

Annual Fire Pensions Conference 2016

Workshop: Abatement and Protected Pensions Age

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Agenda

12:15pm – 12:45pm

Abatement & Protected Pension Age (“PPA”):

- What is it and why is it important?
- A look at the Cherry case and implications for Fire Authorities

12:45pm – 1:15pm

Discussion

1:15pm – 2:15pm

Lunch

2:20pm+

Feedback from various workshops

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Abatement and Protected Pensions Age

**What are Abatement & Protected Pension Age
and why are they important?**

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Abatement and Protected Pensions Age

What is Protected Pension Age?

- Historic government policy of having a minimum age people can take their pension from (known as the normal minimum pension age, “NMPA”)
- NMPA was set at age **50** until HMRC announced changes on **10 December 2003** to raise NMPA (this date is significant – you’ll see why later)
- New NMPA was decided to be **55** from 6 April 2010
- **BUT:** change of NMPA might be unfair to those planning retirement
- **SO:** the Government gave **transitional protection** for those with the lower NMPA of 50
- This transitional protection is what we call “**Protected Pension Age**”

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Qualifying for PPA

- Member needs to have an **unqualified right to an NMPA of 50** under the Scheme Rules
- That right existed in the Scheme's governing documents on **10 December 2003**
- **The 1992 Scheme has this right built into it** (obviously those Members who joined the 2006 and 2015 Schemes don't qualify as these Schemes were introduced after 10 December 2003)

NB1: The right includes a *prospective* right e.g. on redundancy

NB2: NMPA does not apply to ill-health early retirement

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Example

- Roger is a member of the 1992 Scheme. He joined the Scheme in 1995.
- The 1992 Scheme had:
 - an unqualified NMPA of 50 before 2010; and
 - the NMPA of 50 was contained in the 1992 FFPS Regulations (the Scheme Rules) before 10 December 2003
- Roger would therefore have a PPA of 50.

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(1) Why is PPA important for Schemes and Employers?

- If a Scheme allows members to draw their benefits when a Member has not reached their NMPA:
 - it is an **Unauthorised Payment** (i.e. not an Authorised Payment under the Finance Act 2004)
 - the scheme administrator and the member may be subject to a tax charge (of up to 55%), depending on the circumstances, for making an Unauthorised Payment
 - these tax charges are often tens of thousands of pounds (although we have seen liabilities which could be over £100,000)

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(2) Why is PPA important for Schemes and Employers?

- If a Scheme allows members to draw their benefits when a Member has not reached their NMPA:
 - At the extreme (but unlikely) it could affect the status of a scheme as a Registered Pension Scheme
 - Member complaints – IRDP, possible referral to Pension Ombudsman
 - Public complaints & audit reviews
- Members can lose their PPA in certain circumstances (and the above will then apply)
 - Transfers out of the Scheme (not in a Bulk Transfer)
 - **Retire (and take pension benefits) and rejoin the employer/continue working**

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Retirement and rejoining/continue working – why is this an issue?

- Since 6 April 2006 no qualification on retirees being employed / re-employed
- Government policy is to prevent sham retirement to exploit the PPA and take advantage of the various tax advantages (e.g. 25% tax-free lump sum) while working
- Finance Act 2004 reflected in HMRC guidance makes it clear employees can only retain their PPA if, when they rejoin an employer:
 - **There has been at least a six-month break in employment; or**
 - **There has been at least a one-month break in employment; and either**
 - the new employment is “materially different” from the previous employment; or
 - **the scheme rules provide for abatement (a reduction of the member’s pension to reflect his earnings).**
- Break in employment means the employee is required to leave continuous service with (one or more) Authorities before taking up a new position
- If the employee is still in pensionable service with one or more Authorities, the Member’s PPA is likely to be lost as HMRC do not see the employee performing alternative duties (e.g. under different hours or duties) as a break in pensionable service.
- Loss of PPA was tested in *Cherry* case

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What do HMRC mean by “materially different” employment?

- “A simple **change in hours** will not be a materially different employment”
- “To be a materially different employment, **the duties and/or the level of responsibility** in the new employment must be different from those in the old employment.”
- Not a problem once the normal six months have past from Member being entitled to take benefits.

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(1) What is abatement?

- Abatement is the ability of the Authority to reduce the Member's pension if the Member is receiving a salary from a Fire Authority or from certain other employments after retiring
- Caps the total payment received from Authority (i.e. pension + new salary) to maximum level of pay received in role at retirement
- Abatement provisions contained in relevant Scheme's Rules – 1992 and 2006 Scheme Regulations (not contained in 2015 Scheme)
- Authority has the discretion to reduce all or part of a pension where member re-employed "**in whatever capacity**" by an Authority (including certain other employments)

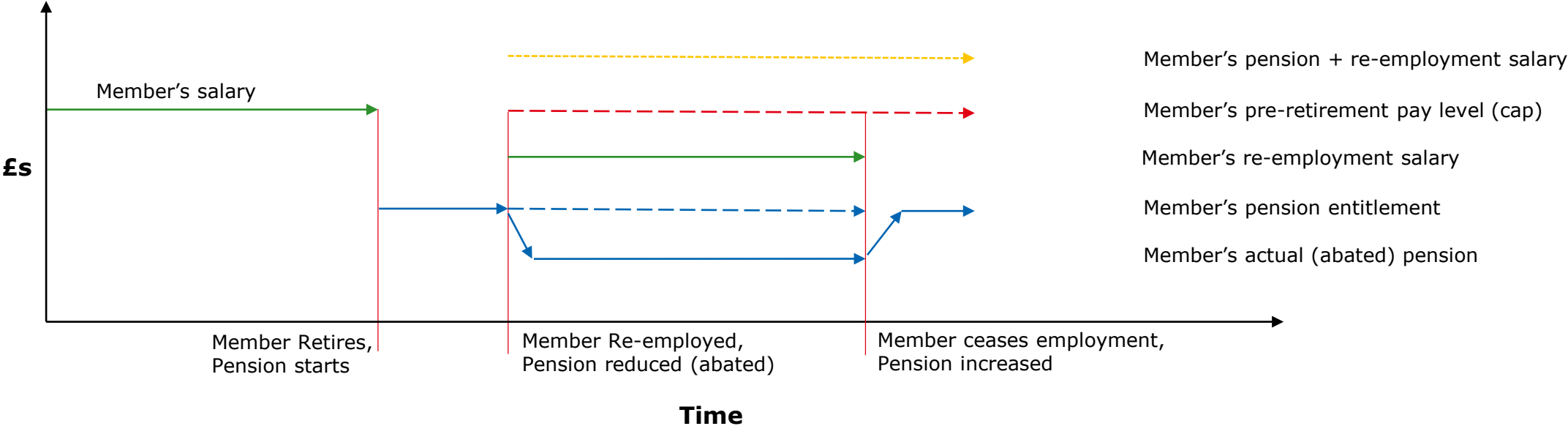
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(2) What is abatement?

- Normally only applies in the context of PPA, if the new role is **not** “materially different” from that which the Member retired from
- **However, Government as a matter of public policy require abatement to be used and Authorities are therefore required to apply its discretion to reduce all or part of a pension where member re-employed to cap overall payment to Member**
- Fire Authority guidance on abatement issued:
 - Guidance was first issued in Section 3(i) of Circular FPSC 08/2006, updates in FPSC 10/2009
 - DCLG policy is that the Authority’s discretion over whether abatement should be applied so that the retiree Member’s income “...*does not exceed the level of earnings directly prior to their retirement...*” FPSC 10/2009

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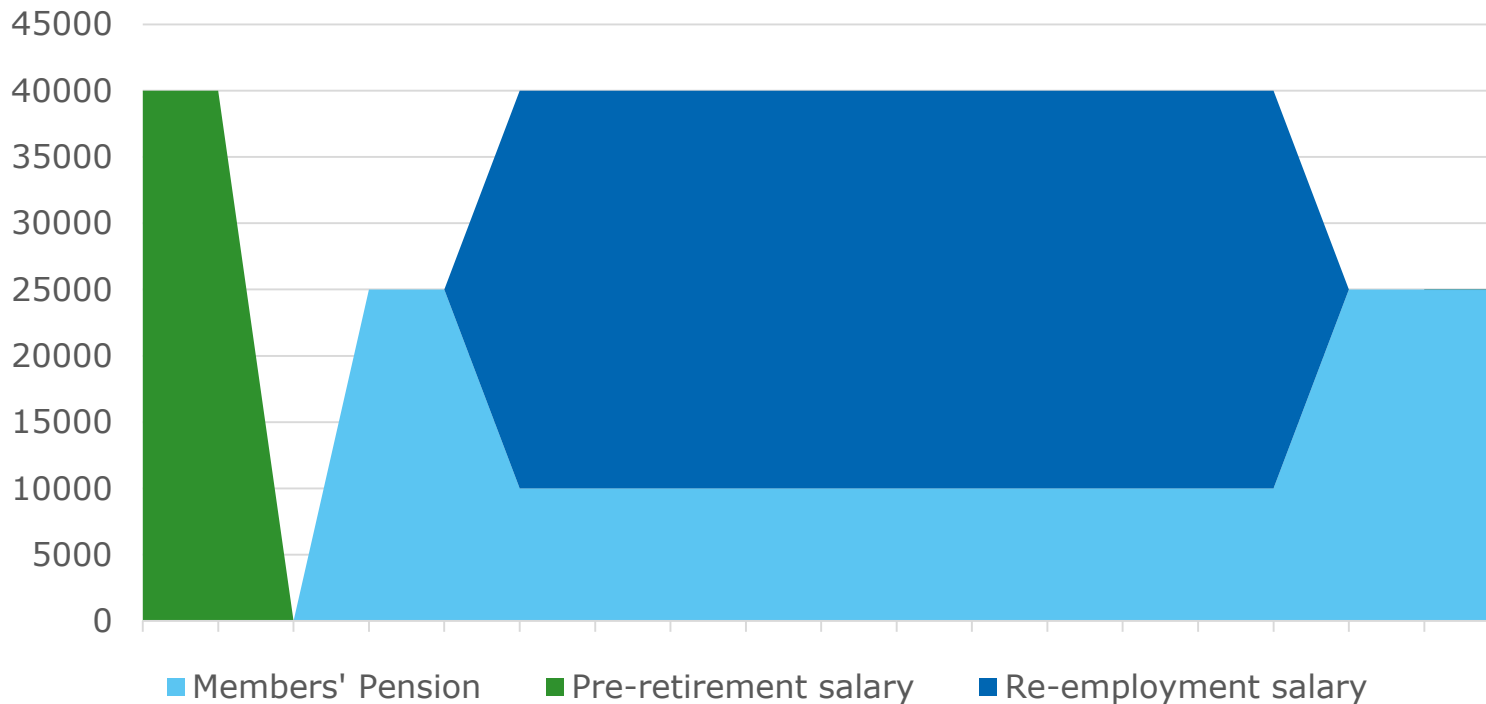
A diagram to explain



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A worked example...

Example of an abated of a pension



Member's pre-retirement salary was £40,000 (this is the cap)

Member retires on £25,000 pension

Re-employed by Authority on £30,000 salary

Member's pension reduced/abated to £10,000 (so Member does not exceed £40,000 cap)

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Cherry v PCC of South Wales

- John Cherry (“C”) was a Police Officer employed by the PCC of the South Wales police force (the “Force”). He joined in 1982.
- C took retirement from the Force on 12 June 2011. He was then re-employed on 23 June 2011 within one month of receiving his benefits.
- C lost his PPA and made a complaint of maladministration to the Pension Ombudsman arguing that his employer should have alerted him to the adverse tax implications of re-employment within one month of retirement.

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What happened?

- Pension Ombudsman found the Force had **no legal duty** to give individual officers and employees **advice** on their tax and pension liabilities
- **BUT:** the PCC had received a Home Office Circular 007/2006 dated 6 April 2006, which included information related to PPA and HMRC's approach to it
- **THE RESULT?** The Pensions Ombudsman concluded that the Force, "*...as a responsible employer ...had a duty of care to **inform** [C] of the tax implications of re-employment on his retirement benefits...*" [Paragraph 14, Cherry case]

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Implications for Fire Authorities

- Common for recent retirees to continue employment with Authority as retained firefighters or to take up different employment with an Authority
- Fire authorities have received FPSC Circulars similar to those in *Cherry*
- Authorities therefore have a **duty of care as an employer to provide information on pensions implications on retirement/re-employment**
- Potential significant tax charges payable by both Scheme administrator and member due to loss of PPA!
- Policies in place for retirement? Need advice for non-standard cases?
- What communications do you have with retirees about re-employment?

Discussion

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Suggested points for discussion:

- How can we prevent PPA becoming an issue in our Authorities?
- Is there anything in the near future in our Authority that could cause an issue (e.g. redundancy exercises or collaborations with other authorities)
- What is our policy on retained firefighters who have stayed on after retiring from normal service?
- If we spot a problem, what can we do about it? (Clue: phone a lawyer!)
- Are there any resources you could share with our colleagues in other Authorities?

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Final thoughts

- What steps or actions could you take when you go back to your Authority?
- Are these actions “SMART”?
- What new learning are you going to take away from today?

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