



#LGAfirepensions



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SUTHERLAND



Firefighters Pension Scheme

Annual General Meeting Day Two



www.local.gov.uk

18 September 2018



@LGAworkforce #LGAFirepensions

Agenda

- Chair's Welcome
- Government Panel Session, Jayne Baldock, Home Office and Chris Mulholland, Government Actuary's Department
- Public Service Pension Tax, Andrew Hopkinson, Fire Leaders Association
- Workshops
- Case Law Update, Eversheds
- Workshop feedback
- Pensionable Pay Update, Jane Marshall, Weightmans
- Firefighters Pension Scheme Benchmarking Exercise
- Closing remarks

Workshops

1. Top-Up Grant – Westminster Room

Natalie Klisevica, Economist, Office for Budget Responsibility and HMT,
Workforce, Pay & Pensions

2. Medical Appeals – Smith Square 1 & 2

Speaker: **Dr Mark Groom**, Medical Director, Health Management Limited

3. Combining Pension Scheme Service – Bevin Hall

Speakers: **Nicola Daniel** and **Helen Scargill**, West Yorkshire Pension Fund

Chair's welcome

Malcolm Eastwood

**Chair of the Firefighters Scheme
Advisory Board (England)**



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➤ **Cost effectiveness objective**

The Budget enables the board to look for cost savings and an improved service to members by reducing duplication and undertaking guidance and communications centrally.

And allows for delivery of an effective and varied work plan that has improved the understanding of Firefighters pensions and therefore delivered a better service to members.

➤ **Cost effectiveness**

- **Privacy notices delivered at £74 per notice across Police and Fire**
- **Tax awareness delivered at £75 per delegate across Police and Fire**
- **Plain English Mark delivered at £24 for each Fire Authority**
- **39 Local Pension Board Training Sessions delivered at no cost**
- **5 free training events delivered at no cost**

➤ **Events**

- **Data Conference**
- **Technical Seminar on Special 2006 Members**
- **Joint governance conference with Police Pensions**
- **Local Pension Board Wrap Up Annual Training**
- **Annual Two Day Conference**

Events

Details of events supported by the work of the Scheme Advisory Board can be found here.



Fire Pensions Annual Conference 17-18 September 2018

Annual Local Pension Board wrap-up training - London - Tuesday 19 June 2018

Fire and Police Local Pension Board Governance - London - Wednesday 9 May 2018

Special members of the 2006 Firefighters' Pension Scheme - refresher workshop - London - Wednesday 2 May 2018

Meeting GDPR and TPR's data requirements - London - 29 March 2018

Tax Awareness Seminars

Fire Pensions Annual Conference 9-10 October 2017

- **Board Advisers**
 - **Legal Adviser**
 - **Actuarial Adviser**
 - **Technical Adviser**

➤ **2017/2018 Projects**

➤ **Tax**

➤ **Data**

➤ **GDPR**

➤ **Local Pension Board Survey**

➤ **Pension Board Governance**

➤ **Guidance on Voluntary Scheme Pays**

- **2018/2019 Projects**
 - **More Tax**
 - **Benchmarking**
 - **Pensionable Pay**
 - **More technical guidance**





How can we, the Fire Pensions Community, take forward the 'Pensions Agenda', improve and innovate the way we manage, administer and deliver fire pensions within the constraints FRA's currently have due to restricted resources, time, expertise, constraints of government legislation and time





Public Service Pensions Tax

**Andrew Hopkinson, Deputy Chief Fire Officer, Bedfordshire Fire & Rescue
National Secretary, Fire Leaders Association**



Public Service Pensions Tax

Andy Hopkinson

National Secretary

Tuesday 18 Sept 2018

Who are we?

The FLA exists to promote and protect the interests of the strategic leaders of the UK Fire and Rescue Service;

- Membership open to both operational and corporate staff working at Area Manager level and above;
- We provide support and advocacy to all members on employment and other work related matters;
- Formerly the Association of Principal Fire Officers
 - Nov 2016 – merged with Prospect
 - Jan 2018 - rebranded as Fire Leaders Association

Public Service Pensions Tax

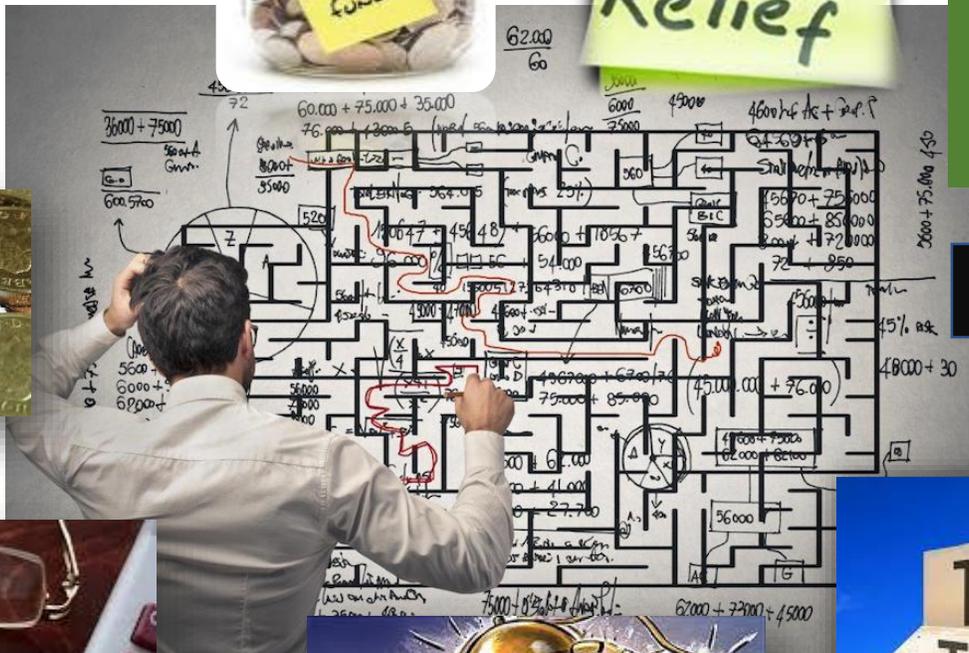
Tapered Allowance



Pension Tax Relief



LTA



Unintended Consequences



HM Treasury



PM confirms £20.5bn NHS England budget rise by 2023

Police recruitment crisis as officers spurn chance to be chief constables

Pension squeeze blamed for longer NHS queues

Fire and rescue service facing a retirement crisis

NHS staffing shortage could become a "national emergency"

Armed Forces short of 8,000 soldiers and 1,000 airmen amid mounting threat from Russia, warn MPs

So what are we doing?



Early 2018 – FLA canvassed affected trade unions, employers, and other key stakeholders representing NHS, police, fire, military, teachers, civil servants and others



12 June – FLA hosted a 1 day workshop to discuss and evidence the adverse impacts on Recruitment, Retention & Motivation



10 Sept – Working Group – Evidence, Evidence, Evidence



Early Nov – Working Group – Utilise the evidence to build a case for change
Work together in a co-ordinated way to lobby stakeholders and Government for change.

Our approach

- Evidence, evidence & more evidence gathering
 - Impact on recruitment, retention & motivation
 - Human stories
 - Impact on individual schemes & HM Treasury
- Building the robust business case for change
 - Focus on improving freedom & flexibilities
 - Options to manage short & long term consequences
 - How to better manage growth in pension to minimise tax
 - How can people stay in scheme and manage benefit accrual

Questions...?

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Refreshments



Fire Pensions Conference 2018

Case Law Update

18 September 2018

Cat Ellis

Senior Associate

Wills Crump

Associate



Sargeant v LFEPA; McCloud v Ministry of Justice

Age Discrimination

Sargeant v LFEPA; McCloud v Ministry of Justice

Age Discrimination

Age Discrimination

- What does the law say about age discrimination?
 - Unlawful since 1 December 2006
 - Can be objectively justified
- How does this work in a pensions context?
 - Pensions are age related!
 - Exceptions in Regulations

Sargeant v LFEPA; McCloud v Ministry of Justice

Age Discrimination

McCloud & Others v Ministry of Justice

— Facts

- Transitional provisions intended to mitigate effect of compulsory pension changes on older workers
- McCloud as representative of segment of younger Judges who did not benefit from full transitional protection that older Judges did

— First instance decision

- Tribunal found that transitional protection had *no* objective justification

Sargeant v LFEPA; McCloud v Ministry of Justice

Age Discrimination

Sargeant and Others v London Fire and Emergency Planning Authority and Others

— Facts

- Transitional provisions intended to mitigate effect of compulsory pension changes on older workers
- Sargeant as representative of segment of younger Firefighters who did not benefit from full transitional protection that older Firefighters did

— First instance decision

- Tribunal found that transitional protection had objective justification
- Confusingly followed McCloud v Ministry of Justice case in ET (same level of court) which found the opposite on similar (but not identical) facts

Sargeant v LFEPA; McCloud v Ministry of Justice

Age Discrimination

EAT decision – two cases were heard together

— Outcome of *McCloud*

- EAT found that ET had failed to take into account the difficulties in providing evidence where political or moral issues are under consideration; HOWEVER
- in relation to whether the transitional provisions were a proportionate means of achieving a legitimate aim the EAT said of the ET's conclusions:

"...that the extremely severe impact of the transitional provisions on the Claimants far outweigh the public benefit of applying the policy consistently across the whole public service pension sector cannot be faulted and cannot be characterised as perverse..."

Sargeant v LFEPA; McCloud v Ministry of Justice

Age Discrimination

EAT decision – two cases were heard together

— Outcome of *Sargeant*

- Agreed that a legitimate aim was cost reduction; BUT
- the EAT found that the ET had not sufficiently considered whether transitional provisions were a proportionate means of achieving that legitimate aim.
- Case has been remitted to the ET for reconsideration of whether transitional protection is 'proportionate';
- Given decision of *McCloud* case in EAT, appears that ET will likely find that transitional protection is *not* proportionate.

Sargeant v LFEPA; McCloud v Ministry of Justice

Age Discrimination

Practical considerations

- Issue to be reconsidered;
- Likely not to be deemed to be “proportionate” based on EAT’s conclusions;
- May therefore undo transitional protection as it has been implemented for public sector workers;
- Adverse finding for either side likely to result in appeals (especially if it goes against the Government’s policy due to cost) so difficult to draw further conclusions at this stage;
- Appeal has been expedited and is listed on 5 November for 5 days
- Watch this space!

Mr N (PO-12763)

Due diligence on transfers

Mr N (PO-12763)

Due diligence on transfers

Facts

- Mr N was an employee of Northumbria Police Authority (the “Authority”) and was a member of the Police Pension Scheme (“PPS”)
- Mr N was looking to reduce his hours and make cost savings to spend more time with his family – he thought it was unlikely he would work to receive his full benefit and therefore looked to opting out of the PPS
- Mr N was 39 and was not looking to immediately ‘liberate’ his pension but transfer it to another provider so he could take it from age 55 should he wish to
- TPR’s ‘Scorpion Guidance’ was published in February 2013 relating to pension scams

Mr N (PO-12763)

Due diligence on transfers

Facts

- Mr N went part time in March 2013 and he contacted a firm, 'Pension Transfer UK', about his pension options in August 2013, he received a call two weeks later from 'Viva Costa International' who referred him to 'Gerard Associates Limited' ("Gerard")
- Gerard recommended Mr N to transfer into the London Quantum Retirement Benefit Scheme ("London Quantum"). London Quantum apparently a DC occupational pension scheme established in 2012. (Its supporting employer was also established then.)
- In November 2013, Mr N submitted a transfer request to the Authority and, after a further meeting with Gerard, his benefits were transferred to London Quantum in August 2014. No 'scorpion warning' was sent to the Mr N by the Authority.
- Mr N then spotted on his paperwork that he had signed up to a high risk investment but could not make contact with Gerard or the trustee of London Quantum
- Mr N complained to the FCA (which was outside their jurisdiction) then went through the PPS' IDR

Mr N (PO-12763)

Due diligence on transfers

Outcome

- PO ordered Mr N's benefits reinstated in the PPS as a result of maladministration and a £1000 compensation payment to Mr N
- Authority had failed to put in place adequate procedures and properly inform Mr N of TPR's pension scams guidance – it was published on an intranet page but not sent to the member
- Authority should have gone further than just issuing guidance as London Quantum exhibited classic signs of being a scam and cited Jerrard PO-3809 as level of due diligence expected

Mr N (PO-12763)

Due diligence on transfers

Practical considerations

- Applicable to both public and private sector schemes
- Greater level of due diligence required by transferring scheme, expectation of PO around processes to recognise pension scams
- Ensure members communicated with at point of transfer with clear records of what documents sent and warnings given
- Expensive for Authority – full reinstatement of benefits

Estate of Mr Y (PO-13540)

Timing of death benefit payments

Estate of Mr Y (PO-13540)

Timing of death benefit payments

Facts

- Mr Y in NILGOSC Scheme, recommended for ill health early retirement, 12 week notice period from employer
- Informed his spouse would receive more pension benefits if he died in retirement, told to contact employer if condition worsened to end notice period
- Spouse contacted employer to draw some or all of Mr Y's pension (although employer disputed the contents of the call) in light of terminal illness
- Employer told spouse that benefits could not be accessed early and they would have to wait for benefits
- Mr Y died before the end of his employment, meaning his spouse received lower benefits
- Spouse went through IDRPs and then complained to PO

Estate of Mr Y (PO-13540)

Timing of death benefit payments

Outcome

- DPO ordered employer to recalculate and pay benefits spouse would have received had Mr Y's employment terminated on date of call, with interest
- No award for maladministration / stress and inconvenience made
- DPO held the employer "reasonably ought to have enquired" as to whether the member wished to waive his remaining notice period, even if this option had not been specifically requested

Estate of Mr Y (PO-13540)

Timing of death benefit payments

Practical considerations

- Unfortunate manner of timing in this case
- Onus on employers to make reasonable enquiries
- Employers will need to consider defensive strategies e.g. record keeping – no notes or recording of call so no evidence to submit to DPO

Mrs Y (PO-16581)

General Pension Administration

Mrs Y (PO-16581)

A sad tale of poor administration

Facts

- Mrs Y requested a transfer out of the PCSPS prior to the introduction of pension flexibilities in 2015;
- Mrs Y provided all documents in good time and regularly followed up etc; she complied with tight turn-around because of pending legislative changes;
- The administrator, MyCSP, failed to arrange transfer of her benefits in time despite promises to do so;
- Mrs Y's was unable to transfer to her designated ROPS because it had been removed from the permitted list and was unable to designate another because the law had changed;
- Mrs Y was awarded £2000 for distress and inconvenience; she stated she would have to work another 7 years to pay off her mortgage.
- Lesson to be learned: a general reminder to ensure that timescales are complied with in respect of processing members' requests, especially where there has been a change in the law

Questions?



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This information pack is intended as a guide only. Whilst the information it contains is believed to be correct, it is not a substitute for appropriate legal advice. Eversheds Sutherland (International) LLP can take no responsibility for actions taken based on the information contained in this pack.

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Workshops

1. Top-Up Grant – Westminster Room

Natalie Klisevica, Economist, Office for Budget Responsibility and HMT,
Workforce, Pay & Pensions

2. Medical Appeals – Smith Square 1 & 2

Speaker: **Dr Mark Groom**, Medical Director, Health Management Limited

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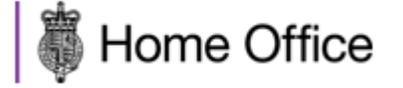
Speakers: **Nicola Daniel** and **Helen Scargill**, West Yorkshire Pension Fund

Lunch





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Welcome back

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Workforce, Pay & Pensions

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Weightmans

Weightmans

Firefighters' Pension Scheme – pensionable pay update

The story so far...

18 September 2018

Jane Marshall

Partner

0161 214 0508

Jane.Marshall@weightmans.com



What we will cover

- The case law so far:
 - Kent & Medway Towns
 - Norman v Cheshire
 - Recent PO determinations
- The Blackburne principles
- Additional principles arising from case law
- What is on the horizon?
- Practical implications
- Questions

The case law so far...

- Kent & Medway Towns Fire Authority v Pensions Ombudsman and anor, [2001] OPLR 357
- Norman v Cheshire Fire & Rescue Service, [2011] EWHC 3305 (QB)
- Mr Michael Smith v South Wales Fire & Rescue Service, PO-3511 (2014)
- Mr N v West Yorkshire Fire & Rescue Authority, PO-11867 (2017)
- Mr A v Warwickshire Fire & Rescue Authority, PO-15584 (2018)

Kent & Medway Towns

- Mr Hopper – a regular firefighter
- 1992 Firefighters’ Pension Scheme – ‘pensionable pay’ – pay as determined in relation to rank
- Retired on ill-health grounds in April 1997
- Accrued 8 days leave whilst on sick leave for last 8 months of service
- £643.64 paid in lieu – was this pensionable and should it have been include in his final pensionable salary?
- Decision – payments in lieu of annual leave are not pensionable

Norman v Cheshire

- Mr Norman – a regular firefighter & retained duties
- 1992 Firefighters’ Pension Scheme – ‘pensionable pay’ – aggregate of the amount determined in relation to the performance of his duties of his role and the amount in respect of continual professional development
- Received basic pay, public holiday pay, retaining fee, turn-out fees and attendance fees (“call-out/disturbance fees”)
- Collective agreement entered into 28 September 2007 – retaining fee, disturbance fees & public holiday pay rolled up as % uplift in basic pay

Norman v Cheshire

- Decision:
 - uplifts by way of retainer fee & disturbance fees are pensionable (before the collective agreement the retained elements were undertaken voluntarily, so not undertaken by way of duties under contracts of employment. The position changed when the collective agreement was made)
 - uplift by way of public holiday pay is pensionable (it ceased to be episodic in nature and became a regular payment as a result of the collective agreement)

Mr Michael Smith v South Wales Fire & Rescue Service

- Mr Smith – regular firefighter, retired May 2011
- The 2006 ‘New Firefighters’ Pension Scheme’ – “pensionable pay” includes permanent emoluments (including in the case of a retained firefighter, any retaining allowance)
- May 1997 seconded to full time trade union duties
- Continued to receive day crewing duty system allowances for rent, fuel & light and annual retainer
- Decision – annual retainer payments are not pensionable (for a regular firefighter the annual retainer payments are temporary because they can be moved to a different duty system)

Mr N v West Yorkshire Fire & Rescue Authority

- Mr N – retired 30 March 2016
- 1992 Firefighters’ Pension Scheme
- 2009 Authority decided temporary promotion was not pensionable
- Mr N temporarily promoted April 2013 – March 2014
- Regulations amended 2013 – discretionary power to treat temporary promotion as pensionable
- Decision – pensionable pay must have something of a permanent nature. The Authority was entitled to treat temporary promotion as non-pensionable

Mr A v Warwickshire Fire & Rescue Authority

- Mr A – retained firefighter & deferred member
- The 2006 ‘New Firefighters’ Pension Scheme’ – “pensionable pay” includes permanent emoluments (including in the case of a retained firefighter, any retaining allowance)
- Mr A received annual retained allowance (pensionable), disturbance payments, work activity payments & training attendance payments
- Decision – disturbance, work activity and training attendance payments are pensionable for the purpose of calculating Mr A’s pension

Blackburne principles

The requirement of pensionable pay:

- payment should be calculated in accordance with a firefighters' ordinary rate of pay (to be “determined in relation to rank”);
- payment must be ‘pay’, for work done under the contract of employment;
- payment must be regular in nature, i.e. it must be pay to which the firefighter is entitled, at the rate applicable to his rank;
- must not be of a “one-off” nature, as a result of some extraordinary event;
- it must have something of a permanent nature.

Additional principles arising from case law

- The starting point is the drafting of the Regulations at the applicable time – what is the true construction of the regulations?
- The Grey Book is not authoritative on what is pensionable
- DCLG (as was) can not determine what is pensionable
- Must consider the specifics of the contract of employment/collective agreements
- If a payment can't be distinguished from basic pay (i.e. % uplift) it is likely to be pensionable

Additional principles arising from case law

- Payments for duties that become obligatory under the contract of employment/collective agreement are likely to be ‘in relation to the performance of his duties of his role’
- Payments for voluntary duties are unlikely to be ‘in relation to the performance of his duties of his role’
- The fact that a payment may have been paid for years does not automatically confer permanence

What is on the horizon?

- We know there is currently another case with the PO about pensionable pay
- PO has alluded in correspondence to the significance of the case
- Believed to be on payments for undertaking separate duties under the 1992 Firefighters' Pension Scheme (such as urban search & rescue) and whether such payments are 'permanent'
- PO was hoping (best case scenario) to have a final determination out by mid-August, but a determination has not yet been released
- Wait and see?

Practical implications

- Review the current & historic payments that are/have been treated as pensionable
- Consider what each payment actually relates to and not just what each payment is called
- Consider contracts of employment/collective agreements to determine 'duties of his role'
- Analyse the information collected against the Blackburne principles and the other principles established under case law
- Ensure current practices comply
- Correct historic issues identified?
- If in doubt, seek appropriate advice



Weightmans

Questions?

Jane Marshall

Partner

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Administration and Management Costs Benchmarking Review

Firefighters' Pensions (England) Scheme Advisory Board
18 September 2018

Today's speakers



**Alison
Murray
FFA**

Partner and Head of Actuarial
Public Sector
Aon



**Craig
Payne**

Benefits Consultant
Public Sector
Aon

The Firefighters' Pension Schemes

What we know

Firefighters' Pension Schemes Regulations and Guidance



Source: www.fprsregs.org/



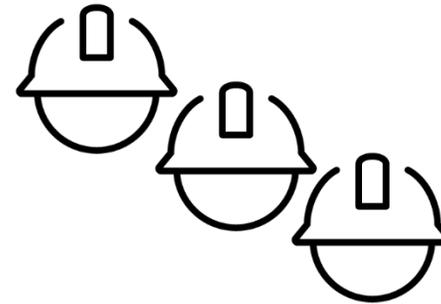
Member contributions: 8.5% to 17% of pay
Employer contributions: 14.3% to 21.7% of pay

What we don't know

How much are scheme management costs?
How effective is scheme administration?

	Total
Number of pensioners	41,731
Total deferred members	12,161
Active regular members	22,944
Active retained members	8,440

Source: Home Office, Fire statistics Table 1304



45 Fire
authorities

The purpose of the review



How effective is scheme administration?

- Do members receive a good service?
- Are the right benefits paid at the right time?



What are the costs of running the scheme?

- Explicit costs
- Implicit costs
- “Extra” costs



Are there any themes / patterns?



Could anything be done differently/better?

No preconceptions, no naming and shaming

How are we going to do it

Key stakeholders



Administrators



Fire and Rescue
Authorities



Members

Surveys
Listening meetings

Scheme Manager Survey



Factual and perception questions
Really important responses are accurate/comparable



Likely to require input from operational and finance staff



Links to surveys circulated to Chairs of Local Pension Boards for forwarding to appropriate personnel

Administrator Survey



Factual and perception questions
Really important responses are accurate/comparable

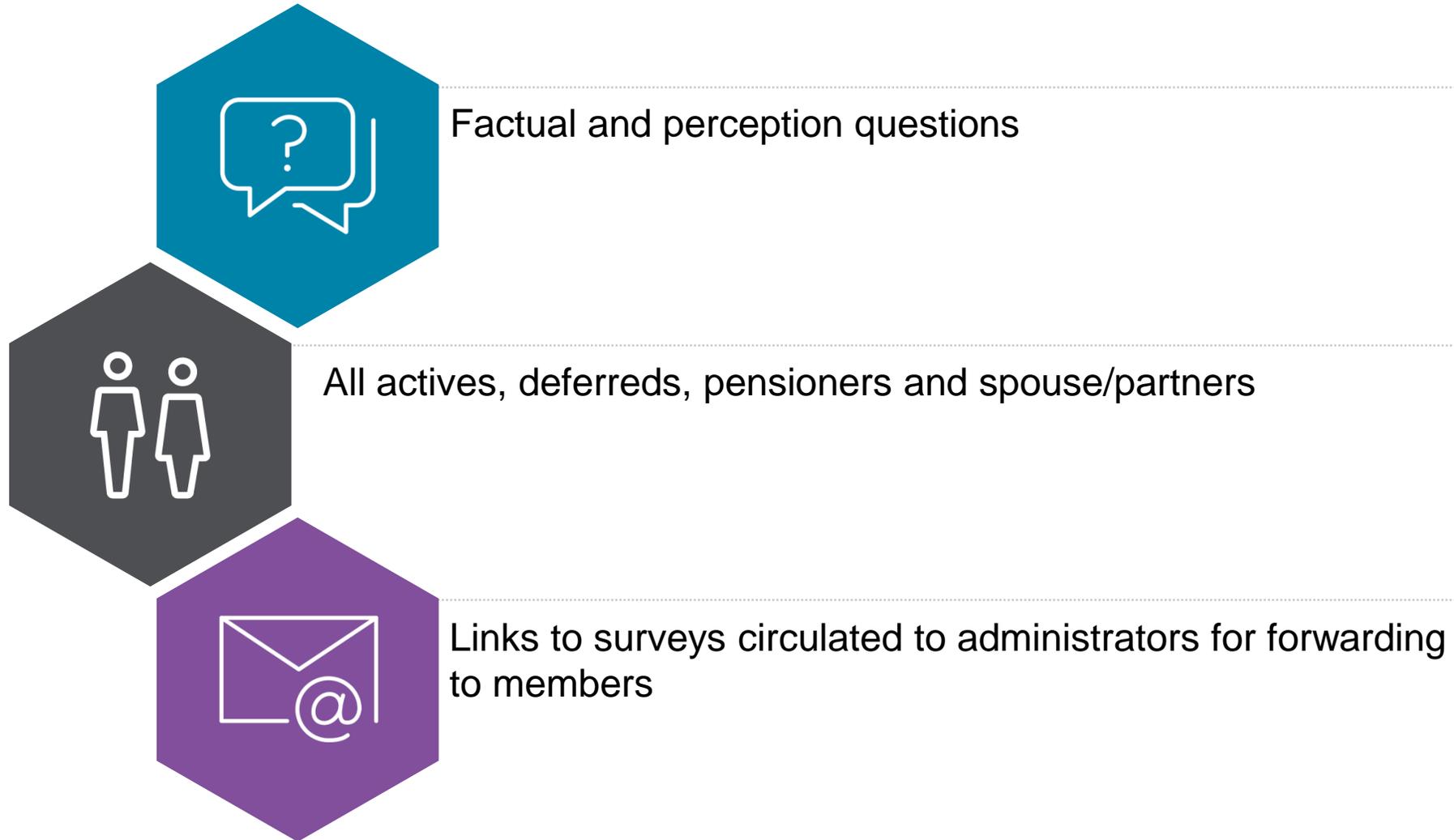


One survey for each FRA



Links to surveys circulated directly to administrators

Member Survey



Qualitative Feedback



Qualitative feedback to supplement surveys



Open questions to facilitate debate



Face-to-face meetings with group representatives

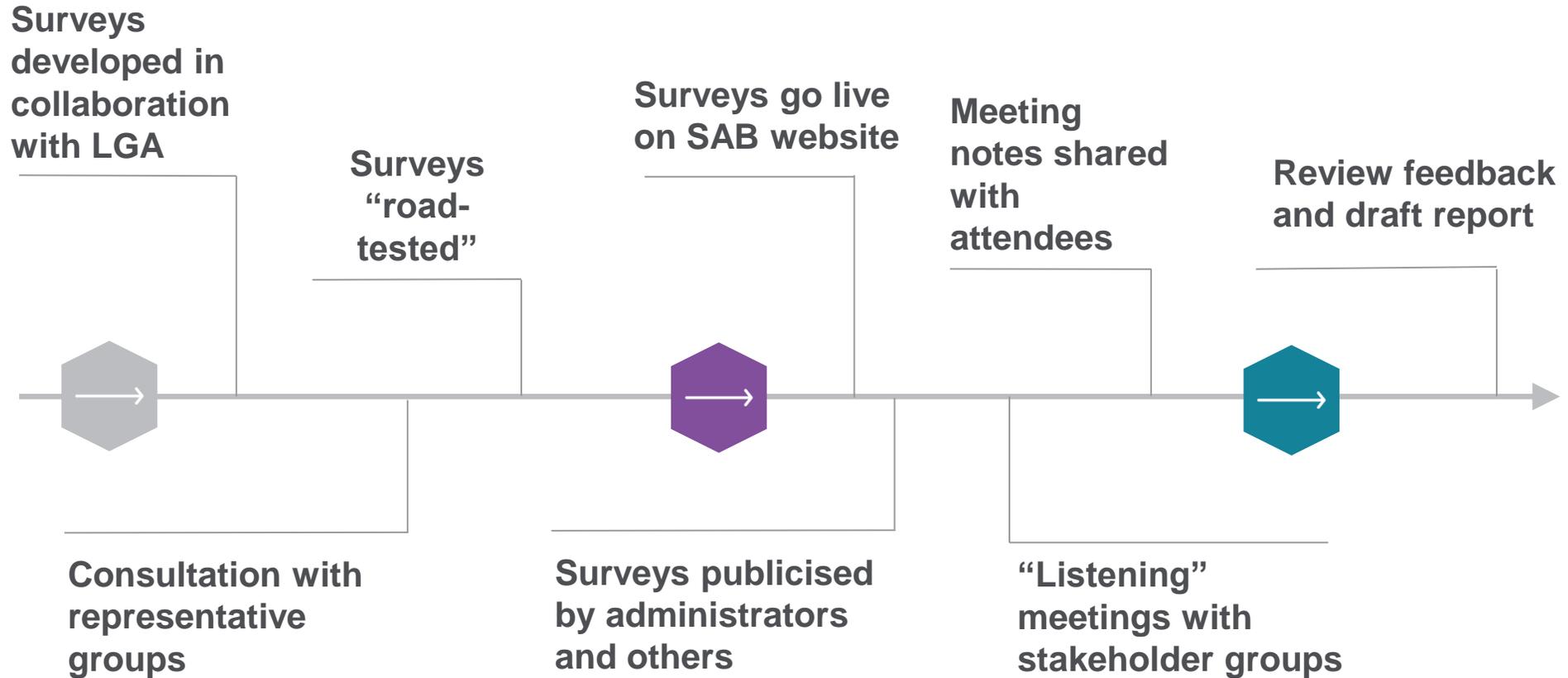


Notes of meetings circulated via email

Dispelling Myths / Allaying Fears



The process



Proposed timetable



Week of 1 October 2018 – Surveys live on website for completion

September - November 2018 – Stakeholder meetings

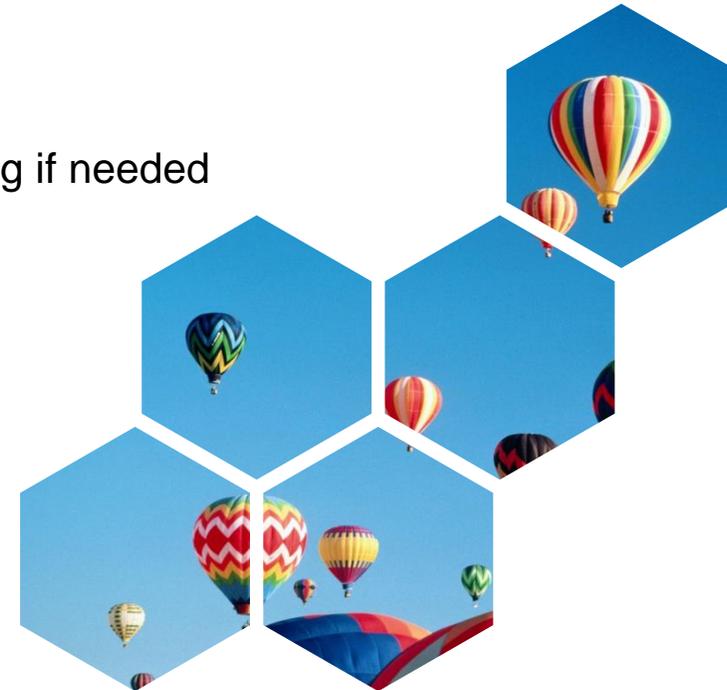
30 November 2018 – Surveys close

5 December 2018 – Verbal update to SAB

December 2018 – January 2019 – further data gathering if needed

14 March 2019 – Draft report presented to SAB

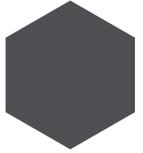
April 2019 – Report published



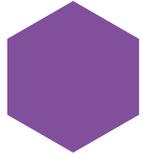
We need your help



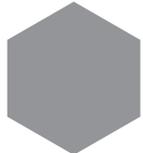
Filling a gap in data on the FPS



More responses = more/better analysis = better decisions



A golden opportunity for you to shape future disclosures



Please publicise this work and encourage your administrators and employees to participate

Please support this project – it's important!

Questions?



Contact details

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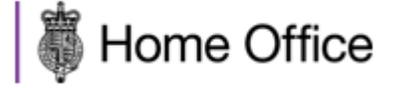
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Closing remarks

Hoping to put your feet up in 2019?



Hmmmm!

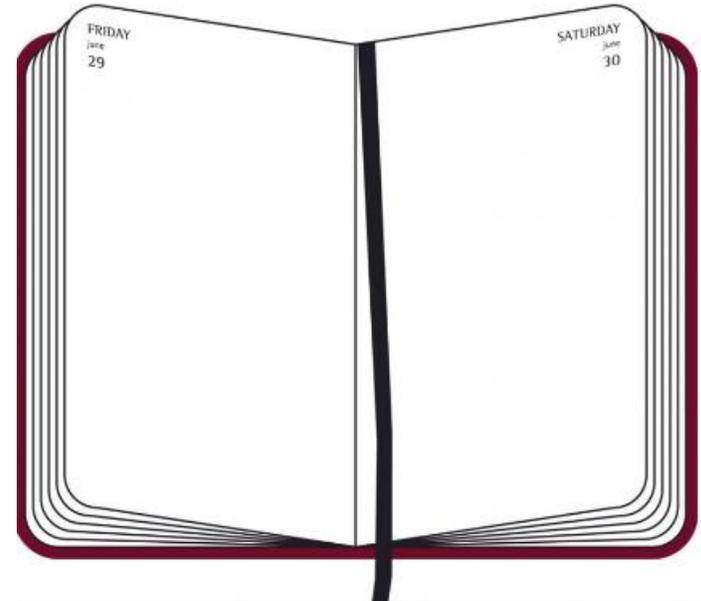
- **Data, Data, Data**
- **Pensionable Pay**
- **GMP reconciliation**
- **Valuation**
- **Tax**



Supporting pensions since 2015!

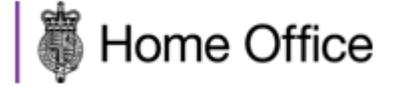
Dates for your diaries

- 24 & 25 September 2018 – Fire AGM
- All events advertised [here](#)





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Thank you for coming

Have a safe journey home

bluelight.pensions@local.gov.uk
www.fpsboard.org and www.fpsregs.org

www.local.gov.uk



@LGAworkforce #LGAFirepensions