



Buckinghamshire & Milton Keynes Fire Authority

MEETING	Executive Committee
DATE OF MEETING	24 March 2021
OFFICER	Mark Hemming, Director of Finance and Assets
LEAD MEMBER	Councillor David Hopkins
SUBJECT OF THE REPORT	Firefighters' Pension Scheme – Age Discrimination Remedy and Employment Appeal Tribunal Judgment
EXECUTIVE SUMMARY	<p>This report outlines the position in relation to immediate detriment cases under the McCloud/Sargeant ruling. The Government has considered the consultation responses on proposals to remedy the discrimination found in this case and issued its response.</p> <p>Informal guidance has been issued by the Home Office in relation to 'immediate detriment' cases as changes to legislation is not likely to be in place for some time. Legal advice has been sought on whether it was lawful and appropriate, for the Authority to apply this guidance in the circumstances indicated.</p> <p>The Committee is invited to consider the report and resolve that all firefighters who were members of the Firefighters' Pension Scheme (FPS) 1992 or New Firefighters' Pension Scheme (NFPS) 2006 ("their old schemes"), subject to the criteria detailed in this report, are treated as if in their old scheme. This resolution applies to immediate detriment cases and those due to taper from the date of this resolution, where the calculation of benefits under legacy scheme for the remedy period is possible.</p>
ACTION	Noting and Decision.
RECOMMENDATIONS	<p>That the Executive Committee, on behalf of the Authority (the Scheme Manager of the Authority's firefighter pension schemes):</p> <ol style="list-style-type: none"> 1) Note the contents of the report; 2) Resolve that all firefighters who were members of the FPS 1992 or NFPS 2006 ("their old schemes") who: <ol style="list-style-type: none"> a) belonged to those schemes at 1 April 2012; and b) continued to do so on 31 March/1 April 2015;

	<p>and</p> <p>c) who did not qualify for full protection from being transferred into the new 2015 Pension Scheme under the Public Service Pensions Act 2013 and the transitional regulations made thereunder; and</p> <p>d) who have been transferred, or are liable to be transferred at the end of their tapered protection, into the new 2015 Scheme;</p> <p>are now deemed to be members of their old schemes and if still on tapered protection are no longer liable to be transferred; and</p> <p>3) Resolve, in regard to those who were transferred into the 2015 Scheme and are not still on time limited tapered protection from such a transfer, they are deemed not to have left their old schemes as a result of any compulsory transfer; and</p> <p>4) Resolve those members now deemed to be restored into their old schemes as set out above, or no longer liable to be transferred out of their old schemes as identified above, are to receive pension benefits under, and are to be treated as being subject to, the terms of their old schemes.</p>
<p>RISK MANAGEMENT</p>	<p>There are significant changes to firefighter pension schemes and the outcomes of the consultation will result in wide ranging impacts for the administration of firefighter pension schemes for many years to come.</p> <p>There are likely to be challenges in undertaking calculations for some immediate detriment cases because guidance on some technical aspects do not exist. This may result, in some cases, in insufficient information being available to the member concerned to inform their decision or result in the pension administrator being unable to calculate benefits.</p> <p>There is a risk that individuals may make decisions based on information at the time but later find themselves responsible for a tax charge linked to that decision. It is also not clear whether tapered members have to forfeit any deferred benefits in the FPS 2015 scheme if they choose FPS 1992 pension for the remedy period when making immediate detriment choices. To try and mitigate the risk, all individuals will be required to sign a declaration to indicate they understand the request they are making and potential consequences of their decisions, albeit this may not be sufficient to avoid later claims.</p> <p>Whilst every effort will be made to ensure the correct calculation and payment of benefits is put in place,</p>

	<p>there is a risk that benefits may be calculated incorrectly due to the complexities associated with contributions rates, taxation and the period of time over which recalculation of benefits need to be undertaken. There has been an indication from the FBU nationally that legal action will be taken against those FRAs who do not seek to apply the immediate detriment guidance and give eligible members the choice. Affording individuals the choice will therefore limit the potential for further challenge.</p>
<p>FINANCIAL IMPLICATIONS</p>	<p>It is not possible at this stage to identify the specific costs associated with the recommendations of this report as these will be identified on a case by case basis. Using the immediate detriment guidance note now will not increase any direct amounts payable, it will simply bring some of those costs forward. However, if interest is applied as part of the final solution it may actually result in lower overall costs on the basis that using the guidance now would close the period that interest is calculated over, instead of extending it to 2022 for the 16 cases identified.</p> <p>It is expected that the costs associated with the administration of the remedy will be borne by FRAs whilst monies owed to members will be met by government. In some circumstances individuals may also incur additional costs as a result of a change in pension schemes e.g. annual allowance costs.</p> <p>In not applying the guidance, further legal action could be taken by the Fire Brigades' Union and result in further litigation costs.</p> <p>Given the absence of some technical information to support calculations there is potential for error. Whilst the pension administrator will use best efforts in any calculation and payment of benefits, the Authority may be required to meet any financial liabilities arising in these circumstances.</p>
<p>LEGAL IMPLICATIONS</p>	<p>Under the current Scheme of Delegation to Officers (June 2013) the Chief Fire Officer has discretion from the Authority "within the approved budgets and policies, [to] exercise all matters of day-to-day administration and operational management of the services and functions".</p> <p>Unless expressly reserved to the Authority or taken to the Authority for timetabling reasons, the Executive exercised statutory discretion under the 1992 FPS and 2006 FPS, and under the Local Government Pension Scheme.</p> <p>Reliance on the guidance note does not provide the Authority with any legal protection or indemnify it against any claim or costs arising from acting on the guidance. However, the Authority, as the Scheme</p>

	<p>Manager, can rely on the Employment Appeal Tribunal's Judgment and Section 61 and 62 of the Equality Act in making its decision regarding Immediate Detriment cases and those due to taper to the 2015 scheme.</p> <p>Any individual challenge against the decision of the Scheme Manager would be made through the Firefighters' Pension Scheme Internal Dispute Resolution Procedure. If this process does not resolve the matter, the issue can be taken to The Pension Regulator.</p> <p>The legal advice provided to support this paper is legally privileged.</p>
<p>CONSISTENCY WITH THE PRINCIPLES OF THE DUTY TO COLLABORATE</p>	<p>BFRS and Royal Berkshire Fire and Rescue Service (RBFRS) share the same pension administrator and have sought to understand the position jointly, seeking advice and considering additional pension support that can be shared between the two services.</p>
<p>HEALTH AND SAFETY</p>	<p>No direct impact.</p>
<p>EQUALITY AND DIVERSITY</p>	<p>To reduce the risk of discrimination, this report proposes that in applying the immediate detriment guidance, individuals who meet the eligibility criteria are provided a choice of which scheme they would like to be in for the remedy period regardless of whether they are a claimant or non-claimant.</p> <p>The public sector equality duty requires public bodies to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010. The resolutions in this report aim to meet this duty.</p>
<p>USE OF RESOURCES</p>	<p>See Financial Implications.</p>
<p>PROVENANCE SECTION & BACKGROUND PAPERS</p>	<p>Interim Order made by the Employment Tribunal</p> <p>Public service pension schemes: changes to the transitional arrangements to the 2015 schemes consultation document https://www.gov.uk/government/consultations/public-service-pension-schemes-consultation-changes-to-the-transitional-arrangements-to-the-2015-schemes</p> <p>Fire Authority. 14 October 2020. Public Service Pension Scheme Consultations. https://bucksfire.gov.uk/documents/2020/10/item-9-public-service-pension-scheme-consultations.pdf/</p> <p>FPS Bulletin 37 – September 2020 https://www.fpsregs.org/images/Bulletins/Bulletin-37-September-2020/Bulletin-37.pdf</p> <p>Public service pension schemes: changes to the</p>

	<p>transitional arrangements to the 2015 schemes – Government response to consultation HM Treasury CP373 February 2021 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/958635/Public_Sector_Pensions_Consultation_Response.pdf</p>
APPENDICES	<p>Appendix A – Report Summary Appendix B – Home Office Immediate Detriment Guidance Note Appendix C – (EXEMPT FROM PUBLICATION) Legal Advice (Legally Privileged) Appendix D – LGA information guidance note – October 2020 Appendix E - (EXEMPT FROM PUBLICATION) Legal advice received from the LGA. 23 October 2020</p>
TIME REQUIRED	30 Minutes
REPORT ORIGINATOR AND CONTACT	<p>Mark Hemming mhemming@bucksfire.gov.uk</p>