

Meeting of the Board 24 June 2021

Internal Dispute Resolution Procedure (IDRP) 2020-21 data request update

Background

1. At the meeting of the Board on [14 March 2019](#) [paragraph 12.4], members agreed that the secretariat should collect data on patterns of IDRPs in line with each scheme year, to monitor trends and establish where further guidance or advice may be needed.
2. This exercise was first carried out in March 2020 and the findings reported to the Board in a paper by email dated May 2020.
3. Following the submission of the paper, the secretariat published an IDRP factsheet to update the informal guidance provided in [FPSC 1/2009](#), in respect of who each stage of the appeal should be heard by, and the relevant timescales for each stage.
4. Further guidance notes for IDRP decision makers and applicants has been drafted and is awaiting review.
5. This paper provides board members with the results of the second IDRP data request which was issued to Fire and Rescue Authorities (FRAs) with [FPS Bulletin 44](#) on 30 April 2021. Authorities were given a calendar month to complete the spreadsheet return.

Response rate

6. The response rate to the request was slightly higher than last year, with 34 FRAs submitting data. This equates to around 76 per cent. Of those responses, nine FRAs reported a nil return, meaning that they did not receive any IDRPs in the 2020-21 scheme year. A list of respondents is included at Annex 1.
7. There is no clear pattern in the FRAs that responded in each year. Previous data collection exercises have seen that the same organisations tend to respond or not. Some of the previous outliers have responded to this request, whereas other consistent responders have not submitted a return.

Stage One decision makers

8. The FPS retains a two stage IDRPs and the guidance in FPSC 1/2009 set out that Stage One decisions should be heard by the Chief Officer or a delegated senior manager. The IDRPs factsheet confirms that an appropriate delegation would be the scheme manager as delegated under regulation 5 of the Firefighters' Pension Scheme (England) Regulations 2014¹.
9. The data returns indicate the following Stage One decision makers:

Table 1: Stage One decision makers

| Role | FRA responses |
|--|----------------------|
| CFO/ DCFO/ ACFO | 19 |
| Scheme manager | 4 |
| HR Manager / Director | 4 |
| Finance Manager/ Director | 2 |
| Other representative of FRS management | 1 |
| Pensions manager | 1 |
| A nominated individual | 1 |

10. These responses broadly reflect the guidance issued in 2009 and it is reassuring to note that decisions are generally being considered at senior manager level. Not all FRAs provided a response to this question, particularly if they had submitted a nil return.
11. One FRA reported that their IDRPs does not specify a decision maker but stated that "the complaint will be considered carefully by the nominated individual, this individual will not have been previously involved with the matter being complained about". This gives the authority more flexibility in considering cases, however, could impact on the consistency of decision making and lacks assurance that decisions are being taken at a senior level.

Stage Two decision makers

12. The guidance in FPSC 1/2009 set 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.
13. The effectiveness of a nominated panel of FRA representatives has previously been questioned, as elected members may not be expected to have an in-depth knowledge of the pension scheme.

¹ <https://www.legislation.gov.uk/ukxi/2014/2848/regulation/5/made>

14. The data returns indicate the following Stage Two decision makers:

Table 2: Stage Two decision makers

| Role | FRA responses |
|--------------------------------------|----------------------|
| Appeals Panel or Committee | 12 |
| CFO/ DCFO/ ACFO | 5 |
| Fire Authority | 3 |
| Scheme Manager | 2 |
| PFCC | 2 |
| Director of Law/ Chief legal officer | 2 |
| Senior manager | 2 |
| Treasurer | 1 |
| Director of Corporate Services | 1 |
| An alternative manager | 1 |

15. Again, these results are broadly in line with the expectations set out in guidance. While there is a wider range of positions/ functions included, not all FRAs provided an answer.
16. The Stage Two process for the FRA referenced under paragraph 10 states that it “will be undertaken by an alternative manager, and if possible, someone who was not previously involved with the original determination”. As noted, this offers more flexibility, but less assurance.
17. There did not appear to be any correlation between decision makers for each stage between FRAs.

Decision Types

18. IDRPCs were raised in several categories. Table 3 illustrates the number of disputes raised in each category, and how many were upheld or overturned at each stage.
19. The meanings used are in line with the Pensions Ombudsman (TPO) definitions:
- 19.1. Upheld means that the decision maker agreed with the complainant.
- 19.2. Overturned means that the decision maker did not agree. If a decision is overturned at Stage One, it may progress to Stage Two. If a decision is overturned at Stage Two, the individual has recourse to TPO.
20. Although care was taken to check that responses were returned in line with these definitions, it cannot be guaranteed. Where the responses appeared to be inconsistent, for example an upheld decision progressed to the second stage, the data was adjusted manually.

Table 3: IDRPs decisions taken in 2020-21

| Type | Stage One | | Stage Two | |
|-----------------------------------|-----------|-----------|-----------|-----------|
| | Upheld | Overtaken | Upheld | Overtaken |
| Pensionable Pay | 12 | 11 | | 5 |
| Ill-Health | | 6 | | 3 |
| Injury | 2 | | | |
| Refund | | 2 | | 1 |
| Transfer | | 5 | | 2 |
| FPS Remedy | | 7 | | 1 |
| Special member | | 5 | 2 | 2 |
| Contributions | | 1 | | |
| Early release of deferred pension | | 1 | | 2 |
| Two Pension entitlement | | 1 | | |
| Tax | | 1 | | 1 |
| Pension calculation | | | 1 | |
| Survivor benefits | | 1 | | |
| Interest | | 2 | | |
| Total | 14 | 43 | 3 | 17 |
| Combined total | | 57 | | 20 |

21. FRAs were asked only to provide numbers of these types of decisions and the outcomes. There was no scope to examine what the decision was and why it went to IDRPs, so this report does not comment in detail on the decision types.

22. Of the 25 FRAs who responded with an IDRPs during 2020-21 there were 57 Stage One decisions; around one quarter (14) of those were upheld in the member's favour.

23. Twenty Stage Two cases were reported. This is around half of the overturned number of cases from Stage One (43). However, due to the reporting discrepancies outlined at below, these cases may not directly correlate. Only three decisions were altered at Stage Two and upheld in favour of the member; two of these were recorded as partially upheld.
24. The range of decision types is smaller than last year and the number of cases that went to IDRPs is higher for Stage One, but lower for Stage Two. In some cases, FRAs have reported on partially completed IDRPs. That is where the first stage has been completed and the second stage is ongoing. The secretariat recommends a further instruction for next year to include only fully completed cases, to ensure more consistent analysis between stages.
25. Pensionable pay complaints were again by far the most common occurrence. A significant proportion of those upheld at Stage One derived from the same FRA. Ill-health was also a common cause for complaint, which also reflects the findings from last year.
26. The number of cases in relation to transfers and special members has increased. The increase in transfer cases may be related to future implementation of age discrimination remedy which could see members able to increase their service in their legacy scheme.
27. The secretariat is aware of an increase in retrospective claims for special membership of FPS 2006, however, as the option to join is now closed FRAs are unable to facilitate these requests. One such complaint was partially upheld at Stage Two and it would have been interesting to understand the mechanics of this.
28. Seven IDRPs were received in relation to age discrimination remedy. All were overturned and one progressed to Stage Two. As noted last year, this is an interesting finding, as the IDRPs factsheet highlights that the procedure cannot be used where “*proceedings in respect of the dispute have been commenced in any court or tribunal*”, presumably because a complainant may become entitled to redress as a result of those proceedings.

The Pensions Regulator (TPR)

29. TPR’s [Governance and Administration survey results](#) [Table 4.7.2] show that overall complaints per 1,000 members equated to 0.6 in 2019 for the FPS. Of these total complaints, 67 per cent entered IDRPs, and 20 per cent on average were upheld [Table 4.7.3].
30. The most common types of complaint according to TPR’s data are “*eligibility for ill-health benefit*” and “*inaccuracies or disputes around pension values or definitions*” [Table 4.7.4]. Although the terminology is different, the second category here almost certainly relates to disputes in relation to pensionable pay.

Conclusions

31. The data shows that the number of IDRPCs received remains relatively low and that decision makers at both stages are generally in line with guidance.
32. The findings reported by TPR are broadly in line with the results of the direct IDRPC data request. Some variation is to be expected due to the difference in time parameters and terminology as noted above.
33. Despite the development of resources to improve knowledge and understanding, pensionable pay and ill-health continue to be areas of contention. More development is planned in these areas, including a factsheet on resolving historic pensionable pay errors, and a review of the ill-health documentation.
34. There has been some increase in other types of complaint, which could be linked to ongoing legal proceedings and may therefore be a continuing trend until resolution is reached.
35. Around 75 per cent of Stage One decisions were overturned, which could indicate that FRAs have appropriate processes in place to make robust decisions on pension matters.
36. Almost half of the number of overturned Stage One decisions went to Stage Two, showing that the second stage is still of value, albeit a low number of decisions were changed during the Stage Two process. This indicates either robustness of decision making or a lack of confidence and/ or knowledge to reverse the Stage One determination.

Board decision

37. The Board are asked to note the data provided on IDRPCs for 2020-21 and agree that this data should continue to be requested on an annual basis.

Board Secretary
June 2021

Annex 1. Respondents*Table 4: Responding FRAs*

| |
|--|
| Fire and Rescue Authority |
| Avon Fire and Rescue Service |
| Bedfordshire & Luton Fire and Rescue Service |
| Buckinghamshire & Milton Keynes Fire and Rescue Service |
| Cheshire Fire and Rescue Service |
| Cleveland Fire Brigade |
| Cornwall Fire and Rescue Service (with Isles of Scilly Fire Brigade) |
| Cumbria Fire and Rescue Service |
| Derbyshire Fire and Rescue Service |
| Devon & Somerset Fire and Rescue Service |
| Durham & Darlington Fire and Rescue Service |
| East Sussex Fire and Rescue Service |
| Gloucestershire Fire and Rescue Service |
| Greater Manchester Fire and Rescue Service |
| Hampshire Fire and Rescue Service |
| Hertfordshire Fire and Rescue Service |
| Humberside Fire Brigade |
| Isle of Wight Fire and Rescue Service |
| Kent Fire Brigade |
| Lincolnshire Fire and Rescue Service |
| London Fire Brigade |
| Merseyside Fire and Rescue Service |
| Norfolk Fire and Rescue Service |
| North Yorkshire Fire and Rescue Service |
| Northumberland Fire and Rescue Service |
| Nottinghamshire Fire and Rescue Service |
| Shropshire Fire and Rescue Service |
| South Yorkshire Fire and Rescue Service |
| Staffordshire Fire and Rescue Service |
| Suffolk Fire and Rescue Service |
| Surrey Fire and Rescue Service |
| Tyne & Wear Fire and Rescue Service |
| Warwickshire Fire and Rescue Service |
| West Sussex Fire and Rescue Service |
| West Yorkshire Fire and Rescue Service |