Information

Annual Allowance – Impact of the backdated pay award

Purpose

This factsheet has been prepared to provide a background to the impact of the backdated pay award on Annual Allowance.

The factsheet provides a summary of how to allocate the pay arrears and their impact on the Annal Allowance.

Background

Colleagues will be aware that a two-year Firefighter pay settlement was agreed on 6 March 2023, at a 7 per cent increase in pay and CPD backdated to 1 July 2022 and a 5 per cent increase in pay and CPD from 1 July 2023.

The pay settlement circulars can be accessed at the following link: https://www.fpsregs.org/index.php/member-area/firefighter-pay-scales

Due to the proximity to the scheme and tax year end, it is possible that arrears payments will not be processed until April payroll.

This document has been drafted to explain the considerations when making backdated payments across financial years.

Allocation of pay arrears

The FPS 2015 introduced a pension scheme year which runs from 1 April to 31 March each year. There is a general public sector school of thought that pensionable pay is applied to the scheme year in which it is paid not when it is earnt. Some scheme rules are clearer on this than others, for example LGPS, whereas the fire regulations are not as clear:

LGPS regulation 23(4):

(4) Except where regulation 10 (temporary reduction in contributions) applies, the amount of earned pension for a Scheme year is 1/49th of the member's pensionable pay received in that year (irrespective of whether it relates to work carried out in that year).

FPS 2015 regulation 34(3)(a):

(3) The amount is—

(a) for earned pension, 1/59.7th of the member's pensionable pay received for that year for the scheme employment in respect of which that member's account is established;

It is arguable that the 'when paid' approach is the correct approach to use in the Career Average scheme which introduces the concept of pension being earnt and banked in a specific scheme year, rather than calculated using final salary and total service.

Where a member has final salary service in one of the legacy schemes and is retiring (or has already retired) within the period affected, the arrears should be notionally apportioned to the correct period i.e. final or average pensionable pay should not be artificially inflated.

The Home Office's informal view is that the regulations do not definitively support this 'when paid' approach, although they have previously informally supported the 'when paid' approach to the FPS 2015, and we have subsequently communicated this approach to administrators and payroll.

The key drawback to treating the arrears for CARE on a ‘when paid’ basis is the potential impact on a member’s annual allowance position, particularly where a late agreement may lead to two pay awards occurring in the same pension input period (PIP).

Impact on Annual Allowance

HMRC’s Pensions Tax Manual [PTM053800] confirms that in the event of a backdated pay award where arrears of pay may be owed to a member, a member’s Annual Allowance amount will be calculated in the standard way.

The PTM confirms that the previous PIP does not need to be recalculated to provide a new opening value for the current PIP.

Final salary

The member’s final salary calculation for the opening and closing balance of the current PIP will be worked out using their new pensionable pay amount as determined by the pay increase. Any arrears of pensionable pay received in the current PIP relevant to previous input periods will not be used to establish the growth in benefits for the current period.

CARE

However, as AA in respect of CARE includes all pensionable pay credited to a member’s pension account within the PIP, this would include the arrears of pay.

Example

The following example is based on a Watch Manager B with transitional membership of the FPS 1992 and FPS 2015. The example is based on the Sargeant roll-back position i.e., the member has final salary service up to 31 March 2022 and the CARE record commences from a nil balance on 1 April 2022.

Following agreement of the pay award at 7 per cent for 2022 and 5 per cent for 2023, the annual rates of pay are as follows:

1 July 2021	£39,974
1 July 2022	£42,772

1 July 2023	£44,911

Opening value of the member's benefits for 2023/24:

At 5 April 2023		
FS pensionable pay		
06/04/2022 – 30/06/2022	(£39,974 / 365 x 86 days)	£9,418.53
01/07/2022 – 05/04/2023	(£42,772 / 365 x 279 days)	£32,694.21
	Total	**£42,112.74**
FS scheme membership to 31/03/2022	Notional service to 5 April 2023	Max FS service
26 years 160 days (26.438360)	27.452050	34.904110
CARE pay		£42,112.74
Opening Value		
Final Salary Pension		
Basic pension	(£42,112.74 x 26.43860/27.452050 x 34.90411/ 60) = £23593.91 + £484 (APB)	£24,077.91

Multiply by 16	£24,077.91 x 16	£385,246.56
Increase by CPI at Sept 2022	£385,246.56 x 10.1%	£38,909.90
	Total opening value final salary	**£424,156.46**
CARE Pension	£42,113 / 59.7 = £705.41 Plus 1.07 revaluation = £49.37	£754.78
Multiply by 16	£754.78 x 16	£12,076.48
Increase by CPI at Sept 2022	£12,076.48 x 10.1%	£1,219.72
	Total opening value CARE	**£13,296.20**

Closing value of the member's benefits for 2023/24:

At 5 April 2024		
FS pensionable pay		
06/04/2023 – 30/06/2023	£42,772 / 365 x 86 days	£10,077.79
01/07/2023 – 05/04/2024	£44,911 / 365 x 62 days	£34,329.23

	Total	£44,407.02
FS scheme membership to 31/03/2022	Adjusted for double accrual guarantee to 5 April 2024	
26 years 160 days	28.45205	36.90411
CARE pay		£46,505.42
Closing Value		
Final Salary Pension	Basic pension: £44,407.02 x 26.4386/28.45205 x 36.90411/ 60 = £25380.26 + £532.88 (APB)	£25,913.14
Multiply by 16	£25,913.14 X 16	£414,610.24
	Total closing value final salary	£414,610.24
CARE Pension	CARE pot of £754.78	£754.78
CARE Pension built up in year	£46,505.42 x 1/59.7	£778.98
CARE Revaluation	(£754.78 + 778.98) x 5% (assumed)	£76.69
Total CARE pension	£754.78 + £778.98 + £76.69	£1,610.45

Multiply by 16	£1,610.45 x 16	£25,767.20
	Total closing value CARE	£25,767.20

Pension growth at 5 April 2024		
Final salary benefits	**Closing value at 5 April 2024**	£414,610.24
	Opening value at 5 April 2023	£424,156.46
Pension growth	Closing value-opening value	Nil
CARE benefits	**Closing value at 5 April 2024**	£25,767.20
	Opening value at 5 April 2023	£13,296.20
Pension growth	Closing value-opening value	£12,471.00

From the example given, it is possible to infer with some certainty that employees from the role of Firefighter to Watch Manager B are unlikely to breach the £40,000 AA threshold as a result of the backdated pay award.

Employees in the role of Station Manager upwards are more likely to breach. However, it is likely that the majority of members who breach as a result of the pay award would have breached in any case. Additionally, we can expect that pension growth in the 2022-23 PIP is lower than would have been the case (if the pay award had been applied from July 2022), so members may experience a lower-than-expected breach in 2022-23 (or more carry-forward available) and a higher-than-expected breach in 2023-24.

It is also worth noting that The Public Service Pension Schemes (Rectification of Unlawful Discrimination) (Tax) Regulations 2023 provide that Pensions Saving Statements (PSS) do not need to be supplied for tax year 2022-23 as individuals' tax positions will need to be amended for the remedy years and the subsequent year following roll-back (regulation 6).

While we do not recommend that administrators send no information for year 2022-23, members should be made aware that their PSS is likely to be amended and reissued following the implementation of Sargeant.

It has been confirmed at Spring Budget that the Annual Allowance will increase to £60,000 from 6 April 2023. Additionally, for remedy members, legacy and reformed schemes will be considered linked for the calculation of AA. This means that negative real growth for AA purposes in legacy schemes can be used to offset AA growth in the linked public service scheme.

Contribution banding

Regulations 110(1) and (5) provide that a member must pay contributions at the rate applicable to their annual pensionable pay at 1 April, and further that the scheme manager has discretion over when to apply a change of rate when there has been a material change to a member's employment or pensionable pay.

Therefore, FRAs can choose to apply any new bandings effective from 1 April 2023 rather than backdating any uplift to the effective date of the pay award.

Member contributions

110.*—(1) Subject to regulations 111 to 113 (contributions during absences), an active member of this scheme must pay contributions to the scheme in respect of a scheme employment at the contribution rate applicable to the annual pensionable pay that member is receiving in the pay period in which 1st April falls for that employment (or in the case of an active member whose membership commences after 1st April in any year, on the annual pensionable pay the member receives at the commencement of that membership).*

(5) Where there is a change in scheme employment, or a material change which affects the member's pensionable pay in the course of a financial year and the revised amount of the pensionable pay falls into a different contribution rate band the scheme manager must determine that this rate should be applied and the scheme manager must inform the member of the contribution rate applicable and the date from which it is to be applied.

The Home Office has confirmed that employee contribution rates and bandings remain unchanged from 1 April 2023.

This factsheet has been prepared by LGA to give some guidance on the impact of the backdated pay award on Annual Allowance calculations using the regulations as they stand at April 2023, however they should be used only as an informal view of the interpretation of the Firefighters' Pension Scheme 2015 as only a court can provide a definitive interpretation of legislation. This factsheet should not be interpreted as legal advice

Please address any queries on the content of this factsheet to bluelight.pensions@local.gov.uk