



Safest People, Safest Places

Combined Fire Authority

25 October 2023

Firefighters' Pension Scheme – Immediate Detriment Update

Report of Director Emergency Response

Purpose of Report

1. To provide Members with an update on the position in relation to the immediate detriment cases under the McCloud/Sargeant ruling.

Background

2. In 2015 most public service pension schemes, including the Firefighters' Pension schemes (FPS) were reformed. These reforms included 'transitional protection' for people closest to retirement age.
3. The Court of Appeal ruled in 2018 that the transitional protection element of the 2015 public service pension reforms constituted unlawful age discrimination in the (FPS). The government respected the decision and confirmed it would remove the difference in treatment across all main public service pension schemes.
4. The Home Office (HO) issued updated guidance on 10 June 2021 to enable Fire and Rescue Authorities (FRA) to progress certain immediate detriment cases. The guidance aimed to deal only with cases where the pension benefits were not yet in payment (Category One or prospective cases).
5. Members agreed to adopt this guidance and progress immediate detriment cases to the extent that they were able at the Authority meeting on 20 July 2021.
6. A further paper was presented to the Authority seeking approval from Members to adopt a Memorandum of Understanding (MOU) and Framework for dealing with immediate detriment cases. The MOU and Framework, published on 8 October

2021, had been developed by the Local Government Association (LGA) and the Fire Brigades Union (FBU) and was based on the understanding of the Public Service Pensions and Judicial Offices Bill (draft primary legislation). Scheme Managers were made aware that secondary legislation pursuant to the Bill (together, the Remedying Legislation) was required to provide affected pension scheme members with a remedy for the discrimination found in the McCloud/Sargeant claims. Members agreed to adopt the MOU and Framework at the Authority meeting on 12 November 2021, however, a final decision on progressing cases was delegated to the Chief Fire Officer, in consultation with the Treasurer, Chair and Vice Chair once details of the settlement costs were known.

7. On 29 November 2021, the Service was informed that the HO had withdrawn its informal guidance on dealing with immediate detriment cases ahead of legislation with immediate effect. Albeit the decision on whether to process any immediate detriment cases lies with the Authority as Scheme Manager, the Government's advice was not to process any cases before the legislation was in place, given the associated risk and uncertainty.
8. In addition, Her Majesty's Treasury (HMT) issued correspondence on 29 November 2021 on their best assessment on the advisability of processing immediate detriment cases before the new legislation was in place and the implications of this assessment on the HO guidance.
9. Prior to the new legislation being in place, it was initially thought that section 61 of the Equality Act 2010 would be sufficient to enable corrections to be made to an individual's pension arrangements using the guidance documents published, however gaps and uncertainties existed, and cases would need to be revisited once this legislation was in place.
10. Further work carried out by HMT and Her Majesty's Revenue and Customs (HMRC) on drafting the remedy to support the legislation identified that the gaps and uncertainties referenced above were considerably greater than previously thought. In some situations, section 61 may not give all the powers required to operate the remedy without generating significant uncertainty for schemes and risking second or third adjustments for individuals.
11. Because of this, HMT's view was that all immediate detriment cases could not be processed before legislation was in place without considerable risk, uncertainty and administrative burdens for individuals, schemes and employers and the impact of section 61 was understood.
12. At the Authority meeting on 16 February 2022, Members were informed that the decision had been taken to pause the processing of any Immediate Detriment cases until further clarity was received to mitigate the legal and financial uncertainty facing the Authority. This had been communicated to affected members of the pension schemes.

Current Position

13. Following consultation, the Public Service Pensions and Judicial Offices Act 2022 came into force on 1 April 2022 to remedy the discrimination. Following further consultation, the Firefighters' Pensions (Remediable Service) Regulations 2023 were laid to come into force on 1 October 2023 to allow for respective remedy which covers the period 1 April 2015 to 31 March 2022.
14. The Authority and West Yorkshire Pension Fund (WYPF) who administer the pension scheme, have been working to implement processes and systems to ensure that remedy can be implemented as quickly as reasonably practicable following the Firefighters' Pensions (Remediable Service) Regulations 2023 coming into force.
15. On 1 October 2023, for all eligible members, their pension for the remedy period was automatically 'rolled back' to their legacy scheme. Information will be provided to the members about their benefit options through a Remediable Service Statement (RSS) for the remedy period.
16. The RSS must be sent to members between October 2023 and March 2025, it is likely that this will be included with individuals Annual Benefit Statement in the summer of 2024. The RSS will show any contribution adjustment and interest due; the contributions will also be subject to a tax relief adjustment. Before any pension arrears can be paid, the pension contribution adjustments need to be made.
17. For members retiring in the next 12 months, WYPF will provide an estimate containing their pension figures for both the legacy scheme and the 2015 reformed scheme to enable an informed decision to be made.
18. For pensioner members with remediable service who retired before 30 September 2023 and beneficiaries of deceased members with remediable service who died before 30 September 2023, a choice is to be offered to either roll back the remediable service into the legacy scheme or for this to remain in the reformed scheme. This choice will be offered as soon as practicable, but the RSS must be issued by 1 April 2025. Once the choice is offered, the member has to make an election of their choice within 1 year of receiving the choice. If no election for the reformed scheme is made, 'roll back' will occur at the end of the election period.
19. Communications have been issued to all active and retired members by WYPF to update members on the current position and the next steps specific to their individual circumstances. The Authority and WYPF will continue to provide support and guidance to all members affected.

Recommendations

20. Members are requested to:
 - a. **Note** the contents of the report.
 - b. **Agree** to receive further updates as necessary.

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