



**DEVON &  
SOMERSET**  
FIRE & RESCUE SERVICE

## **LOCAL PENSION BOARD**

**Date of Meeting:** Wednesday 9 September 2020, at 3.00 pm via Webex Video Conference

### **SUPPLEMENTARY AGENDA No. 1**

<b>ITEM NO.</b>	<b>ITEM TITLE</b>
8.	<p><b>(a) <u>Pensionable Pay - Pay for Availability (P4A)</u></b> (Pages 1 - 6)</p> <p>Historically pensionable pay has been a concern for Fire and Rescue Authorities (FRAs) with regards to what pay constitutes pensionable pay. There have been a number of landmark High Court decisions on this issue (notably Kent and Medway Towns v Pensions Ombudsman and Hopper [more commonly referred to as Blackburne], Norman v Cheshire and Booth v Mid and West Wales). There have also been several ombudsman determinations.</p> <p>This Board has previously been asked to express a view on pensionable pay matters to assist the Authority (as Scheme Manager) in determining these.</p> <p>As part of its new Service Delivery Operating Model, the Service is seeking to introduce a new payment (pay for availability) for the on-call duty system. The Board is asked to express a view as to whether it considers this should be pensionable.</p> <p>Attached is a copy of a factsheet on pensionable pay resources and an updated Service spreadsheet listing allowances and payments considered for pensionable pay purposes in accordance with the principles set out in this factsheet.</p>

#### **Board Membership**

*Scheme Manager  
Representatives:*

Mike Pearson  
Satnam Singh Rai  
Amy Webb  
Cllr George Wheeler

*Scheme Member  
Representatives:*

Andy Hallam  
James Leslie  
Peter Redbourn  
Ben Redwood

*Other Attendees:*

Steve Pope (Delegated Scheme Manager)  
Caroline Gourlay (Rewards & Benefits Manager)  
Steve Yates

This page is intentionally left blank



## Pensionable pay resources

### Background

Historically pensionable pay has been a concern for Fire and Rescue Authorities (FRAs) with regards to what pay constitutes pensionable pay and there have been some landmark High Court decisions on firefighters pensionable pay, notably [Kent and Medway Towns v Pensions Ombudsman and Hopper](#) (more commonly referred to as Blackburne), [Norman v Cheshire](#) and [Booth v Mid and West Wales](#), as well as several [ombudsman determinations](#).

This factsheet has been prepared to summarise the guidance and resources available to FRAs on making pensionable pay decisions.

The factsheet has been agreed by the Firefighters' Pensions (England) Scheme Advisory Board (SAB).

Each FRA should have a process in place which determines how pensionable pay decisions will be made.

### Broad Principles

Notably the broad principles on determining pensionable pay are:

1. Each High Court determination and ombudsman case has referenced following the 'Blackburne principles':
  - 1.1. Payment should be calculated in accordance with a firefighter's ordinary rate of pay.
  - 1.2. Payment must be 'pay' for work done under the contract of employment.
  - 1.3. Payment must be regular in nature, i.e. should be pay to which the firefighter is entitled at the rate applicable to rank / role.
  - 1.4. It must not be one-off, as a result of an extraordinary event.
  - 1.5. It must have something of a permanent nature.

2. Pay in relation to a duty system an individual is required to perform is likely to be pay in relation to the performance of the role of a firefighter.
3. Equivalent allowances paid for the same duty should be treated the same way regardless of whether the individual is a regular or retained firefighter.
4. An allowance will be permanent unless it is temporary in the sense of occasional, one-off, irregular and time limited.
5. Just because firefighters can be moved to different stations or different duty systems and an allowance may then terminate does not mean that the allowance is not 'permanent'.
6. A 'permanent' payment does not have to endure for the whole of a firefighter's employment.
7. Must consider the specifics of each contract of employment and any collective agreements.
8. What is pensionable under FPS 1992 is also likely to be pensionable under the later schemes i.e. the inclusion of the words "permanent" and "temporary" in the definition of "pensionable pay" was not intended to limit what could be considered pensionable under the later schemes.

## Guidance and Resources

1. Regular [pensionable pay workshops](#).
2. Factsheets have been provided on:
  - 2.1. [Pensionable Pay \(Booth v Mid and West Wales\)](#)
  - 2.2. [Additional Pension Benefits](#)
  - 2.3. [Two pension entitlement and drop of pay in FPS 2015](#)
3. [Monthly FPS bulletins](#) will signpost conversations and resources about pensionable pay. Relevant bulletins can be found in the subject index on the main Bulletin page under the topic heading 'Pay'
4. Consolidated versions of the regulations showing the amendments have also been provided:
  - 4.1. [FPS 1992: Regulation G1](#)
  - 4.2. [FPS 2006: Part 11, Chapter 1, Rule 1 & 2](#)
  - 4.3. [FPS 2015: Rule 17](#)
5. The importance of robust and transparent pensionable pay decision making has been included in scheme manager and governance training.

6. In order to assist FRA pensionable pay decision making, resources have been bought together into one place - <http://www.fpsregs.org/index.php/member-area/pensionable-pay>

Contact Us Search Member Area



### Pensionable pay

We are aware that pensionable pay continues to be an issue and concern for FRAs. At their meeting of 9 January 2020 the Scheme Advisory Board (SAB) discussed how FRAs could be best supported. One agreed action was to provide a central point of reference for pensionable pay resources.

This page has been developed to hold historic and archived resources to assist authorities in managing the application of pensionable pay and what to consider when making determinations.

For information on case law determinations in relation to pensionable pay visit our dedicated web page <http://fpsregs.org/index.php/legal-landscape/relevant-case-law>.

You can view all articles published on "Pay" in our monthly bulletins by using the subject matter index available on the [Bulletins](#) page. Additionally, any queries on pay related issues can be found on the [Technical queries](#) page - the queries log is updated monthly.

[Regulations](#)

[Resources](#)

[Ombudsman determinations](#)

This factsheet has been prepared by LGA to give some guidance on the rules of the pension scheme and associated legislation using the regulations as they stand at July 2020, however they should be used only as an informal view of the interpretation of the firefighters' pension scheme 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](mailto:bluelight.pensions@local.gov.uk)

This page is intentionally left blank

Treatment of Allowances & Payments from a Pensionable Pay Perspective

Allowance or Payment	Description	Previous or Current Allowance?	Has a decision on Pensionable Pay already been made?	Pension Regulations		The Blackburne Principles			Is it considered as Pensionable for FPS 1992	Is it considered as Pensionable for NFPS 2006	Is it considered as Pensionable for FPS 2015	Recommendation on Pensionability
				Is it in relation to the performance of the duties of the role?	Is it Temporary or Permanent	1. Is the payment calculated in accordance with the ordinary rate of pay	2. Is it a payment for work done under the FFs contract of employment?	3. Is the payment regular ie not a one-off or unexpected payment				
Area Manager Allowance	9% plus increase in car allowance for reduction in AMS, loss of midweek rota day & TOIL and flexible working.	Previous: Jul 2009 - Apr 2017	Yes	Yes	Permanent	Yes - 9% of basic pay	Yes	Yes	Yes for Perm Appt APB for Temp Appt	Yes for Perm Appt APB for Temp Appt	Yes for Perm Appt No for Temp Appt	Already Pensionable
Area Manager Rota Allowance	12% for new AM Duty System and further reduction in AMS.	Current: from 1st Nov 2018	Yes	Yes	Permanent	Yes - 12% of basic pay	Yes	Yes	Yes for Perm Appt APB for Temp Appt	Yes for Perm Appt APB for Temp Appt	Yes for Perm Appt No for Temp Appt	Already Pensionable
Training Allowance	12% for Weekend working (6-8 weekends plus 30 hrs per annum).	Current: from 2005, previously 8% from 2000	Yes	Yes	Permanent	Yes - 12% of basic pay	Yes	Yes	Yes for Perm Appt APB for Temp Appt	Yes for Perm Appt APB for Temp Appt	Yes for Perm Appt No for Temp Appt	Already Pensionable
New Training Allowance	12% for temporary 12 month trial for 126 hours per annum for Training duties.	Current: from Apr 2019	Yes	Yes	Temporary	Yes - 12% of basic pay	Yes	Yes	No since on a trial basis, if made perm then pensionable	No since on a trial basis, if made perm then pensionable	No since on a trial basis, if made perm then pensionable	Already Not Pensionable
Special Activity Allowance	£550 Payment for additional specialist rescue capability in Water and Rope Rescue.	Current: from Jan 2010 for Stn 60 Previous: from Jan 2010 to Jun 2012 for other Special Rescue Stns	Recommendation from LPB	Yes	Permanent	No - flat rate	Yes - at Stn 60	Yes	No since at a flat rate	No since at a flat rate	No since at a flat rate	Not Pensionable
Specialist Rescue ARA	ARA Level 4 - £969 Payment for specialist rescue capability in Water and Rope Rescue.	Current: from Jul 2012 for Special Rescue Stns other than Stn 60	Recommendation from LPB	Yes	Permanent	No - flat rate	Yes - at Specialist Rescue Stns	Yes	No since at a flat rate	No since at a flat rate	No since at a flat rate	Not Pensionable
Day Crewing Rent Allowance	10% for staff living within one mile or 4 minutes of the station could undertaking the evening commitment from home. If not then the evening commitment is undertaken at the station and the rent allowance is not paid.	Previous: up until Ilfacombe changed status from Day Crewing to On-call. The payment ceased from the 31st Mar 2014	Yes	No	Permanent	Yes - 10% of basic pay	No	Yes	No since not for work done in relation to the performance of duties	No since not for work done in relation to the performance of duties	No since not for work done in relation to the performance of duties	Already Not Pensionable
Dog Handlers Allowance	10% for off-duty commitments associated with animal care and voluntary attendance at operational incidents during rota and leave periods.	Current: from Nov 2009	Recommendation from LPB	No	For the working life of the dog but the dog has been replaced and the allowance continued.	Yes - 10% of basic pay	No, the activity is that associated with the care of the dog at home and voluntary standby during rota and leave.	Yes	No since not for work done in relation to the performance of duties	No since not for work done in relation to the performance of duties	No since not for work done in relation to the performance of duties	Not Pensionable
Flexi-duty Allowance	20% for providing additional cover under the Flexi-duty System	Current	Yes	Yes	Permanent	20% of basic pay	Yes	Yes	Yes if linked to Perm Promotion APB for Temp Promotion If not linked to Promotion then Pensionable	Yes if linked to Perm Promotion APB for Temp Promotion If not linked to Promotion then Pensionable	Yes if linked to Perm Promotion Not Pensionable for Temp Promotion If not linked to Promotion then Pensionable	Dependent on Pension Scheme
Station 60 WT On-call Allowance	10% for for call out on rostered duty periods	Current: from Apr 2007	Yes	Yes	Permanent	Yes - 10% of basic pay	Yes	Yes	Yes	Yes	Yes	Already Pensionable
Station 60 Call Back Team Allowance	Payment of 52 weeks x 4 hours as an Allowance	Previous: up until Dec 2018. Now payment linked to attendance rather than an allowance	Yes	Yes	Permanent	Linked to basic pay	Yes	Yes	Yes	Yes	Yes	Already Pensionable
Community Responder Allowance	Equivalent to 21hrs per week for additional hours	Current	Yes	Yes	Permanent	Linked to basic pay	Yes	Yes	Yes	Yes	Yes	Already Pensionable
CPD	Payment of £554 as APB within the 1992 and 2006 schemes. Part of Pensionable pay within the 2015.	Current	Yes	Yes	Permanent	No - flat rate	No	Yes	Yes but part of APB	Yes but part of APB	Yes but part of pensionable pay	Already Pensionable but either APB or part of a CARE earnings
Mess Allowance	£226 per annum and £126 for a Deputy	Current	Yes	No	Temporary	No - flat rate	No	Yes	No since not for work done in relation to the performance of duties	No since not for work done in relation to the performance of duties	No since not for work done in relation to the performance of duties	Already Not Pensionable
Car Allowance	Rate for FDOs, Support staff, SLT and EB grades	Current: from Oct 2018	Yes	No - NB Uniformed Officer can have a provided vehicle and non-uniformed staff can use a pool car	Permanent	No - flat rate	No	Yes	No since not for work done in relation to the performance of duties	No since not for work done in relation to the performance of duties	No since not for work done in relation to the performance of duties	Already Not Pensionable
Crewing Pool Hourly Rate	Payment for work undertaken on a voluntary basis at other stations.	Current: from Oct 2019	Yes	No - the work within the Crewing Pool is on a voluntary basis and is not a requirement of the contract.	Crewing pool hours will be available on a irregular basis so ordinarily would be temporary.	Yes - the rate is that of basic pay	No	No	No since not for work done in relation to the performance of duties	No since not for work done in relation to the performance of duties	No since not for work done in relation to the performance of duties	Not Pensionable

This page is intentionally left blank