to the first issue of the Firefighters' Pensions Schemes bimonthly bulletin. If you have any comments on the contents of this bulletin or suggested items for future issues, please contact [Claire Hey](#).

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[Meet the bluelight team](#)

[Clair Alcock](#) – Firefighters’ Pension Adviser

Clair joined LGA in December 2014, after an 8 year career with AquilaHeywood leading the Police and Fire developments, with 2 years before that in Police Pension Administration, and 5 years before that in private sector administration. Clair heads up the Fire and Police pensions team at LGA, offering advice to employers on their pension scheme responsibilities and supporting the national governance of the Fire Pension Scheme.

Clair is delighted to have recently welcomed Claire and Kevin.

[Kevin Courtney](#) – NPCC Pensions Adviser

Kevin has spent most of his career working in public sector reward, including time with Transport for London, Guy’s & St Thomas’ Hospitals and, from 2001 to 2016, with the Metropolitan Police as Head of Reward.

Kevin has been in his current role since January 2017 and is leading on improving scheme governance, working closely with the Police Pensions Scheme Advisory Board, improving communication among all stakeholders and progressing technical issues with the administrators and the Home Office police pensions team.

[Claire Hey](#) – Assistant Firefighters’ Pension Adviser.

Joining the team in June 2017, Claire has 10 years’ public service pension experience, in LGPS and the Firefighters’ Pension Schemes. Claire commenced Local Government employment in 2004 at Salford City Council, before moving to Greater Manchester Pension Fund, and most recently Greater Manchester Fire & Rescue Service.

Claire’s role is to provide secretariat support to the Fire Pensions Scheme Advisory Board and develop national scheme communications.

[Home Office assumptions exercise](#)

The Home Office has written to all FRAs to request submission of their pension income/expenditure forecasts for the period 2017/18 to 2023/24, via the online LOGASnet system.

The letter sets out the centrally prescribed assumptions that **must** be applied when calculating pension income and expenditure forecasts. The forms can be accessed on LOGASnet from Monday 17 July. The deadline for submissions is Wednesday 6 September.

FRA's are also required to complete an excel table in order to declare the local assumptions that they have applied to calculate their pension estimates. The prescribed assumptions that FRA's should use for CPI percentage increases, pay increases and employer contribution rates for the forecasting period have already been pre-populated on the table. Please note that payment of the 2018 Top Up grant will be conditional on its completion and incomplete tables will be returned to FRA's.

FRA's are reminded that forecast pension accounting data is being subjected to an ever increasing scrutiny and, as such, they should ensure that processes are in place to ensure that they have a robust methodology to calculate these.

The letter and spreadsheet template can be found at Appendices 1 and 2

tPR governance and admin survey

During autumn 2016, the Pensions Regulator carried out a survey on public service pension scheme governance and administration. The results were published in May of this year.

The results and a summary of the survey research can be found here

<http://www.thepensionsregulator.gov.uk/docs/public-service-research-summary-2017.pdf>

The top risks identified across all schemes were:

- Governance
- Record keeping
- Internal controls
- Member communication

tPR has produced two presentations focusing on the results of the survey in relation to the Firefighters' Pension Schemes and the key messages that can be drawn from these findings. The presentations can be accessed at Appendices 3 and 4.

Brewster case

Early in 2017 a judgement was handed down in respect of the requirement for nomination for a survivor's pension to be made, in the case of Brewster v NILGOSC -

<https://www.supremecourt.uk/cases/docs/uksc-2014-0180-judgment.pdf>

The Home Office issued advice with regards to the Brewster judgment, that in their opinion authorities can rely on section 3 of the Human Rights Act 1998 (the "HRA 1998") as the legal basis for their not requiring that a surviving adult partner be nominated in order to receive payment of survivor benefits under the 2006 scheme.

This issue for FPS only affects the 2006 scheme, for which the majority of the membership transferred to the 2015 scheme under reforms, therefore the potentially affected cohort is very small. Equally because of the local administration of pensions, nomination forms are encouraged to be completed regularly throughout the membership.

The potential risk to authorities were they to pay a survivors pension without a nomination in place and without the regulations being amended to allow this, is that potentially they could be challenged by a third party. In making a challenge they would have to successfully argue that the

Brewster judgment and the Human Rights act could not be taken into account and the authority had acted outside of the regulations in order to make the payment.

In a note from the Home Office they advise that *“scheme managers should seek their own legal advice or that of the Local Government Association on the legal effects of the Brewster Judgment.”*

However, it is not proposed to seek legal advice on this matter at the present time, as we share the Home Office opinion that the risk of a successful legal challenge is low. Were an authority to identify a member who has died without nominating a partner, we would work with the authority at that time to determine a course of action.

If anyone has any information contrary to this, and feel there is a risk to Firefighters’ Pension Scheme members by such an approach, please contact [Clair Alcock](#) .

Voluntary Scheme Pays

FRA’s may be aware that LGA have recently been asked to consider whether authorities can satisfy a tax charge under ‘Voluntary’ Schemes Pays where a transitional member has breached AA across the Firefighters’ Pensions Schemes, and / or any active member is subject to the tapered annual allowance.

Please see below a summary of the legal advice taken on behalf of FRA’s. The detailed advice note is available at Appendix 5.

1. In certain circumstances, an individual cannot use Mandatory Scheme Pays ‘MSP’ to pay a relevant HMRC tax charge. This note considers whether an FRA can satisfy the tax charge on a members behalf using Voluntary Scheme Pays ‘VSP’
2. The Home Office is considering amendment to the legislation that would allow an FRA to use ‘VSP’ in certain circumstances only. However, unless or until that legislation is introduced it is for the FRA to consider their approach to this issue ensuring that what they do is both lawful and appropriate.
3. Having taken Legal advice on behalf of FRA’s, LGA can confirm that an FRA (including County Councils, combined Fire Authorities and Metropolitans) can offer Voluntary Scheme Pays arrangements in order to pay the tax bill where a member of the scheme cannot use mandatory scheme pays because **they have a power of general competence, which may be exercised reasonably where there are sufficient grounds for doing so’**.
4. It is considered that FRA’s should consider the test of ‘exercised reasonably where there are sufficient grounds for doing so’ to be in line with the two circumstances proposed by the Home Office and agreed by the Scheme Advisory Board:
 - Transitional members with service in one of the 1992 or 2006 Schemes, and the 2015 Scheme, are able to access a VSP arrangement in the same way that a protected 1992 or 2006 scheme member, or a member with service only in the 2015 Scheme, can do so through Mandatory Scheme Pays.
 - Scheme members with a tapered annual allowance are able to use a VSP arrangement to pay a tax charge in a circumstance where the pension growth in one scheme (or more

schemes) is less than the £40,000 general AA limit but more than their own tapered AA limit.

5. The Fire Authority as the 'scheme administrator' have an express power under [Rule 2, paragraph 2](#) of the Modification of Scheme Regs SI 2011/1791, to allow for an adjustment to be made to the pension (i.e. in this case a scheme pays debit)

Other News and Updates

GDPR

From 25 May 2018 the EU General Data Protection Regulation (GDPR) introduces new legislation governing the collection, use, and processing of personal data. While many of the provisions remain the same as the existing Data Protection Act, "new elements and significant enhancements" will impose new responsibilities on schemes by granting a number of additional rights to data subjects. The government have confirmed that the UK's exit from Europe will not affect the introduction of the new regulations.

Of particular interest to schemes will be the following:

- The definition of 'personal data' has been expanded to include online identifiers such as IP addresses.
- Implied consent is no longer permitted and therefore consent cannot be bundled, or inferred from silence, pre-checked boxes or inactivity. Explicit consent is required for telephone number and email address.
- Data subjects must be informed, typically via a privacy notice, why and how their data is being processed, how long it will be retained, and what rights they have under legislation. The notice should include details of the data controller and be written in a clear and transparent manner.
- While data subjects currently have the right to request access to their personal data, the removal of the £10 subject access request fee is a significant change. A 'reasonable fee' can still be charged, if a request is "manifestly unfounded or excessive". Timescales to provide the information have also been reduced, to a maximum of one month.
- Data subjects continue to have the right to have inaccurate data corrected, although this has now been formalised, with a one month deadline for compliance.
- The right to erasure allows an individual to request that any stored personal data is deleted or removed, in certain circumstances. However, mandated law overrides this, such as the retention of payroll records for a specified period.
- Should an individual contest the accuracy of their personal data or they object to the processing of it, then the right to restrict should be applied. In this case, the data can be stored, but further processing must not take place.
- The right to data portability now gives individuals the right to request that a scheme transfers their personal data to a third party, using a commonly used, machine readable format such as csv. The information must be provided free of charge and can be requested to be transmitted directly to the third party if this is technically viable.
- The data subject can object to the processing of their data in which case processing must cease, unless "compelling legitimate grounds" can be demonstrated. Individuals must be informed of their right to object at the point of first communication.

The Information Commissioner's Office has prepared a 12 step guide on actions that organisations should take in advance of the implementation date to ensure that they are compliant

<https://ico.org.uk/media/for-organisations/documents/1624219/preparing-for-the-gdpr-12-steps.pdf>

The original legislative guidance can be found here <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN>

State Pension age review

On 19 July, the Government published its review of the State Pension age (SPa) , accepting the recommendations of the [Cridland report](#), to phase in the increase to SPa of 68 between 2037 and 2039, rather than from 2044 as was originally proposed:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/630065/state-pension-age-review-final-report.pdf

As the deferred pension age in the Firefighters' Pension Scheme 2015 is equivalent to SPa, any member born between 1969 and 1971 may be affected by this change if they leave the scheme without immediate entitlement to benefits.

Supreme Court case – Walker v Innospec

In July, the Supreme Court handed down a judgment which has potential implications for pension schemes who offer differing survivors' pension benefits depending on whether their relationship with the originating member was a civil partnership, same sex marriage or opposite sex marriage.

The Equality Act 2010 contains an exception which made it legal for pension schemes to discriminate in the survivor benefits it offered, saying that pension schemes did not have to provide civil partners with pension benefits relating to membership accrued prior to the introduction of civil partnerships in December 2005. The Supreme Court found that this exception was incompatible with EU law.

The case relates to a member (Mr. Walker) whose pension scheme, making use of the exception in the Equality Act 2010, would have only provided his civil partner with a survivor's pension based on his membership from 5 December 2005 upon his death. By contrast if Mr. Walker had been married to a woman, a survivor's benefit payable based on his entire membership would have been payable on his death.

Following the judgment, we understand that Government lawyers are considering the possible impacts the ruling will have on the survivor pension rights offered by public service pension schemes, including the FPS.

HMRC

HMRC newsletters/ bulletins

HMRC have published [pension schemes newsletter 88](#) - June 2017 and [pension schemes newsletter 89](#) – July 2017 containing updates and guidance on pension schemes.

Contracting-out reconciliation update

[Countdown bulletin 25](#) has been published by HMRC on 24 July 2017 covering a variety of related topics. This was followed by [countdown bulletin 26](#), published on 10 August 2017.

HMRC have confirmed that the October deadline for queries is the last queries they would be expecting to receive. Therefore with an expected three month turnaround for queries (from a date set by HMRC, not date of submission), and an average of up to three iterations of queries expected, HMRC have advised that the first round of queries needs to be with them by January 2018

For those yet to start a comparison of data to look at the match rate %, it is recommended they request a re-refresh of data. This will include all active and deferred members as the closure scan has now taken place. To obtain a 'refresh' of data, authorities should email HMRC at: Schemereconciliationtelephoneenquiry.inbox@hmrc.gsi.gov.uk.

Authorities now need to give serious consideration to how they will approach the exercise. Only 12 FRAs had submitted queries as at January 2017, though it is appreciated that all public service schemes are behind the curve due to lack of resource.

HMRC will not look at any queries received after final deadline, and GMP data will stand. This could lead to incorrect payment of benefits and breach of the Pensions Regulator data quality and Data Protection regulations.

Outstanding queries

A summary of FPS related enquiries outstanding with HMRC is available at Appendix 6.

We are pleased to confirm that after liaising with HMRC in order for Fire Authorities to be able to pay the Unauthorised tax payments in respect of the contributions holiday to HMRC as part of a bulk procedure, HMRC are now in a position to confirm that procedure, please find attached:

- The procedure for each Fire Authority to report & pay the tax due on the unauthorised payments (Appendix 7)
- A spreadsheet for each Fire Authority to complete with details of the unauthorised payments (Appendix 8)

You will need to return the spreadsheet by post, with a covering letter titled "**Firefighters contribution refund**" that references your **SAFE** reference and the reference CLM Firefighters 2017.

For the purposes of this exercise you do not need to provide NI numbers, however, if the spreadsheets are not provided (as outlined in the procedure document) then the NI numbers will need to be included on the Event Report.

Please see the procedure for the address and bank details.

In order to obtain your PSTR and SAFE reference, please email bluelightpensions@local.gov.uk and we will send you your individual PSTR & SAFE reference.

Training

'Wrap-up' board training

We have had a number of requests for individual training sessions for new members of boards, and therefore pleased to confirm that we are able to offer a board training 'wrap up' session. This event will be held in London and our offices in Layden House, Farringdon on 22nd August, and will run from 10.30 to 3.30, please see the attached agenda at Appendix 9.

TPR will also be available at the session.

There are 30 places only, so please book early.

If you wish to enquire about full board training, please contact either [Claire Hey](#) or [Clair Alcock](#). Each board is entitled to a free training session under the Scheme Advisory Board levy.

LGA pension update

Slides providing a short update of current issues affecting the Firefighters' Pension Schemes have been uploaded to the Knowledge Hub at the following link:

https://khub.net/group/thefirefighterspensionsdiscussionforum/group-forum/-/message_boards/message/57198061

The slides are based on a presentation given at the CLASS AGM held in Manchester in July 2017.

Save the date

Details have recently been circulated of three events to be held in London on 9th and 10th October:

DAY 1 - 9th October 2017

10.00am to 3.00pm - Pension Scheme Governance

(Registration and refreshments from 9.30am)

Primarily for scheme managers and local pension boards this event, will feature speakers from TPR, LGA, Pensions Ombudsman, SAB and include practical guidance on how to meet TPR requirements for good governance

3.30 to 5.30pm – Firefighters Technical Community

(Tea and coffee from 3.00pm)

This meeting is attended by representatives from the regional groups, LGA and SAB and is an opportunity to discuss technical matters. We welcome any guests who would like to attend.

5.45pm onwards – After conference drinks – venue to be arranged locally to Layden House.

DAY 2 – 10th October 2017

10.15am to 3.30pm - LGA Firefighters Pension Scheme AGM

(Registration and refreshments from 9.30am)

Primarily for fire pension practitioners, scheme managers and interested parties, the AGM will feature speakers from Eversheds, LGA, SAB and include technical updates with opportunities to explore topics on pensionable pay, tax etc. in technical workshops.

Please save the dates in your diaries. The link to register should be available in the next few weeks.

Legislation

SI	Reference Title
2017/774	The Occupational Pension Schemes (Charges and Governance) (Amendment) Regulations 2017
2017/717	The Pension Schemes Act 2015 (Transitional Provisions and Appropriate Independent Advice) (Amendment) Regulations 2017

Useful links

- Knowledge Hub Firefighters Pensions Discussion Forum

Knowledge Hub home page - <https://khub.net/group/thefirefighterspensionsdiscussionforum>

Technical Group minutes - https://khub.net/group/thefirefighterspensionsdiscussionforum/group-forum/-/message_boards/category/5611524

GAD Guidance - https://khub.net/group/thefirefighterspensionsdiscussionforum/group-forum/-/message_boards/category/19045086

Training - https://khub.net/group/thefirefighterspensionsdiscussionforum/group-forum/-/message_boards/category/25859256

- Knowledge Hub FPS LPB members group forum

Home Page - <https://khub.net/group/firefighters-pension-scheme-local-pension-board-members-group-forum>

SAB minutes - https://khub.net/group/firefighters-pension-scheme-local-pension-board-members-group-forum/group-forum/-/message_boards/category/27800196

- FPS1992 guidance and commentary
<http://webarchive.nationalarchives.gov.uk/20120919152859tf/http://www.communities.gov.uk/fire/firerescueservice/firefighterpensions/firefighterspensionscheme/>

- The Pensions Regulator <http://www.thepensionsregulator.gov.uk/>
- The Pensions Ombudsman <https://www.pensions-ombudsman.org.uk/>
- HMRC Pensions Tax Manual - <https://www.gov.uk/hmrc-internal-manuals/pensions-tax-manual>

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Appendices

Appendices can be accessed [here](#).