Sent by email to the HMT Deputy Director - Workforce, pay and pensions.
CC: Home Office Deputy Director responsible for fire pensions policy

12 April 2024

RE: Tax treatment of interest on arrears of pension and lump sum for Immediate Choice members affected by the Sargeant/McCloud remedy

Dear Mr Elks,

I am writing to you at the request of the Firefighters' Pensions (England) Scheme Advisory Board (the SAB) which I chair. The remit of the SAB comprises two elements:

- The purpose of the Board is to provide advice in response to a request from the Secretary of State on the desirability of making changes to this scheme and any connected scheme.

- To provide advice to scheme managers and local pension boards in relation to the effective and efficient administration and management of this scheme and any connected scheme.

Given this remit, the SAB has been following the emerging guidance from HM Treasury and HMRC regarding the tax considerations needed for the interest accrued on arrears of pension/lump sum which we understand only became identified as an issue in January of this year, some 4 months into the remedy implementation period.

It is our understanding that, contrary to what might be expected from Nick Donlevy's letter to the then Government Actuary dated 12 December 2022 – which advocated the use of an 8% simple rate of interest for the Treasury Directions for both arrears of pension/lump sums and pension refunds – it is now proposed that there should be a very different tax treatment of the interest on these different elements.

The SAB is concerned to learn that outstanding policy and process questions remain around how this methodology will be applied; and that the programming of the GAD calculator, which is such a necessary element of delivering the remedy, cannot be completed until clarity on policy and process guidance has been supplied by HM Treasury and HMRC.

Whilst we understand that the 8% rate of interest is not a commercial rate, it is clearly a rate that would be set by the Courts to include a level of compensation for any discrimination that has been suffered, and we would have expected it to be treated in line with compensation payments for the McCloud/Sargeant remedy. Instead, the guidance suggests that further detailed calculations will be required to separate the interest into the various elements and that some elements calculated in line with HM Treasury Directions will be unauthorised payments, attracting or increasing an unauthorised payment charge for the member to pay. It will also potentially involve a scheme sanction charge for Fire and Rescue Authorities to pay. That said, HM Treasury officials have indicated that they are in discussion with HMRC to look to disapply the scheme sanction charge; but like many other areas this is a policy we have not yet had sight of.

You will be aware that administrators and systems providers for the Firefighters' Pensions Scheme are currently already overburdened with rectifying the part timer discrimination (Matthews Remedy) and correcting two years of pension revaluation that was incorrectly published in the Treasury Orders figures, alongside trying to deal with the McCloud/Sargeant age discrimination remedy. This latest development regarding tax on interest for members having their benefits corrected will increase the resource and costs pressures enormously. It will hamper the attempts to introduce an efficient remedy process for members and increase the risk of the legislative deadlines for remedy being missed. The SAB has significant concerns about how affected members will find the process of calculating their tax, and the risk of widespread criticism by affected firefighters.

The SAB believes that this taxation is particularly burdensome to the Firefighters' Pensions Scheme due a combination of its relatively small size compared with other public sector schemes, its locally administered nature (which means that the processes will need to be understood and made available to multiple administrators and systems providers, not to mention 44 individual scheme managers) and the nature of the benefits provided. We note that HM Treasury's intention regarding the interest rate was not to unduly burden the taxpayer and bring into question government's fiduciary duties of handling public resources. Due to the significant increase in administrative burden and members claiming compensation from government for tax advice created by this unexpected tax treatment and lack of guidance or support, it will significantly increase costs for the taxpayer. It is imperative that all public sector organisations can and should innovate in carrying out their responsibilities. We hope that HM Treasury stands ready to help work through these issues.

With one third of the time to implement the McCloud/Sargeant remedy having already passed until we reach the deadline imposed on us by HM Treasury, it is vital that further guidance is issued urgently, and some policy positions be reviewed. We note the complexity of the issues, and we urge HM Treasury to set this aside via a simple legislative change to the directions so that HMRC would be able to deem the payments as compensation.

We would be grateful for your support for a collective solution, particularly as the current situation poses significant reputational risk for the Government as a whole and will have implications for other public sector pension scheme members and a disproportionate impact on the Firefighters' Pension Scheme.

Yours sincerely

Joanne Livingstone
Chair of the Firefighters' (England) Pensions Scheme Advisory Board