

Meeting of the Board 17 March 2020

ITEM 9

Immediate event data request update

Purpose

1. The purpose of this paper is to update the Board on the request for information about immediate cases that might be impacted by remedy, and to consider what the next steps should be.

Background

2. At the board meeting on 09 January 2020, the Board agreed¹ to issue guidance on what action FRAs should take in the case of ill-health retirement and to request information on the number of Firefighters who would have an immediate event within the period to 31 December 2020.
3. [Bulletin 28](#) provided this guidance and requested FRAs to return the [required information](#) by 29 February 2020.
4. Unfortunately, at 29 February 2020 a limited number of FRAs had responded and the deadline was extended in [bulletin 29](#) to 16 March 2020.

Response

5. To date 28 of the 45 English FRAs have responded to this request, representing a 62% response rate.
6. The totals gathered are shown in the table below.

	Claimants	Non-Claimants	Totals
Ill-Health Retirements			
No ill-health pension in payment because 2015 scheme lower tier ill-health criteria not met	5	25	30
Lower Tier in Payment Only (Higher Tier criteria not met)	17	53	70
Higher Tier in payment	10	17	27
Immediate retirement (Those who meet 50+ with > 25 years' service between 1 January 2020 and 31 December 2020)			

¹ Action 8 - <http://www.fpsboard.org/images/PDF/Meetings/09012020/SAB-draft-minutes-090120.pdf>

	27	1665	1692
Tapered Due to Taper between 01 January 2020 and 31 December 2020			
	9	484	493
Totals	68	2244	2312

Remedy

7. Despite an interim order for claimants which confirms that those eligible for remedy can be treated as if they were members of the FPS 1992, guidance is awaited that allows payment of benefits under FPS 1992 terms.
8. In order to calculate benefits under the final salary terms, guidance has been requested in the following areas;
 - How contributions that would have been paid under FPS 1992 should be calculated and paid, for example, can these be deducted from the lump sum.
 - How the member should claim tax relief on the additional pension contributions. Learning from the special members of the FPS 2006 has shown that:
 - HMRC will only apply tax relief based on the current tax year, they will not calculate retrospective tax years.
 - HMRC will only pay tax relief for active members.
 - How events in FPS 2015, such as a transfer in or purchase of added pension would affect the calculation of the pension value in FPS 1992.
 - How any pension debits for scheme pays or pension sharing orders that currently apply to FPS 2015 should be treated.
 - How the pension growth should be calculated on the difference between the previous FPS 2015 benefits to the remedied FPS 1992 benefits, i.e.
 - retrospectively as if the member had always been an FPS 1992 member
 - or
 - as a one off event at the point of remedy/ retirement.

III-Health

9. In addition to the general questions above there are specific issues that would apply where a member qualifies for higher tier ill-health under FPS 2015:
- The enhancement paid under the higher tier pension rules of the FPS 2015 can mean in some cases the pension per annum is higher under the FPS 2015 than it would be under the FPS 1992.
 - Although the pension may be higher, the lump sum under FPS 2015 will be lower, so the member will need to consider the value of higher income / survivor's pension during retirement above cash now.
 - Unmarried partner pensions are paid under FPS 2015; however, they are not paid under FPS 1992.
 - An ill-health pension paid under the FPS 2015 carries with it a death in retirement five-year guarantee, meaning if the member dies within five years of payment the estate gets a payment of the balance.
 - If the FPS 2015 pension is put into payment at the higher rate it is not clear how the position would be reversed in order to be treated as a member of FPS 1992, and whether this would result in overpayments by the scheme.
 - Whether the member would have to pay back the FPS 2015 pension received in order to be paid the higher FPS 1992 lump sum.
 - Overpayments of pension are considered unauthorised by HMRC and therefore taxable. If the member has been overpaid pension at the FPS 2015 rate and is therefore subject to an unauthorised tax charge as a direct result of the remedy process which would not otherwise have arisen, would this be borne by the Government as per the Milne v Gad cases and the FPS 1992 contribution holiday.

Implications

10. Based on 62% of responses, there are currently 2,312 members who have an immediate event in this year which FRAs currently cannot action. This would be proportionately higher with a 100% response rate.
11. When the Board met in January, they requested the guidance necessary for administrators to start processing cases, as of 31 March 2020 this guidance has still not been received.
12. The Board are concerned that without guidance administrators and FRAs may inadvertently be taking incorrect action which could be detrimental for members, and lead to financial consequences for FRAs

Board action

13. The Board are asked to

- Approve publication of this paper on the website
- Request that the Home Office urgently escalate a response to the request for guidance.

Board Secretary
March 2020