

Age discrimination remedy – Member factsheet Compensation

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Introduction

In April 2015, a new pension scheme (called FPS 2015) was introduced. As part of the roll out of the new scheme, some members were given 'protection' and remained in their legacy scheme for a set period after April 2015.

After a legal challenge, the courts determined that these protections were age discriminatory and not fair to all members of the pension scheme i.e. younger members in the scheme were missing out on additional years of benefits from the original pension schemes.

The changes introduced from 1 October 2023 aim to give all members the choice of benefits for the remedy period (1 April 2015 to 31 March 2022).

As part of the decision-making process, or because of the choice you make, there may be some loss which could be compensated for. This document sets out the process for making a claim.

Am I eligible to make a compensation claim?

An application to make a compensation claim may only be made by:

- An eligible remedy member, or
- A personal representative of a deceased eligible remedy member, or
- A designated person (who has ordinary or lasting power of attorney), where the eligible remedy member is not deceased.

Eligible claims for compensation where a loss has been suffered will fall into one of three categories, a compensation claim must be:

- a) Attributable to the non-discrimination rule, or
- b) Attributable to the application of remedy, or
- c) A Part 4 tax loss, which is either because of:
 - I. Incurring a charge or an increased charge under [Part 4 of the Finance Act 2004](#), or
 - II. Not being entitled to a relief or being entitled to less relief under [Part 4 of the Finance Act 2004](#)

What is a compensation Claim?

A compensation claim will be for a specific financial loss which is clearly identifiable. It will have been incurred by a member either because of the discrimination because of putting a member in the same pension position that they would have been in if the discrimination had not occurred.

What are the types of compensation claim?

Compensation payments will fall into either automatic or non-automatic compensation claims.

Automatic Claims

Automatic compensation claims will be paid automatically without the need for completing a compensation claim form.

These claims can be paid at the earliest opportunity when all the relevant information is available and must be paid to fulfil the requirements of legislation; there is no choice for the member.

The types of automatic compensation claims are:

- Members of the FPS 2015 scheme who bought added pension in the FPS 2015 scheme during the remedy period will receive a refund of 2015 added pension contributions that they paid during the remedy period. See [Member factsheet](#).
- FPS 2006 legacy scheme members who are returned to their legacy scheme will receive a refund of overpaid FPS 2015 scheme contributions. The member will be able to choose the timing of this payment.
- FPS 1992 legacy scheme members who choose FPS 2015 benefits when they make their choice of retirement benefits will receive a refund of 1992 overpaid contributions.
- A protected or taper protected member who commenced a contract to pay legacy scheme added years contributions during the remedy period, but later chooses reformed scheme benefits at retirement will receive a refund of any added years contributions.
- Tax relief for non-active members, excluding opted-out service reinstatement for post remedy.

Non-automatic claims

Compensation claims will fall into different categories, there is no definitive list for all the types of claims, but examples are:

Accountancy services:

Reimbursement for engaging a suitably qualified accountant to help:

- Calculate a new or revised tax charge due to remedy, or
- Support a taper protected or unprotected member to complete a revised tax assessment, or
- Support to complete information to use the HMRC digital service, or
- Calculate evidence towards a compensation claim.

Independent financial advice:

Reimbursement for engaging a suitably qualified independent financial adviser to help with particularly complex cases such as:

- Members who have a contingent decision, or
- Members who are entitled to Ill-Health benefits in the alternative scheme, or
- Members who have lifetime allowance protections, or
- Members who will have a new or revised tax charge because of going back to the legacy scheme, or
- Members who have a pension sharing order.

Legal services: -

Reimbursement of legal services used for the purpose of re-examining a divorce court order to understand how a divorce affects pension benefits.

Financial loss:

Reimbursement for a direct financial loss suffered due to remedy such as:

- An active member who settles a contribution adjustment before retirement and consequently suffers a loss of tax relief on those contributions, when compared to the tax relief that would have been given if the contributions had been paid at the correct time.

Part 4 tax loss:

Reimbursement for a Part 4 tax loss which has occurred because of remedy such as:

- An overpaid annual allowance or lifetime allowance tax charge which occurred in an out-of-scope tax year.
- Overpaid lifetime allowance charge when considering restoration of lifetime allowance protections.

What is not payable as a compensation claim?

Compensation claims cannot be made nor will be accepted for any of the following:

- Professional advice or services that could have reasonably been obtained from the scheme manager.
- A member has already received compensation for the loss in question (e.g. pursuant to a court order), or the compensatable amount has been used to reduce an amount owed by the member.
- An unauthorised payment tax charge on interest for arrears of pension or arrears of lump sum for an immediate choice member.
- An unauthorised payment tax charge on the arrears of lump sum due for an immediate choice member.
- Indirect or hypothetical financial loss as a result of an employment decision (e.g. taken retirement earlier).
- An Immediate Choice member who is a taper protected member where either of their choices for remedy benefits results in a lower set of benefits than those in payment.
- Legal services fees incurred by a member in the case of litigation.

There may be other cases where the scheme manager will not accept the compensation claim, but the reasons for this will be explained to you and you will be able to raise an appeal if you disagree with the decision.

When can I make a compensation claim?

You should make a compensation claim as soon as the direct financial loss has occurred. You may find that different aspects of remedy will affect your pension at different stages, so you may need to submit compensation claims at different times, as and when each direct financial loss arises.

Typically claims will be received up to six months after you have made your immediate or deferred choice for remedy benefits.

Applications received more than six months after you have made your election, may still be accepted in exceptional circumstances.

How do I make a compensation claim?

You will need to complete the [compensation claim form](#) to make your claim. You should submit a separate claim for each type or claim - You only need to do this for non-automatic claims.

You will also need to consider what evidence should be provided to support your claim. Once you have everything, the claim form and evidence can be submitted to the scheme manager for your Fire and Rescue Authority (FRA).

All claims will need to provide:

- Justification as to how it meets one of the three eligible categories outlined above, and
- Clear evidence of a direct financial loss such as a receipt, an invoice, or a bank transaction.

If the claim is for a Part 4 tax loss, then the application must also contain either a calculation that has been obtained from HMRC or a signed declaration that all information is given to best of your knowledge and belief.

What is the process for a compensation claim?

The scheme manager will review your claim for compensation and the evidence you have supplied. If the evidence provided is unclear or incomplete the scheme manager will ask you to provide additional information.

When the scheme manager is satisfied that they have all the necessary information available, they will assess your claim and decide whether the claim can be accepted or not. Where a claim can be accepted, they will also determine the amount of the compensation that can be paid to you.

What are the timescales to make a compensation claim?

The timescales provided below are the suggested national timescales that have been provided as a guide for all FRAs, there may be differences for local arrangements.

The scheme manager for your FRA will be able to advise you of the timescales that will apply for you.

Description	Timescales
The scheme manager acknowledges receipt of the compensation claim and the evidence provided. This will include any information about delays that are anticipated, especially where cases may be paused before being progressed to the next stage.	Ten working days
The scheme manager reviews the compensation claim and the evidence provided and makes their decision.	Two months
The scheme manager notifies the Member of the outcome of the compensation claim.	Ten working days

What can I do if I have not heard anything about my case?

If you have not received any communication to advise you of a delay, or you are expecting to hear and the timescales set out have passed, you should in the first instance contact the scheme manager for your FRA to ask about your compensation claim.

Appeals

If your compensation claim is declined by the scheme manager, you will be provided with details of how to raise a dispute through the Internal Dispute Resolution Procedure (IDRP).

Your fire and rescue service should have an IDRP policy, which will set out the process and who to contact at each stage.

Your case will be heard by a delegated person at your fire and rescue service.

You will also have the right of appeal to the [Pensions Ombudsman](#).

Legislation

The legislation that applies to compensation is: -

1. [The Public Service Pensions and Judicial Offices Act 2022](#) (PSPJOA 2022)
 - Compensation - [Section 23 to 25 of Chapter 1](#)
2. [The Public Service Pensions \(Exercise of Powers, Compensation and Information\) Directions 2022](#) (The Directions)
 - Compensation - [Directions 8 to 12 of Chapter 3 of Part 2](#)
3. [The Firefighters Pensions \(Remediable Service\) Regulations 2023](#)
 - Indirect compensation - [Regulation 59 of Chapter 2 of Part 9](#)
 - Application for compensation - [Regulation 60 of Chapter 2 of Part 9](#)

This factsheet has been prepared by LGA using the regulations as they stand in May 2024.

This factsheet will be reviewed, referencing any changes to the scheme regulations and policies that might be needed.

This factsheet should not be interpreted as legal advice.

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

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