

Report to	North Wales Fire and Rescue Authority
Date	28 April 2025
Lead Officer	Helen MacArthur, Assistant Chief Fire Officer, Finance and Resources
Subject	Firefighters' Pension Scheme – update on legal challenges



PURPOSE OF THIS REPORT

- 1 The purpose of this report is to provide members of the North Wales Fire and Rescue Authority (the Authority) with an update on the statutory changes to Firefighters' Pension Scheme following significant legal challenges. These are more commonly known as the McCloud and O'Brien (Matthews 2) pension remedy exercises.

EXECUTIVE SUMMARY

- 2 The recent legal challenges to the UK public sector pension schemes have resulted in regulatory changes to the Firefighters' Pension Scheme (FPS). These changes are necessary to address two main issues; age discrimination following the implementation of the Firefighters' Pension Scheme 2015 (McCloud Judgment) and an historic issue relating to the pension arrangements for part time workers (O'Brien Judgment).
- 3 The changes arising from the McCloud judgment require a retrospective review of the pension benefits of eligible pension members between the period 1 April 2015 and 31 March 2022. This includes the provision of pension options for retired members, beneficiaries, deferred members and active members. The work to reconcile the payroll and pension records of staff within scope is in progress but the deadline of 31 March 2025 has not been achieved for all categories of members. Members within scope of immediate detriment are being prioritised and a report has been made to the Pensions Regulator.
- 4 The changes arising from the O'Brien judgment require a review of the contracts relating to eligible part time staff who express an interest in receiving pension benefits from the commencement of their employment. Staff who wish to proceed will be permitted to buy back their pension entitlement. The regulations currently require that this work is completed by 31 July 2025, however due to significant workload pressures it is unlikely that these deadlines will be achieved. Cases are being managed to ensure that those at risk of detriment are prioritised.

RECOMMENDATION

5 It is recommended that Members:

- i) Note the progress with implementing the McCloud Judgment;**
- ii) note that a report has been made to the Pensions Regulator as the Service has been unable to achieve the statutory requirements; and**
- iii) note the position regarding the implementation of the O'Brien Judgment.**

OBSERVATIONS FROM THE LOCAL PENSION BOARD

6 The Local Pension Board receives regular updates on progress towards implementing the changes required and has noted the complexity of the issues and the significant challenges to achieving the statutory deadlines. The Local Pension Board recognised the national challenges being faced and impact of the workload on both the Pensions Team within the Service and the Dyfed Pension Fund who administer the scheme on our behalf.

BACKGROUND

- 7 The Public Service Pensions Act (2013) is the primary enabling legislation for all public sector pension schemes. As responsibility for the management of the Firefighters' Pension Scheme is a devolved function in Wales, the Senedd has responsibility for updating and maintain the regulations. The Authority is the Scheme Manager with responsibility for compliance with the underlying regulations.
- 8 There have been two significant legal challenges which are applicable to the Firefighters' Pension Scheme; the McCloud Judgment which relates to age discrimination and the O'Brien Judgment which relates to the pension arrangements for part time workers.

INFORMATION

MCCLOUD JUDGMENT

- 9 Following Lord Hutton's 2011 review of public sector pensions, the Public Service Pensions Act (2013) provided the legal framework to reform public sector pension schemes. Reforms included restricting existing final salary schemes, extending retirement ages, and introducing CARE (Career Average Revalued Earnings) Schemes.

- 10 In 2015 the majority of public service pension schemes were reformed to provide defined benefits, on a CARE basis, and extended the normal retirement age of members. The pension scheme regulations were amended to introduce these changes, with the amended regulations also providing protections for certain members of existing final salary schemes. This protection was age related and members reaching the normal pension age of 55 by 31 March 2012, were afforded full protection with other members receiving protection on a tapered basis depending on their age. This protection was known as transitional protection and members who did not qualify for protection, transitional or otherwise (unprotected), were moved out of their legacy schemes, into the new 2015 Firefighters Pension Scheme on the 1 April 2015.
- 11 In 2018 the Court of Appeal ruled that the transitional protection element of the 2015 public service pension reforms constituted unlawful age discrimination, in the Firefighters' Pension Schemes. This is now referred to as the McCloud/Sargeant case. On the back of this decision, the Government confirmed that it would remove the difference in treatment across all public service pension schemes
- 12 In October 2020 the UK Government undertook to consult the public on the way forward in relation to public service pension schemes and, in particular, how it should respond to the detail outlined in the judgement. The outcomes of the consultation were published on 4 February 2021, with an option called 'the Deferred Choice Underpin' being adopted. This means that members will make their decision between scheme benefit options shortly before their benefits are paid from the scheme, at the point of retirement. In the meantime, members will be deemed to have accrued benefits in their legacy schemes rather than reformed schemes, for the remedy period. The remedy period has been determined to be 1 April 2015 to 31 March 2022.
- 13 The Public Service Pensions and Judicial Offices Act 2022 (PSPJO) was given Royal Assent on 10 March 2022 and provides an overarching framework to allow public service pension schemes to remedy the impact of unlawful age discrimination.
- 14 There were two distinct elements to the changes in legislation; the first came into effect on 1 April 2022 and was known as Prospective Remedy, which meant that from that date all members of the Firefighters Pension Schemes would be automatically become members of the Reformed 2015 Scheme.

- 15 The second was known as Retrospective Remedy, which came into effect on the 1 October 2023 and meant that those that had membership, in a fire scheme, during the remediable period will have the choice of taking those benefits in either the final salary legacy scheme or the reformed career average scheme.
- 16 It is these complex changes, that fall under Retrospective Remedy, that form a large part of the national remedial exercise that is currently underway. The McCloud Remedy Exercise timelines are set out in the new legislation and dictate that active pension scheme members, those that have already retired and member dependents must have received a Remedial Service Statement, no later than 31 March 2025.
- 17 The implementation of remedy requires a full reconciliation of each individual record for the period 1 April 2015 – 31 March 2022 which can take a number of days to complete. This is due to the complexity of the underlying data and other associated factors including the tax consequences, transfers in and out of service and divorce settlements.
- 18 There is a significant administrative burden arising from the changes to the regulations which has required the prioritisation of cases. All staff retiring from the Service receive the choice of taking their legacy or career average benefits for the remedy period. Thereafter, in order to facilitate progress through the project, members have been grouped into cohorts to ensure that those at immediate detriment are prioritised.
- 19 The implementation of remedy has created significant challenges across the public sector both within local teams and also with the pension administrator. It has not been possible to achieve the statutory deadline of 31 March 2025 for all members and consequently a report has been made to the Pensions Regulator.
- 20 This matter is being monitored through both the Local Pension Board and the Scheme Advisory Board. Letters have been circulated to all affected members and work is ongoing to progress this issue.

BACKGROUND – O'BRIEN

- 21 In April 2006, the Firefighters Pension Scheme 1992 (FPS 1992) was closed to new members, and the Firefighters Pensions Scheme 2007 (FPS 2007), came into force, which enabled On-Call Firefighters to be become pension scheme members from that date. Although the FPS 1992 Scheme remained unchanged for those regular firefighters who were already members.

- 22 Historically, On-Call firefighters were excluded from the Firefighters Pension Scheme 1992 (FPS 1992), which was challenged under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000. This resulted in a determination that enabled certain On-Call firefighters, with service between 1 July 2000 and 5 April 2006, to become members of a pension scheme.
- 23 Between 2014 and 2015 an options exercise was undertaken, which gave those that were eligible the opportunity to join the firefighters' pension scheme. As the 1992 scheme had been closed to new members, the FPS 2007 scheme was modified to provide benefits analogous to the 1992 scheme (known as the 2007 modified scheme). This was the first options exercise, which is often now referred to as Matthews 1.
- 24 This principle was subsequently challenged at the European Court of Justice in relation to fee-paid judges. The Court ruled, in that case, that service going back to the start of employment should be considered and the UK government accepted that the same principles applied to certain On-Call firefighters, whether they had made a legal challenge or not.
- 25 As a result, a second options exercise is now taking place to allow eligible On-Call firefighters to buy pensionable service, backdated to the start date of their employment. As part of this exercise the following individuals are eligible for the second options exercise:
- I. On-Call firefighters employed on any date between 7 April 2000 and 30 June 2000 (inclusive);
 - II. On-call firefighters employed on any date between 7 April 2000 and 30 June 2000 (inclusive) as well as on any date between 1 July 2000 and 5 April 2006 (inclusive); and
 - III. On-call firefighters employed on any date between 1 July 2000 and 5 April 2006 (inclusive), but not on any date between 7 April and 1 July 2000, who were eligible to take part in the first options exercise but were not given opportunity to do so.
- 26 To enable the second options exercise to proceed, the Senedd has made the necessary regulatory changes to the pension regulations. These came into force on 1 February 2024 with an 18- month timeframe for full implementation of this project.

- 27 The Service has written out to 622 On Call, or previously On Call, employees to advise them that they are within scope and to date. 312 individuals have formally responded, requesting calculations on their benefits. The calculation does not obligate the individual to buy back their pension and they then have a period within to make a choice. The relevant periods linked to this exercise can go back as far as the 1960s. For some individuals there are also interdependencies with the McCloud Remedy Exercise.
- 28 The O'Brien exercise alongside the McCloud remedy has placed a significant burden on both the Service's Pensions Team and also the Pensions Administrator, Dyfed Pensions Fund. As the challenges being faced are national across a range of public sector schemes there is a backlog in processing. Consequently, proposals are expected to be drafted to extend the statutory deadline for the O'Brien exercise. Whilst this may provide additional time for processing, work will continue to prioritise those who are most at risk of detriment.
- 29 Staff who are considered to be out of scope (i.e. On-Call firefighters whose service commenced between 1 July 2000 – 5 April 2006 who did not take part in the first options exercise but were given the opportunity to do so) have also been communicated with and will be dealt with on a case by case basis.
- 30 There are interdependencies between the McCloud and O'Brien Remedy exercises for some On Call firefighters which may pose some complications in meeting these timelines, on a purely individual basis.
- 31 The Government Actuary's Department has provided a calculator that enables Services to provide information on the purchase of previous service for eligible staff. This process is very complex and requires salary information for each year of employment, the calculation of contributions that should have been paid, tax and interest that applies, alongside the benefits that those individuals would be entitled to receive should they proceed in buying back this service.

IMPLICATIONS

Wellbeing Objectives	The effective operation of the pension schemes support staff wellbeing.
Budget	There are no budget implications directly related to these timelines.
Legal	The Authority has a statutory requirement to ensure that all legislative changes are implemented accurately and within the given timescales The Authority is required to administer the scheme in accordance with existing and new scheme regulations.
Staffing	Transparent and effective operation of the pension schemes ensures that staff are treated fairly and equitably.
Equalities/Human Rights/ Welsh Language	It is not considered that there are any issues that need addressing as the recommendations apply equally to all Members regardless of protected characteristics under the Single Equality Act.
Risks	Given the complexities of these projects, the resource considerations and timescales, there is a risk that the statutory deadlines may not be met.