

PSPJOA 2022 Compensation Mechanism



Compensation Powers – The Act

The PSPJOA 2022 confirms that losses can be compensated if they meet the description set out in the [Public Service Pensions \(Exercise of Powers, Compensation and Information\) Directions 2022](#) and **one** of the following applies:

1. The loss is attributable to the breach of the non-discrimination rule that arose from the application of an exception to Section 18(1) of the Public Service Pensions Act 2014 (i.e. the transitional protections which were found to be unlawfully discriminatory through the [McCloud judgment](#)) [\[\(23\(4\)\)\]](#)
2. The loss is attributable to the application of any provision of, or made under, Chapter 1 of the PSPJOA 2022 (i.e. the application of the remedy as required by the Act) or [Scheme Regulations](#) which implement the remedy set out by the act. [\[\(23\(5\)\)\]](#)
3. A [Part 4 tax loss](#) (a specific tax loss where HMRC's statutory time limits do not allow for correction of the amount of tax paid). [\[\(23\(6\)\)\]](#)

Compensation Powers – The Directions

[Treasury Directions \(8 to 11\)](#) provide principles and detail about the scenarios in which scheme managers may pay compensation using [section 23](#).

- There is no discretion in the PSPJOA 2022 for scheme managers to compensate for Sargeant-related losses outside the scope provided in the Treasury Directions.

There are five relevant directions for compensation, which are:

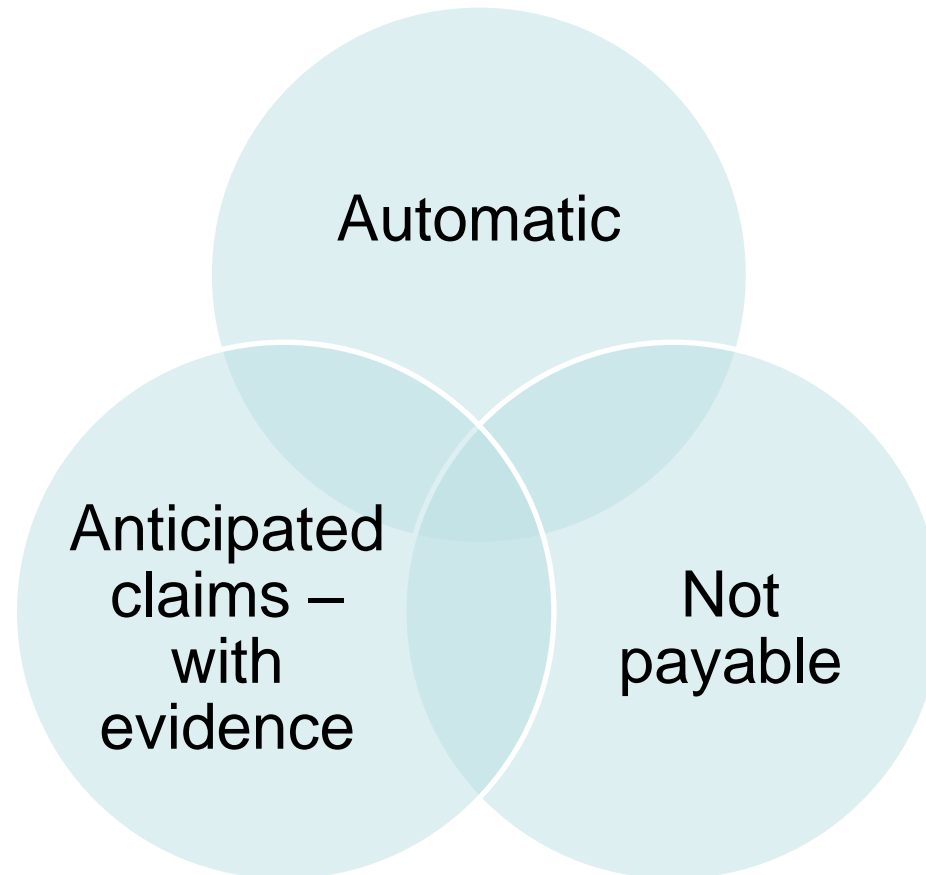
1. Direction 8 - Sets out the power to pay compensation and sets out 10 principles.
2. Direction 9 - Describes a compensatable loss as being either a direct financial loss or a specified part 4 tax loss. The directions refer to specific compensatable tax loss scenarios, but no specific scenarios of compensatable direct financial losses are provided.
3. Section 10 - Indirect compensation.
4. Direction 11 – Indirect compensatable losses.
5. Direction 18 – Sets out the process to apply for a compensation claim.

The principles

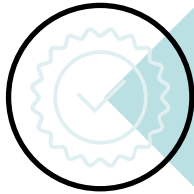
Claims **must** meet the 10 principles in Treasury Direction 8

1. Have regard to the purpose of the compensation
2. Comply with the principle of regularity
3. Comply with the principle of propriety
4. Comply with the principle of value for money
5. Have regard to the particular circumstances of the member (or 'person' as referred to by HMT Directions - if different i.e. nominated person, estate).
6. Have regard to whether there is sufficient evidence available to establish (i) whether any of conditions set out in paragraph 1 are met, (ii) whether the loss is of a nature described in the Treasury Directions (see below), and (iii) the quantum of the compensatable loss.
7. Have regard to whether such a claim would be awarded if brought in litigation and if so the likely amount to be awarded.
8. In determining the amount to be awarded, whether and to what extent the member has, or should have, taken reasonable steps to mitigate the loss.
9. Ensure any payment of compensation is reasonable and proportionate to the loss incurred by the member (or their personal representative).
10. Not make a payment that gives an unreasonable financial advantage compared to what would have happened had the discrimination not occurred.

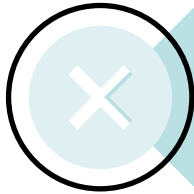
Compensation categories



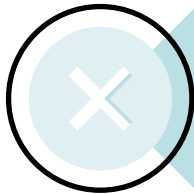
Automatic claims



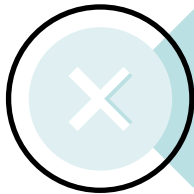
Routinely awarded



No expectation on member to submit a claim



No supplementary evidence needed



No scheme manager decision

Example cases



Contribution refunds

FPS 2006 transition members
FPS 1992 who elect for FPS 2015 benefits



Added pension

Service bought by transitional members in
the remedy period



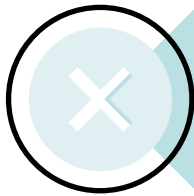
Transfers without a home

Transitional member who transferred in
service during the remedy period

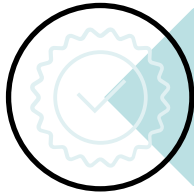


Tax relief for 'non-active' members

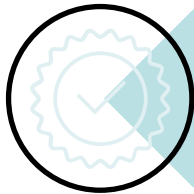
Anticipated claims – with evidence



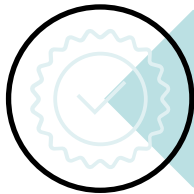
Not routinely awarded



Expectation on member to submit a claim



Supplementary evidence needed



Scheme manager decision

Example cases



Need for accountancy services

To support additional tax needs due to remedy



Need for independent financial advice

To advise on 'unusual' options i.e. contingent decisions



Need for legal services

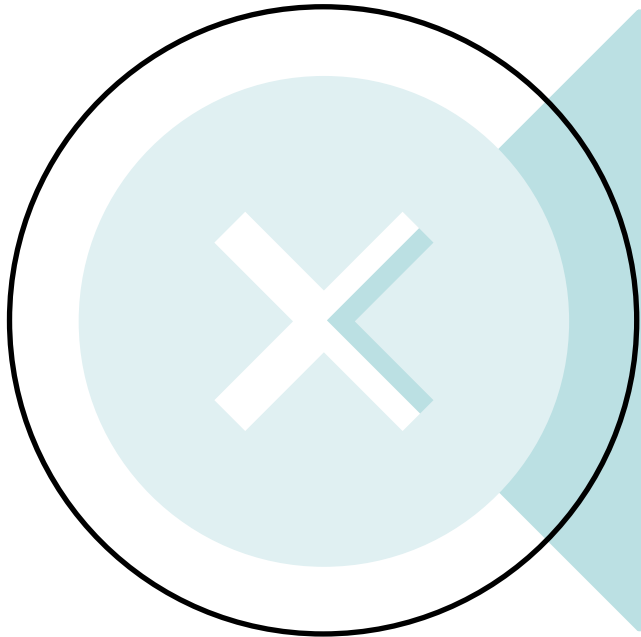
Revisit a previous divorce settlement



Part 4 tax loss

A specific tax loss where HMRC's statutory time limits do not allow for correction of the amount of tax paid

Not payable



**Not supported
by powers
within the
PSPJOA 2022
or directions.**

Evidence

All claims will need to provide clear evidence of a direct financial loss (such as a receipt, invoice, or bank transaction) as well as justification as to how that loss is attributable to one or all the conditions set out by section 23 of the PSPJOA 2022.

Evidence should include an explicit explanation of the financial loss incurred and the amount.

[Direction 18\(2\)](#) confirms how to evidence a Part 4 tax loss

[Direction 8, 1h](#) requires a scheme manager to have regard to whether a person could have mitigated their loss

Decision making

The PSPJOA 2022 and the directions require the scheme manager to make decisions about compensation claims, and to consider appeals.

On the matter of scheme manager discretion, in the Home Office consultation response, paragraph 6.172 Home Office said “Scheme Managers need to be able to consider individual cases when making certain decisions, rather than a blanket set of rules applying”

When exercising the power to pay amounts by way of compensation, the decision maker must act in accordance with direction 8 of the Treasury Directions.

A decision maker may request such further information from the applicant as they consider appropriate.

The relevant decision maker will always be a representative of the current scheme manager, who is the most recent employer of the member.

In order to validate the claim, scheme managers may need to instruct the services of an actuary or legal professional.

Recording, reporting and record keeping

The scheme manager must **indefinitely** hold a record of the claim and the decision, such that no member can be compensated more than once for any specific loss.

It is suggested that all claims, along with their outcome, are reported to LPBs to ensure good governance.

Amounts payable from successful claims must be recorded and reported in line with the [Home Office funding guidance](#).

All costs incurred by scheme managers for auxiliary services i.e. legal, actuarial advice etc. should be recorded.

Supporting material and next steps

Supporting material

- [Scheme manager guidance](#),
- [Member guidance](#), and
- [Claim form](#)
- [Funding guidance](#)

Next steps

- FRA to establish process on:
 - How to communicate compensation to members
 - Considering claims
 - Accepting/rejecting claims (and demonstrate consistency on such decisions)
 - Record keeping
 - Governance (LPB, funding etc.)
 - IDRPs for claims which have been refused

IN OTHER NEWS





IC-RSS rollout

HMT agreed to hold off from providing a statement ahead of the General Election

[Member communications](#) now live!

[FBU circular](#)





Software testing

Heywood clients **only**

ABS-RSS

17 – 27 June 2024

Contact your Customer Relationship Manager



Matthews cases

Support the delivery of Matthews user guide

Anonymised calcs required (please)



GAD Calculator

Experience of bulk upload?

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Thank you for listening!

claire.johnson@local.gov.uk