

Injury Awards - Identification of Overpayment

Report of the Chief Fire Officer

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1 Purpose of Report

This report sets out the context of, and proposals to deal with, recently identified overpayments of injury award pension payments to a small number of retired firefighters.

2 Recommendations

The Fire Authority is asked to:

- a) agree to write off a total of approximately £57,468.03 of overpayments to pensioners that cannot be legally enforced because of statutory time limits.
- b) Delegate consideration of each of the four cases to the Chief Fire Officer and Chair of the Audit and Performance Management Committee in consultation with the Head of Finance (Deputy Section 151 Officer) allowing them to determine whether, following full investigation, write off or recovery of overpayment made within the statutory time limit is appropriate on a case by case basis. Such consideration shall include whether any concealment or fraud was identified in which case full recovery shall be sought.

3 Background

The Firefighters' Pension Scheme 1992 (FPS) came into effect on 1 March 1992 and has been amended from time to time since that date. It became a closed scheme on 6 April 2006 when the New Firefighters' Pension Scheme was introduced.

The new financial arrangements for firefighter pensions introduced in 2006 created a pension fund account into which employees' contributions and the employer's contribution are paid. Pensions are paid out of this account and the Department for Communities and Local Government (DCLG) either tops it up if it is insufficient to meet the cost of the actual pension payments or recoup any surplus.

The new arrangements separated injury awards out from the firefighter pensions schemes on the basis that they are payable irrespective of whether or not the firefighter is a member of the scheme. A firefighter is entitled to injury award if he/she become permanently disabled or dies as a result of an injury received in the exercise of his/her duties as a regular firefighter. Under this arrangement injury award payments are paid directly from the Authority's budget, not from the pension fund account. This means that any errors in calculating the awards which result in either an underpayment or an overpayment to a pensioner which cannot reasonably be recovered are borne by this Authority and not the pension fund account.

The administration for the firefighters' pensions schemes for this Authority, including the calculation of all pension and injury award payments, is provided by the Shropshire County Pension Fund (SCPF). The SCPF provided this service prior to the Authority being established (i.e. for Shropshire County Council) and for the Authority since April 1998 when the Authority was created by the Shropshire Fire Services (Combination Scheme) Order 1997.

The process for calculating an injury award requires that the award must be reduced by the amount of any specified state benefit to which the pensioner is also entitled. Upon examination it would appear that historically the pension schemes administrators have not fully been aware of what benefits members have been in receipt of, nor have they kept up with the changes in the specified benefits paid by the Department of Work and Pensions (DWP). Historically it was difficult for public service pension schemes to get information directly from DWP about the benefits that are in payment or changes to those benefits that are paid to members of the scheme. The DWP only started sharing data with other agencies as part of the National Fraud Initiative in 2008 and indeed some of the difficulties accessing information experienced in Shropshire continued for some years afterwards.

4 Checking Exercises

Reports started to be made by other fire authorities in and around 2008 that, as a result of the DWP now sharing data under the National Fraud Initiative, overpayments of injury awards to pensioned firefighters were being identified.

Officers acted upon this information and requested SCPF to carry out a checking exercise of all pensioned firefighters in receipt of injury award payments. To this extent in 2008 SCPF carried an exercise whereby they sought authority from pensioners to make the necessary enquiries of DWP in respect of what benefits the individuals received.

In the cases concerned, the response from DWP in 2008 was that there were 'no benefits in payment'.

Further checking exercises were carried out by SCPF in 2010, although it appears not all cases were checked; and sporadically thereafter, generally in response to an event in relation to a particular case. In 2015 Officers at Shropshire Fire and Rescue Service (SFRS) undertook their own analysis under the National Fraud Initiative and identified concerns which led to a review of all cases by the Pensions Administrator. The result of that was the identification of the issues set out within this report.

5 Pensions Administration

SCPF has provided pension administration services to the Authority for many years including during the period prior to the making of the Combination Order.

The current service is provided under the contract let in April 2016. This contract now requires that a review is undertaken annually, in writing with each pensioner to verify their benefit entitlements. The correspondence issued was reviewed in light of issues identified and now includes a full list of relevant benefits for the avoidance of doubt. It is clear from the analysis of the overpayments that many of the incorrect injury pension payments occurred prior to detailed contractual arrangements being in place and case management is now improving.

6 Internal Audit

In response to the issues identified Internal Audit were asked to undertake an independent assessment of the review undertaken by Shropshire County Pension Fund in respect of all pensioners in receipt of an injury award pension, and specifically those where an under or overpayment had occurred.

This work is now complete and found that of the 23 pensions reviewed, an overpayment had occurred in four cases as a result of a failure to take into account the pensioners receipt of deductible benefits. The indicated total value of those overpayments is £126,113.32 (subject to Actuarial confirmation in two cases). The circumstances of the overpayments were all different and only one involved a direct error by SCPF to act on information available to them.

The auditors advise that in two cases independent calculation by an actuary is necessary to confirm the precise figures involved due to the complexity of the pension calculations.

The review found that in the case of one pension there had been an underpayment of £33,067.70 which has since been reimbursed to the pensioner. This was as a result of the SCPF continuing to apply deductions to the injury award pension in respect of deductible benefits that ceased on the individual reaching state pension age. Procedures have now been updated to include a separate review of all injury award pensions in advance of the individual reaching state pension age to prevent future occurrence.

The report provides assurance that SCPF have undertaken a full review of all injury award pensions and have enhanced controls to prevent any future over or underpayments and/or ensure that issues are identified in a timely manner.

7 Recovery of Overpayments

Overpayments relate to 4 individual cases with overpayments dating back to 1995 and totalling approximately £126,113.32, of which overpayments within the last six years total approximately £68,645.29.

This sum has built up over many previous financial years. No action has yet been taken to recover any of these overpayments because they need to be viewed as a whole taking into account the long timescale over which they had built up; the likelihood that many of the pensioners had spent their pension payments in good faith without realising they were being overpaid; the prospects of being able to recover the overpayments if necessary through court action and the likely adverse publicity for the Authority.

Each of the pensioners concerned has had at least one meeting with the Assistant Chief Fire Officer, and she is providing them with updates on progress to consider and resolve the situation.

Advice was sought from the Authority's legal advisor on the likelihood of the recovery of this debt and how this might be approached. This included whether the Statute of Limitations in respect of debts over 6 years old would apply. The legal advice in summary is as follows:

- a) Claims for repayment of pension payments wrongly made more than 6 years before proceedings are brought will be statute barred unless the pensioner has deliberately concealed the fact that s/he started to receive DWP benefits or that the benefits increased,
- b) Even in respect of claims for repayment of pension payments wrongly made less than 6 years before proceedings are brought, in many cases pensioners are likely to be able to establish a defence that they had changed their position relying on the payments as being correct. Therefore, in order to succeed in a claim for overpayment the court would have to be satisfied that the pensioner was not acting in good faith. In the majority of cases, this would be extremely difficult to prove: the infrequent reminders sent to pensioners, coupled with incomplete administration of the files, would make it easy for pensioners to allege that they followed the steps required by SCPF, or that they did notify SCPF and as far as they were concerned the matter had been correctly dealt with. (A number of pensioners have already stated that they believed that were receiving the correct pension, they have been caused financial hardship by the correction to their injury award and they could not afford to make any repayments),
- c) Since each case would turn on its own facts, it would mean the Authority would have to take multiple recovery actions in the county court, which would be expensive both in financial terms and in officer time, and in the absence of being able to prove fraud or bad faith on the part of any pensioner, the prospects of success would be slim,
- d) Multiple actions against ex-firefighters who, by reason of the fact they receive an injury award, may be assumed to be in less than good health, are likely to be sympathetically received by the courts and are likely to generate a good deal of adverse publicity,
- e) If the Authority managed to succeed in obtaining judgement against any pensioner, the enforcement of the judgment could be difficult and costly in view of the likely limited financial means of the pensioner concerned,

- f) Under the Authority's Financial Regulations the Treasurer may write-off losses to a limit of £1000, without report, provided no major question of principle is involved and that proper steps have been taken to mitigate the loss and prevent a recurrence of it. Sums to be written off above £1000 in relation to a single debtor required the approval of the Fire Authority after consideration of a report from the Treasurer,
- g) Having regard to legal advice, SCPF have recalculated overpayments to take into account the 6 year limitation period and a potential sum of £57,468.03 relating to the period outside of the limitation period has been identified for write off. It is recommended that Members of the Authority agree to write off this sum as it is not likely to be recoverable. As the overpayments have already been paid out over several years, there will be no financial impact on the Authority's revenue account or balance sheet,
- h) In respect of overpayments referred to at paragraph g) above it is recommended that Members of the Authority agree to delegate consideration of each of the cases to the Chief Fire Officer and Chair of the Audit and Performance Management Committee in consultation with the Head of Finance (Deputy Section 151 Officer) allowing them to determine whether, following full investigation, write off or recovery of overpayment made within the statutory time limit is appropriate on a case by case basis. Where it is found there has been concealment or a fraud, then full recovery should be sought from the pensioner, and where considered appropriate legal proceedings should be instigated to recover such overpayments,
- i) Where it is decided that it is appropriate that recovery should be sought, this would first be subject to negotiation with the individual pensioner. This negotiation would be based upon an expectation of full recovery within the context of the individual's financial circumstances. Because it is likely that most pensioners who agree to repay any overpayments will only be able to repay by monthly instalments deducted from their pension it is possible, because of the age of some pensioners that full recovery will not be achieved and write-off of some balances may be required in due course.

8 Pensions Contract Management

Legal advice was also sought on the prospect of the Authority making any claims against SCPF. The current contract places a duty on SCPF to exercise all reasonable skill and care in performing the provision of pension fund administration services in respect of the Firefighters Pension Scheme.

Although previous contractual agreements with SCPF are less certain than present there was still an implied contractual term that the services should have been provided with reasonable care and skill. A contractual claim against SCPF on this basis would therefore have to be based on an allegation that it was professionally negligent.

The Audit Commission has published data on its success in identifying incorrect payments being made by public bodies through the National Fraud Initiative. Many other Fire Authorities have identified pensions being overpaid because of the problem of maintaining details of benefits in payment. It is not known how individual Authorities have dealt with recovery of overpayments. However, it is understood that these have not resulted in any action against the pensions administrators as this is usually 'in-house', that is provided either by the authority itself or by a lead council.

It should also be noted that there has also often been confusion as to which benefits relate to a Fire Service injury pension and whether an increase in benefit would affect the injury pension in payment.

A review of files by SCPF found that the actual receipt of benefits by a number of pensioners was in contradiction to correspondence on file from the Department of Work and Pensions (DWP) which stated that the individuals were not in receipt of benefits. As a result, the position was queried with the DWP who advised that certain industrial injuries benefits are dealt with from a separate office and that local offices would not be able to supply details of Industrial Injuries Disablement Benefit (IIDB). SCPF staff were unaware of this information historically and as a result reliance had been placed on the DWP correspondence confirming that no benefits were in payment.

9 Financial Implications

The proposal to write-off a proportion of the overpayments identified is made in light of legal advice given. The recovery of the debts outlined in the paper requires deliberation on a case by case basis, taking into account the circumstances of the individuals concerned. The Authority is asked to delegate responsibility for this review.

Following any decisions, the amounts owed will either be pursued using current debt recovery procedures, or written off.

Where this investigation identified a shortfall in pensions, payment to the individual involved has been made. The funds now owing by individuals have been accounted for in the revenue account in previous financial years.

10 Legal Comment

The Monitoring Officer endorses the legal advice given. A decision to write off the overpayments as sought would be consistent with Financial Regulations and the Authority's fiduciary duties. Actions to recover the overpayments from pensioned firefighters could face difficult legal hurdles and may be costly therefore each individual case will have to be considered on its merits and where there is evidence that on balance there has been some concealment or fraud established recovery of overpayments should be considered.

11 Initial Impact Assessment

The report is concerned with historical injury award pension payments and therefore an Initial Impact Assessment is not required.

12 Equality Impact Assessment

The report is concerned with injury award pension payments and therefore impacts on individuals who are defined in the 2010 Equality Act as having 'protected characteristics'. The equality impact of any decision should be documented to demonstrate that account has been taken of this.

13 Appendices

There are no appendices to this report.

14 Background Papers

There are no background papers associated with this report.