

Meeting of the Board 9 December 2021

## Abatement guidance

### Introduction

1. A paper was presented to the Board at its meeting on 17 September 2020<sup>1</sup> to consider abatement guidance drafted by the secretariat following the 2019 FPS AGM: [Draft informal abatement guidance to FRAs](#).
2. As there is no prescribed advice on how abatement should be applied or calculated, the Home Office recommended in 2019 that general advice on principles and best practice could be provided to FRAs to improve consistency.
3. The guidance is based on workshop feedback, answers provided to technical queries, and examples of accepted good practice from FRAs. Consultation on the draft guidance took place with the Home Office and a small group of practitioners.
4. Any guidance provided is non-statutory and is based on consensus reached with employers via the Firefighters' Technical Community.
5. While an agreed position was reached on the majority of scenarios, two key questions remained outstanding and were discussed in September 2020. The Board determined that a legal view should be obtained before the guidance could be agreed.
6. As the government's response to the consultation on changes to the transitional arrangements of the 2015 schemes<sup>2</sup> indicates that abatement will continue to apply to pensions built up in the legacy schemes following implementation of age discrimination remedy, and the LGA Bluelight team continue to receive technical queries about abatement, this paper seeks to provide an update on the outstanding issues in order that the guidance can be finalised and published.

### Outstanding issues

7. The first question raised at the September meeting concerned two technical points:

*7.1. How the pension value in the abatement calculation should be established, in particular where Pensions Increase (PI) has been applied (or not applied if they are under 55), and where the pension includes an Additional Pension Benefit (APB) element.*

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<sup>1</sup> [Meeting 17 September 2020: Paper 3 Abatement guidance](#)

<sup>2</sup> [Public service pension schemes: changes to the transitional arrangements to the 2015 schemes Government response to consultation](#) [A.113 to A.121]

- 7.2. The Board did not provide any commentary on this issue. However, the first part of the enquiry on the application of PI has been incorporated into the revised version of the draft guidance in line with a response to a technical query and provides a suggested way forward for members who are not in receipt of PI. As the recommendation is to include notional PI in this scenario, it follows that PI should also be included in the abatement check if the member is actually in receipt of it.
- 7.3. On the second part of the query, the Technical Community has previously discussed that APBs payable under FPS 1992 or FPS 2006 for an ill-health pension would be liable for abatement. This is because there is no direction from FPS 2015 under [Regulation 65\(4a\)](#) and [Regulation 65\(b\)](#) to pay APB benefits in the 'equivalent amount' when calculating the "one-pot" benefit.
- 7.4. The Home Office has previously advised that it is content for the regulations to remain un-amended.
- 7.5. The item was reconsidered by the technical group on 24 September 2019<sup>3</sup>. The consensus was that the benefit should be abated at age 55 (or age 60) when the one-pot ill-health benefit is split back out to separate schemes. It was also noted that re-employments following ill-health retirement are uncommon.
8. The second area discussed at the September meeting related to concurrent employments:
- 8.1. *... it is common for firefighters to have both a regular and retained employment at the same time. The regulations are unclear on whether abatement should be considered when a firefighter retires from one post and continues in another. The issue is further complicated because of [HMRC'S position on protected pension age](#) which states that continued employment constitutes being re-employed. It is unclear whether HMRC's view should be applied when interpreting the abatement regulations.*
- 8.2. As this highlighted a potential conflict with HMRC policy and may be a legal or employment issue, the Board supported obtaining a legal view on the interpretation of the regulation.
- 8.3. The secretariat sought an opinion from the Board's legal adviser, and a summary of that advice has been incorporated into the draft guidance at paragraph 32.

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<sup>3</sup> [Firefighters' Technical Community minutes 24 September 2019](#) [Item 5)a]

## Amendments to the guidance

9. Since the last version of guidance was provided to the Board for review, amendments have been made to update the FAQs and add a section on the Firefighters' Compensation Scheme (FCS). These are shown as tracked changes in the document.
10. The structure has also been significantly updated; however, those changes have not been tracked as they do not affect the content and were to aid logical reading flow only.

## Board actions

11. The opinion of the legal adviser is that guidance is required from the Home Office as the regulations provide nothing concrete in terms of how abatement should be applied in practice. Both the FPS 1992 and 2006 regulations provide that authorities must have regard to such guidance:

- 11.1. FPS 1992 [Rule LA10](#) (duty to have regard to guidance)

LA10. A fire and rescue authority shall have regard to such guidance as may be issued by the Secretary of State from time to time for the purposes of this Part.”.

- 11.2. FPS 2006 [Paragraph 10 of Part 13](#) (duty to have regard to guidance)

10. An authority shall have regard to such guidance as may be issued by the Secretary of State from time to time for the purposes of this Part.

12. The Board is asked to consider whether a formal request should be made to the Home Office to provide guidance. Responses to previous informal requests have indicated that application of abatement is a decision for the scheme manager and that FRAs could be left to their own devices or some general advice could be provided (by the LGA) to improve consistency.
13. If the Home Office does not agree to provide guidance, then the Board is asked to agree publication of the document, including the latest amendments, as informal and non-statutory guidance or suggested good practice.
14. Board members are invited to provide comments at the meeting or in writing by 7 January 2022.

Board Secretary  
December 2021