

Previous service reckonable following actionable loss

Rule F6A explains how restitution payments may be claimed and credited to the FPS to count as pensionable service for those firefighters who were mis-sold personal pensions.

Background

With effect from 6 April 1988, following changes resulting from the Social Security Act 1986, employers could not compel employees to be members of their occupational pension scheme. Thousands of employees eligible for occupational pension scheme membership were encouraged by the financial services industry to reject those schemes in favour of personal pension plans marketed by the industry. It soon became clear that in many cases the advice given was poor, incorrect or misleading and persons who had followed it were financially disadvantaged, i.e. they had been “mis-sold” a personal pension.

In 1994, the Securities and Investments Board (“SIB” – now the Financial Services Authority) ordered financial services firms to carry out a review. The firms were required to gather information from occupational pension schemes and if it was found that wrong advice had been given to anyone, the firms had to put matters right. This would be achieved by getting the person to join or re-join the occupational scheme and to put them back into the position they would have been, had they not been badly advised. This could be either by payment of compensation to the person or, preferably, by offering the occupational pension scheme a sum of money – a “restitution payment” – which would give the person a pension credit similar to that lost while not a member.

Fortunately, most firefighters stayed with the FPS but for those who had been encouraged to leave, new legislation was needed to enable fire authorities to act in line with the SIB requirements. On 1 September 1997, the Firemen’s Pensions (Provision of Information) Regulations 1997 came into force. This allowed fire authorities to provide information to enable firms to judge if poor advice had been given. It also enabled fire authorities to recover administration fees from the firms. The process of restitution caused considerable extra work for pensions administrators of fire authorities, work that would not have been necessary had mis-selling not taken place.

Then the Fire Services Act 1947 was amended by the Police and Firemen’s Pensions Act 1997 to enable appropriate changes to be made to the Firemen’s Pension Scheme Order 1992. The changes were introduced with effect from 29 December 1997. Rules F6A and F6B were added to the Order to allow reinstatement payments to be received by the fire authority for restitution of reckonable service, and an amendment was made to Rule G3, extending the terms of admission/re-admission (following opting-out) to mis-selling cases.

Section 35 of the Fire and Rescue Services Act 2004 carried forward the provision for fire and rescue authorities to provide relevant information and request a fee for the service. The Firefighters’ Pension Scheme (England and Scotland) Order 2004 allowed the Police and Firemen’s Pensions Act 1997 to continue to have effect as if Sections 1(3) and (3) had not been repealed by the Fire and Rescue Services Act 2004.

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Rule F6A (continued)

Eligibility for restitution payment

Under Rule F6A(1), the reinstatement arrangements apply to a firefighter serving on or after 29 December 1997 who—

- (a) opted out of the FPS, or transferred out, or both and
- (b) suffered a loss “as a result of a contravention which is actionable under section 62 of the Financial Services Act 1986 or section 150 of the Financial Services and Markets Act 2000”, i.e. following incorrect financial advice. (The 1986 Act was repealed by the 2000 Act with effect from 1 December 2001.)

As regards (a) above, Rule F6A(7) clarifies what is meant by “opted out” and “transferred out” for this purpose.

- You have “opted out” if you have made an election under Rule G3(1) not to pay pension contributions and instead, as a regular firefighter, have paid contributions to a personal pension scheme.
- You have “transferred out” if your fire and rescue authority has paid a transfer value, i.e. a sum representing the capital value of your accrued pension rights in the FPS, to a personal pension scheme under Rule F9.

As regards (b) above, how a firefighter can demonstrate “loss” is explained in “Points To Note”, Point 5, below.

Notice required of firefighter

If you are eligible for a restitution payment under the terms of Rule F6A(1), Rule F6A(2) requires that you should –

- (a) give notice under Rule G3(5) cancelling your election not to pay contributions given under Rule G3(1) (i.e. you must elect to join/rejoin the FPS), and
- (b) give written notice to the fire and rescue authority that you wish them to accept payment of a transfer value in order to create or restore a period of service in the FPS.

A firefighter who leaves or dies after giving the notice required by (a) and (b) can still have the re-instatement provisions applied because of the wording of Rule F6A(3). See “Points To Note”, Point 6 below.

Effect of receipt of transfer value

Rule F6A(3) sets a time limit for the receipt of the transfer value from the personal pension provider. This is 12 months from the date of the notice given under Rule F6A(2). However the fire and rescue authority has a discretion to extend this time limit.

On receipt of the transfer value, the firefighter will be credited with an additional period of reckonable service. The amount credited will depend upon the amount of the transfer value.

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Rule F6A (continued)

Effect of receipt of transfer value (continued)

Rule F6B requires a fire and rescue authority to calculate the transfer value needed to restore in full the service the firefighter has lost by opting-out of the FPS and, if relevant, earlier service in the FPS transferred out to the personal pension arrangement. The amount of service credited following payment of the restitution transfer value will depend upon whether it is equal to, or more or less than, the sum calculated under F6B.

If the transfer value is equal to the F6B assessment, under Rule F6A(4) the firefighter can reckon a period of service equivalent to the period lost through opting-out of the FPS, plus any period of pensionable service lost through payment of a transfer value to the personal pension arrangement. He or she is treated as having paid FPS contributions throughout the period of re-instated service. Re-instated service will count as pensionable service in the assessment of benefits under the FPS and for assessing average pensionable pay. Any benefits based on contributions (e.g. balance of contributions payable to an estate) will be the same as if the firefighter had never opted out.

If, however, the transfer value is less than that required by the F6B assessment, under Rule F6A(5) the fire and rescue authority must work out, on similar principles to those used for the F6B calculation, how much service credit the sum offered would allow the firefighter. This is a “partial re-instatement”. A lower sum may be offered if the firefighter paid a lower contribution into the personal pension plan than would have been paid into the FPS. Personal pension providers may sometimes ask individuals if they would be prepared to come forward with an amount to offset the difference in contribution rates between the personal pension and the FPS so that a full restitution can be made, but this will not happen in all cases. Fire and rescue authorities should ensure that in cases where they are offered partial reinstatement the firefighter must give his or her written consent before accepting it.

With a partial re-instatement, under Rule F6A(5) the fire and rescue authority must credit the service resulting from the payment in such a way that the firefighter is deemed to have no gap in his or her pension contributions between the end of the period credited and the start or resumption of fire pension contributions. Such service as is credited is treated as pensionable and will count towards the assessment of awards under the FPS. However, the whole period which would have been covered by full restitution payment will count as qualifying service for assessing eligibility for benefits (e.g. the 2 year period required for entitlement to a deferred pension) and the firefighter is to be treated as having paid contributions throughout the “full restitution” period. This ensures as far as possible that such considerations as average pensionable pay or awards based on contributions, or the lump sum death grant, are not adversely affected by a gap in contributions in the event of retirement or death.

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Rule F6A (continued)

Effect of receipt of transfer value (continued)

In very rare circumstances a sum greater than the Rule F6B assessment may be offered. In this case, the payment in excess of the “restitution payment” cannot be used to purchase a longer period of service than the firefighter would have been able to count if he or she had not opted out (and transferred benefits to a personal pension plan, if relevant). Other pension schemes that are offered an additional amount in this way can have the excess paid into Additional Voluntary Contribution (AVC) arrangements linked to the scheme. The FPS does not have such an AVC arrangement. The fire and rescue authority cannot accept the excess and must advise the provider to retain the sum as the person’s personal pension in “paid up” form. The benefits eventually provided by the personal pension scheme would be treated as retained benefits for the purposes of testing the maximum tax limits on FPS benefits (under tax rules before 1 April 2006).

Adjustment in respect of a previous transfer value

Rule F6A(6) applies in cases where a firefighter has

- opted out of the FPS (and possibly transferred-out accrued rights as well), or left the service with a transfer-out, and
- rejoined as a regular firefighter with a transfer-in of accrued rights.

In these circumstances he or she will already have a service credit in respect of those transferred in rights. The service credit would have been assessed under the normal transfer provisions. It may be, however, that the service credit would be greater if the case was considered under the restitution payment rules. Consequently, if the fire and rescue authority is satisfied that the firefighter is eligible and the firefighter makes the appropriate written election, an assessment of restitution payment can be made and sent to the personal pension provider. The restitution payment would be adjusted by the amount of transfer value already paid and the fire and rescue authority may adjust the service credit derived from any restitution payment received so that there is no double-reckoning of pensionable service on transfer. The service credit will again depend upon whether the adjusted sum requested is paid in full or in part (see “Effect of receipt of transfer value” above).

Useful reference source

- FSC 1/1995: Pension mis-selling
- FSC 8/1997: Pension mis-selling
- FSC 9/1997: Pension mis-selling
- FSC 2/1998: Pension mis-selling
- FSC 2/2000: FSAVC mis-selling

Points To Note

1. Most victims of mis-selling should by now have been identified although re-instatement payments may take some time to be paid.

Previous service reckonable following actionable loss**Rule F6A (continued)****Points To Note continued**

2. A fire and rescue authority will incur costs associated with the provision of information, re-admittance of the firefighter to the FPS, and the calculation and acceptance of a restitution payment and credit of service. The Police and Firemen's Pensions Act 1997 provides that "reasonable fees" may be charged to the personal pension provider by the fire and rescue authority. In 1997, £175 was suggested as a sum for each case for all aspects of administration. However, fire and rescue authorities may wish to be guided by limits published from time to time by the National Association of British Insurers and the National Association of Pension Funds. Charges are subject to VAT.
3. The re-instatement regulations apply only to firefighters who have suffered loss by leaving or failing to join the FPS as the result of incorrect advice and who are serving as regular firefighters on or after 29 December 1997. Note that a serving firefighter who was mis-sold a personal pension during a previous spell of service as a regular firefighter is also covered, but only in respect of his or her period of service in a fire brigade.
4. To be eligible to claim a restitution payment, a firefighter must demonstrate that he or she has suffered loss as a result of incorrect financial advice (Rule F6A(1)(b)). As part of the process of review of mis-selling, the Financial Services Authority required firms who had sold personal pensions to establish whether the advice given to individuals was in keeping with rules at the time or incorrect and, if incorrect, whether the individual had suffered a loss as a result. If the firefighter is found to have suffered a loss as a result of incorrect advice, he or she should receive from the firm either an "offer of redress" – a letter saying how the firm proposes to put things right – or a "letter of intent" confirming the firm's commitment to put things right. Production of either sort of letter to the fire and rescue authority would be proof that the firefighter has suffered loss as outlined in Rule F6A(1)(b). Alternatively the firefighter may be able to produce a court order finding in his or her favour in an action for damages against the firm which gave incorrect advice, or a letter from his or her solicitor confirming this. If the firefighter has difficulty in producing this evidence and is concerned that the firm is not dealing properly with enquiries, the FSA keeps a central register of regulators and can advise the firefighter of the correct regulator to complain to.
5. If a regular firefighter serving on or after 29 December 1997 who can show that he or she has suffered a loss as a result of incorrect advice dies after having given notice under Rule F6A(2), the re-instatement provisions continue to apply. If the firefighter was not already a member of the FPS (again) at the time notice was given, he or she will have (re-)joined the Scheme on the next payment of wages (including a payment taking the wages up to the date of death in service), so that in all cases death benefits and any relevant dependants' benefits can be paid. On the subsequent receipt of the restitution payment the firefighter's reckonable service will be retrospectively increased and any death or dependants' benefits will be recalculated accordingly and backdated to when the firefighter died.
6. If a firefighter does not satisfy the terms of eligibility because he or she dies or has left the service before 29 December 1997, compensation from the firm responsible for mis-selling may still be possible but would have to be negotiated outside the FPS.

Previous service reckonable following actionable loss**Rule F6A (continued)****Points To Note continued**

7. In the case of a partial re-instatement where a firefighter had elected to upgrade widow's and children's benefits (firefighters with service before 1 April 1972) the fire and rescue authority has discretion, if the firefighter requests this in writing, to increase the firefighter's main pension entitlements by crediting the member with service in such a way that he or she is deemed to have suspended making additional and further contributions to enhance survivor benefits for the whole or part of the restored service. Any period where the firefighter is deemed to have made extra contributions should end immediately before the date of opting in to the FPS, i.e. any gap in contributions should be at the start of service. If the firefighter wishes to make up those missing extra contributions, the Government Actuary's Department will advise on the appropriate rate of additional and further contributions the firefighter needs to pay in future.
8. By 1999 it was clear that not only had personal pensions been mis-sold but also Free Standing Additional Voluntary Contribution arrangements (FSAVCs). The Financial Services Authority and the Pensions Investment Authority published a consultation paper in August 1999 following a review of the mis-selling of FSAVCs. The review highlighted the possible implications for public service pension schemes where FSAVCs have been mis-sold to a member of a scheme with fast accrual/and or high employee contributions, such as the FPS.
9. Up to 6 April, firefighters had to be very careful when exploring FSAVCs – because of the high accrual and contribution rate they could easily have exceeded Revenue limits if they paid FSAVCs. As administrators of the FPS, fire and rescue authorities needed to be aware of the Revenue limits for pension purposes. However, fire and rescue authorities were only responsible for ensuring that a scheme member's benefits, when payable and aggregated alongside those of the FSAVC provider, did not exceed Revenue limits. In cases where there was a surplus, FSAVC providers should refund the surplus to the firefighter. The refund would be subject to tax. On and from 6 April 2006 a new tax regime for pensions relaxed some of the previous limits. There is now more scope to pay contributions to other pension arrangements. Care should still be taken; it should be recognised that if the total value of pension benefits exceeds the Standard Lifetime Allowance additional tax charges may apply.