

By: Chief Executive
To: Kent and Medway Fire and Rescue Authority – 22 July 2021
Subject: GOVERNANCE AND POLICY UPDATE ADDENDUM
Classification: Unrestricted

FOR DECISION

Background

1. This addendum sets out the request for Members of this Authority to agree a discretion relating to ‘Voluntary Scheme Pays’.
2. Currently each individual is allowed an amount of tax-free pensions savings, which the Government has set at £40k per annum. However, there may be occasions when an individual breaches that allowance and as such will become liable to a tax charge. The circumstances that create this additional tax charge can result in quite large tax bills, which invariably are very difficult for the individual pay in the given timeframe. As such, for most situations, a ‘Mandatory Scheme Pays’ option is available.
3. ‘Scheme Pays’ is a process that allows the tax charge to be paid by the pension Scheme Administrator on a Scheme member’s behalf. The tax charge is then recovered over time by the Scheme Administrator through a reduction in the pension paid to the scheme member. There are two types of Scheme pays arrangements: Mandatory and Voluntary.
4. **Mandatory Scheme Pays** – this is where the individual has the right under section 237B of the Finance Act 2004 to make an election (within the relevant timescales) to request that their pension scheme pays their tax liability and then subsequently recoups this by reducing their pension by the specified amount. The mandatory provision covers most instances where the individual has breached the tax free threshold, such as:
 - Pension savings growth in the Scheme exceeds the HMRC standard Annual Allowance limit during the tax year; and
 - an Annual Allowance tax charge exceeding £2,000 has been triggered.

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BACKGROUND PAPERS:

- Regulations are such that the individual does not need to seek agreement from the respective Fire Authority, to request Mandatory Scheme Pays.
5. However, there are certain situations where Mandatory Scheme pays could not be applied within the regulations and as such the relevant Authority has the discretion to provide the facility of 'Voluntary Scheme Pays'. Legal advice provided by the Local Government Association (LGA) is that a Combined Fire Authority has the legal powers to operate such a scheme.
 6. **Voluntary Scheme Pays** – is where the Authority introduces a scheme pays arrangement with different triggers or thresholds to that of the Mandatory Scheme. The Local Government Association's advice indicates that the fire Authority's powers must be exercised reasonably and that the introduction of a voluntary scheme pays arrangement would be reasonable in the following circumstances:
 - where access to the Voluntary Scheme Pays arrangement for transitional members with service in one of the 1992 or 2006 Schemes and the 2015 Scheme would be the same as the access a protected 1992 or 2006 scheme member, or a member with service only in the 2015 Scheme, would have to the Mandatory Scheme Pays arrangement;
 - or where access to the Voluntary Scheme Pays arrangement is afforded to those Scheme members where the pension growth in one or more schemes is more than their own tapered annual allowance limit but less than the £40,000 annual allowance.
 7. It is quite clear given the complexities of the McCloud / Sargeant pension case that we may well have colleagues who will breach the tax-free annual pension contribution limit, on potentially several occasions, or they may have missed the timeframe for such tax payments. The circumstances are such in this case, as the recalculation of pensions will go back to 2015, that the Mandatory Scheme pays option would not be available to help fund any tax liability. Members may wish to note that any decision to apply Voluntary Scheme Pays, falls as a cost liability on the pension fund and not on the Authority itself.
 8. Members will be aware that the McCloud / Sargeant pensions' case has been ongoing for a number of years and is a cause for considerable concern by many colleagues. Officers continue to work very closely with our pensions administrators to progress and support those affected by this case, but all the necessary legislation is still some way off, so this only enables us to progress relatively straight forward cases, as has been explained in previous reports. However, to help support those affected by this case, it would be appropriate to ensure that we have a 'Voluntary Scheme pays' mechanism in place. Consequently, Members are asked to agree the discretion of a 'Voluntary Scheme pays' in scenarios detailed at point 6 above, but also in the following cases:

- a pension tax liability that arises as a result of the McCloud / Sargeant case when the remedy is applied (when regulations have been approved) and;
- a pension tax liability that arises as a result of the McCloud / Sargeant case when the Immediate Detriment is applied.

In both cases, there will be no minimum threshold, unlike the £2k threshold in the Mandatory Scheme Pays.

RECOMMENDATION

9. Members are asked to agree:

9.1 to introduce a voluntary scheme pays arrangement, with no minimum threshold, with immediate effect (paragraph 8 refers).