

To: Cambridgeshire and Peterborough Fire Authority

From: Deputy Chief Executive Officer - Matthew Warren

Presenting officer: Deputy Chief Executive Officer - Matthew Warren

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Firefighter Pensions Update

1. Purpose

- 1.1 The purpose of this report is to provide the Fire Authority with the latest position relating to immediate detriment and the Firefighters Pension Scheme (FPS) and a change to the recommended position.

2. Recommendations

- 2.1 The Authority is requested to:

- 2.1.1 note the latest position with regards to immediate detriment,
- 2.1.2 approve the Fire and Rescue Authorities (FRA) Scheme Managers revised approach to immediate detriment (Paragraph 4.9).

3. Risk Assessment

- 3.1 Economic – the potential liability associated with paying pensions ahead of the actual remedy being known could result in a financial liability for the Authority.
- 3.2 Legal – it is not clear whether an FRA can rely upon the Home Office guidance as a basis on which to make payments to certain members during the remedy period.

4. Background

- 4.1 Following the Court of Appeal judgment in 2018 (Sargeant), an interim order was made by the Employment Tribunal on 18 December 2019 which provided members of the FPS (who had brought claims) entitlement to be treated as if they remained in the FPS 1992, as long as they were in the scheme at 31 March 2012 and 31 March 2015.

- 4.2 In January 2020, the Government position with regard to the judgment was that all entitlements, including immediate ones, should proceed under the 2015 scheme rules. This included those that were due to taper into the 2015 scheme and those due to retire.
- 4.3 In August 2020, the Home Office issued a note to FRAs with regard to immediate detriment. The note is labelled as informal guidance and highlighted that the issues raised within it are still subject to ongoing litigation and the UK Government consultation. The note was issued at the request of the Fire Brigades Union.
- 4.4 Whilst the note does provide a useful update from the previous Government position communicated in January 2020, a number of questions (below) remain for each FRA that were detailed in the LGA Immediate Detriment note issued in October 2020.
- What the position is for FRAs if members make decisions without all the correct information, such as pension tax relief.
 - How auditors might treat such payments under legacy terms and on what basis an FRA can rely on the guidance to satisfy an auditor.
 - What risk the member accepts by having benefits paid out before the consultation has concluded, although the note does state that **all** cases will need to be revisited once the remedy is finalised.
- 4.5 Further to the guidance, legal advice was sought by the LGA. The legal opinion, which is subject to legal privilege, didn't provide the necessary reassurance needed for the Authority to proceed with all cases.
- 4.6 Further to this, the LGA and FBU have been working to collectively agree a position that would enable FRAs to process immediate detriment cases. A position has now been agreed between the two in the form of a memorandum of understanding (MOU), attached at Appendix 1.
- 4.7 The key principles outlined within the MOU are;
- 4.7.1 the framework will apply until the remedying legislation comes into force at which time FRAs will apply the legislation,
- 4.7.2 all those that qualify should be treated under their legacy scheme,
- 4.7.3 agreement that further adjustment maybe required after the remedying legislation is enacted.
- 4.8 Whilst the agreement doesn't provide the detail required to accurately process all immediate detriment cases, it does provide FRAs with reassurance that these cases can be processed with minimal risk of legal challenge. It also offers acceptance from all sides that further work will be required to fully resolve these cases when the remedying legislation in enacted.

- 4.9 Given the goodwill shown within the agreement, it is now recommended to the Authority that the Service, through its Pension Administrator, begin to process the immediate detriment cases in accordance with the MOU. A further update will be provided to the Fire Authority when the remedying legislation is available and its implications are understood.

Source Documents

Firefighters'/Police Pension Schemes

McCloud/Sargeant Ruling – Guidance on treatment of 'Immediate Detriment' Cases

LGA Immediate Detriment Information Note: October 2020

Available from Fire Service Headquarters

Hinchingbrooke Cottage

Brampton Road

Huntingdon

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