

“Matthews” and the 2023 options exercise



Who is Matthews?

Matthews & others v Kent & Medway Towns Fire Authority & others

- application of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 to retained duty system (RDS) employees
- PTWR in force from 1 July 2000 to implement EU PT workers directive
- Directive implementation deadline **7 April 2000**
- settlement for RDS ET claims not reached until 2014
- [SI 2014/445](#) implemented regulations with effect from 1 April 2014 to introduce 'special members' into the regulations of the FPS 2006

Special members

Benefits largely mirrored the FPS 1992:

- Accrual rate of 1/45th
- Service capped at 30 years
- Actuarial commutation factors (fixed)
- Normal pension age of 55
- Normal benefit age (deferred) of 60
- Death grant 2 x final pay
- Survivor benefits include unmarried partners

Four categories of special member:

- Special firefighter member (active)
- Special deferred member
- Special pensioner member (could include ill-health)
- Connected special member (transitional FPS 2015)

2014 options exercise

Took place between 2014 and 2015 to allow eligible individuals to join the FPS

- Employed between 1 July 2000 – 5 April 2006

FRAs had to identify these individuals and use reasonable endeavours to contact them

Eligible firefighters had to apply for a statement of service

Statement provided service and payment options available

Eligible firefighters had to make a positive election in order to join the scheme by 30 September 2015

What about O'Brien?

[O'Brien v Ministry of Justice](#) concerns fee paid judges in the JPS

Held that remedy could extend back before the PT Workers Directive was required to be implemented (7 April 2000)

As a binding judgment, UK Government recognised the right applies to RDS claims

[MoU](#) was agreed by all parties on 9 March 2022.

Remedy will be provided by a second options exercise allowing in-scope individuals to purchase pension entitlement as a special member of the FPS 2006

2023 options exercise – in scope

1

7 April 2000 – 30
June 2000 only

2

7 April 2000 – 30
June 2000
plus 1 July 2000 –
5 April 2006

3

1 July 2000 – 5
April 2006 only **and**
not given 2014
option



2023 options exercise – out of scope

Retained firefighters employed between 1 July 2000 and 5 April 2006 who were given opportunity to take part in the 2014 options exercise but did not elect to do so within the statutory time limits

Burden of proof on FRAs to evidence first options exercise complied with:

- Original notification within 2 months
- Statement of service within 4 months
- All individuals sent statement of service if not already received ([2015 amendment for provisional enrolment](#))
- Elections to pay contributions actioned

Acceptable evidence:

- Copies of letters addressed to individual
- Mail merge data base and template letters

Disputes dealt with through IDRPs with recourse to TPO

2023 options exercise - entitlement

Some or all of:

- Service between 7 April 2000 and 5 April 2006
- Continuous service up to 7 April 2000 (no limit on backdating)
- Continuous service from 5 April 2006

Expect same options to convert or transfer as given in 2014 options exercise:

- Standard to special
- Special to standard
- FPS 1992 accrued rights

Aggregation remains under discussion:

- Members who were retained but became wholetime without a break in service
- For FPS 1992, could give ability to retire from 50 with 25 years' and access to double accrual in respect of RDS

2023 options exercise - mechanics

Home Office has a maximum period of 18 months to draft, consult, and introduce the secondary legislation

FRAs to start 2023 options exercise as soon as possible after the legislation comes into force

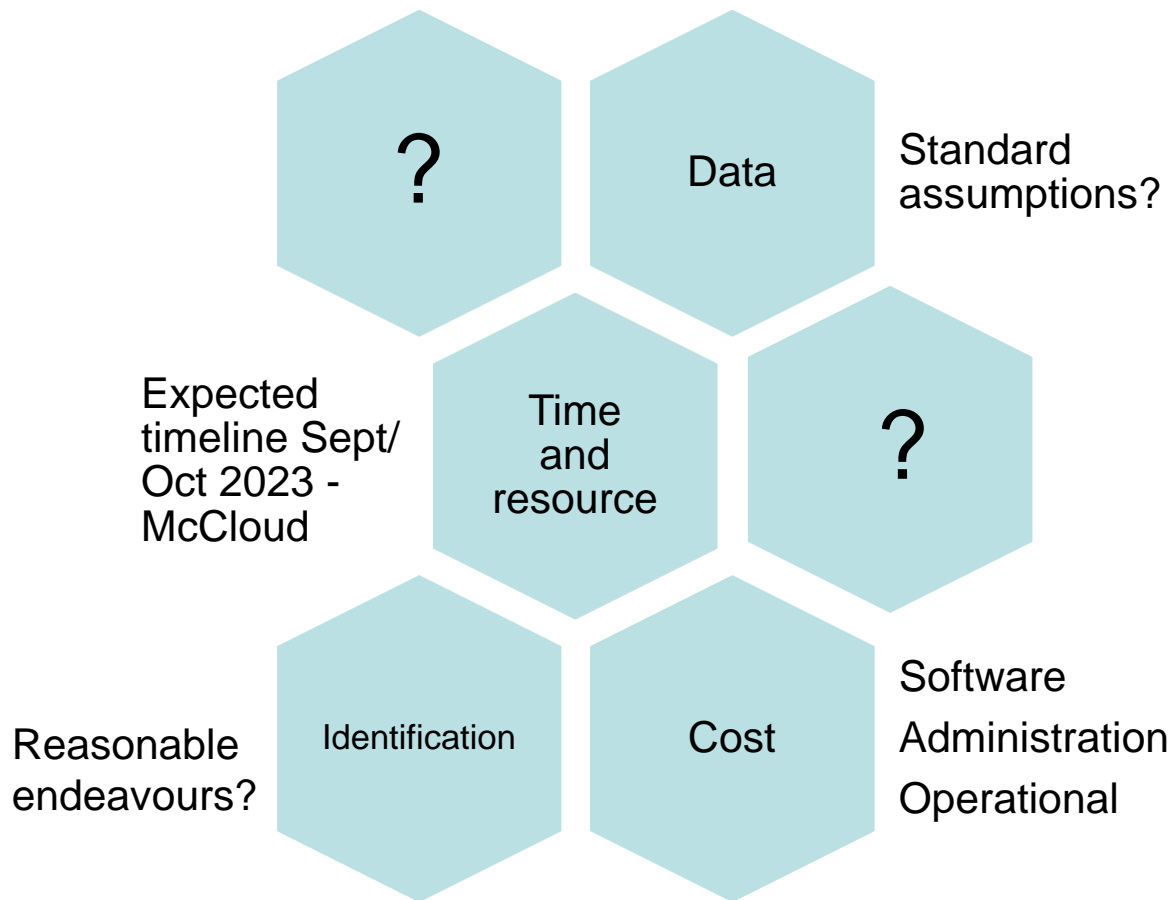
The exercise will run for a maximum period of 18 months

Retained firefighters required to pay relevant employee contributions with interest

Cost will be reduced to reflect tax relief where individual unable to claim through self-assessment

Employer contributions picked up through valuation as past service cost

Challenges



Mitigations

Early engagement

- Home Office
- GAD
- LGA
- Sector

Central support and governance

- LGA
- Scheme Advisory Board
- Local Pension Boards

Communications

- Suite of documents from 2014
- FPS Regulations and Guidance website
- FPS Member website
- Support of rep bodies

Lessons learned

- PAYE
- GAD calculator
- Timescales
- Clear guidance on roles and responsibilities



Next steps

FRAs to:

- Identify those in scope
- Find out what steps were taken for 2014 exercise
- Provide aggregation numbers to LGA by 31 May
- Respond to consultation (in due course)

LGA working with HO and GAD on data spec, calculators, and policy

LGA to work with all parties on central comms

Existing resources:

<https://www.fpsregs.org/index.php/member-area/modified-2006-scheme-resources>

SAB to convene working group

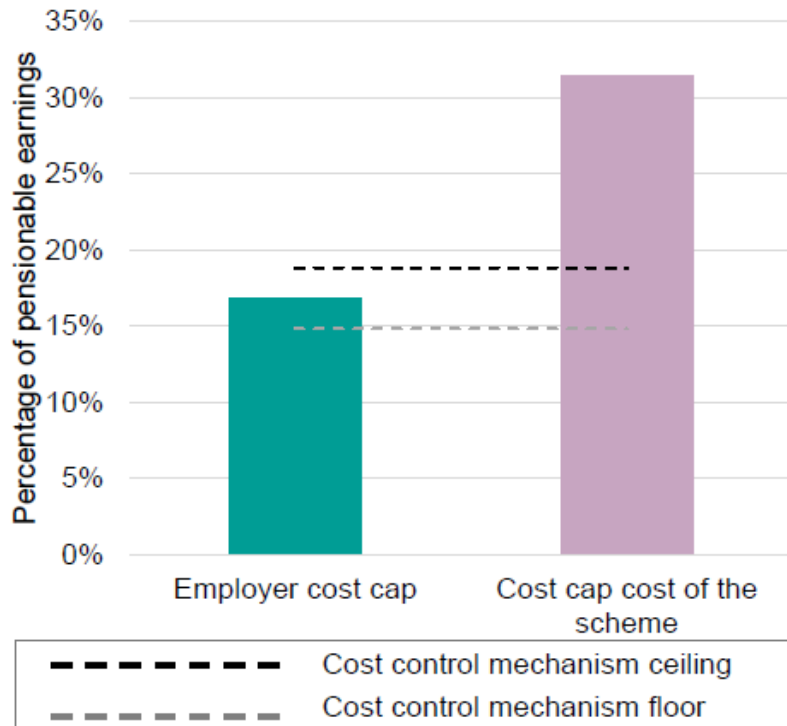
Any other business

2016 cost-control valuation

- [HMT Amending Directions](#) published 7 October allowed cost control element of 2016 valuation to be finalised
- Confirmed ceiling breach for Fire = 14.6%
- PSPJOA legislates that breaches will be waived
- No changes to employer contribution rates
- Ongoing litigation

Summary of results

This report has been commissioned by, and is addressed to, the Home Secretary and sets out the **cost control valuation results** of the Firefighters' Pension Scheme (England) as at 31 March 2016 (see Appendix A: Reliance for further details).



The **cost cap cost of the scheme** is **14.6%** above the **employer cost cap**.

This result lies above the +/-2% corridor specified in **HMT regulations**. The 2015 regulations require the Home Secretary to consult on the steps required to restore costs to the employer cost cap. However, a clause of the Public Service Pensions and Judicial Offices Bill amends section 12 PSPA 2013 (employer cost cap) so that ceiling breaches from the 2016 cost cap valuation have no effect. You may wish to take legal advice on the immediate actions required until the Bill receives Royal Assent.

The results of this cost cap valuation are not used to set the employer contribution rate. HMT has confirmed that changes to the employer contribution rates resulting from the 2020 valuations will take effect from April 2024.

The **employer cost cap** was determined at the 2012 valuation in accordance with [section 12 of Public Service Pensions Act 2013](#)



LGA in the press...



<https://www.pensions-expert.com/DB-Derisking/LGA-calls-for-2025-dashboards-deadline-amid-capacity-crunch-fears>

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LGA calls for 2025 dashboards deadline amid capacity crunch fears

By Benjamin Mercer | March 16, 2022

The Local Government Association has called for the staging date by which the Firefighters' Pension Scheme is to join the dashboards to be set back, arguing that it is not feasible to expect the scheme to join before 2025.

The Department for Work and Pensions' consultation into draft dashboard regulations, in which it reiterated that 'find' and 'view' functionality should be available from launch — despite worries about its feasibility — was met by a wave of concern from across the industry about the ambitious requirements it contained.

Many industry commentators expressed doubt that public sector schemes in particular could be onboarded by their current staging date of April 2024, and the LGA has now added its voice to the chorus, warning that a combination of factors make it unrealistic to expect firefighters' pensions to be included on the dashboards by the required date.

As with other public sector schemes, the LGA pointed to the workload entailed by the McCloud remedy, explaining that FPS administrators will already be under "huge pressure".

There is also a chance that a second options exercise will be under way in the scheme, in line with an agreement between the government and the Fire Brigades Union, announced on February 14, to resolve a long-running dispute over the pension benefits available to retained firefighters.

The LGA argued that neither a remediable annual benefit statement nor a remediable service statement including McCloud data will have been produced before the public sector staging deadline of April 2024, meaning it would not be possible to provide more than one figure to the dashboards, potentially leading to inaccurate or incomplete information being presented as the dashboards would not account for the member's position under the deferred choice underpin as required by the McCloud remedy.

If meaningful data is not available it is highly likely that the preferred approach for the LGA will be to discourage the use of dashboards

Jeff Houston, LGPS Advisory Board

Any questions



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Thank you for listening!

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