

Status of Report: Public

Meeting: Combined Fire Authority

Date: 15 June 2022

Subject: Firefighters' Pension Scheme - Age Discrimination Remedy Update

Report by: The Scheme Manager

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For: Noting

Purpose

1. To provide an update on the developments concerning the age discrimination remedy / immediate detriment related to the Firefighters' Pension Scheme.

Recommendation

2. The Combined Fire Authority (CFA) is asked to note the update concerning the age discrimination remedy / immediate detriment related to the Firefighters' Pension Scheme.

Executive Summary

3. Members will recall from previous reports that following an employment tribunal and subsequent appeals, the transitional protections related to the 2015 Firefighters' Pension Scheme were found to be age discriminatory. These reports have provided a detailed background.
4. The Local Government Association (LGA) and Fire Brigades Union (FBU) negotiated a Memorandum of Understanding (MoU) and a Framework agreement for handling Immediate Detriment cases. This was made available in early October 2021 and the CFA was to be asked to sign up at its meeting in December 2021. However, just days beforehand, the Home Office guidance underpinning the MoU was withdrawn following intervention by Her Majesty's Treasury, due to apparently fresh concerns about the level of risk and uncertainties relating to tax and associated matters. This unexpected development added to the complexities facing Fire and Rescue Authorities. In the light of this, on 2 December 2021 the CFA agreed to pause action to address the immediate detriment and to receive a further report once matters became clearer.
5. A position update was reported to the CFA at its meeting on 9 February 2022. In essence, there had been little further national progress. Fire Authorities were taking differing approaches; some continuing to offer an immediate detriment remedy to upcoming

retirements and those who have already retired; others the former, but not the latter; and others neither. Anecdotally, the most common approach was (and remains) to offer a remedy to personnel approaching retirement.

6. Acting on the advice of the Chief Fire Officer and Scheme Manager, the CFA agreed that a remedy should once again be offered to personnel approaching retirement (category 1), but that action regards those who have already retired should remain paused (category 2). The CFA therefore continued not to adopt the MoU.

Current position

7. Essentially, the position regarding the processing of immediate detriment has not changed.
8. The Public Service Pensions and Judicial Offices Act 2022 took effect on 1 April 2022, as expected. The remaining protected members still in their legacy scheme moved into the 2015 scheme on 1 April 2022, so all active members are now in the 2015 scheme.
9. Retrospective remedy for members who had already retired (category 2) will not be implemented nationally until further legislation is enacted, which is expected from 1 October 2023.
10. Nonetheless, a lot of work is required of the Finance and HR teams and the Scheme Administrator (West Yorkshire Pension Fund) to prepare for the expected impact of the October 2023 legislation.
11. Work is also required in respect of retained firefighters employed between 2000 and 2006, who may have been disadvantaged by being treated differently to wholetime firefighters.
12. It is worthy of note that an employee of LFRS has been selected as one of a number of potential test claimants for the purposes of an injury to feelings award in the remedy proceedings.
13. More detailed updates will continue to be provided to the Local Pension Board.

Report Implications/Impact

14. Legal (including crime and disorder)

This report has been written to inform Members of the latest legal developments relating to the Firefighters' Pension Scheme and how the service is working on resolving the current situation.

The Public Service Pensions Act 2013 introduced a framework for the governance and administration of public service pension schemes. This report aims to fulfil the requirement for Members to assist the Scheme Manager in ensuring that effective administration arrangements are in place.

15. Financial (including value for money, benefits and efficiencies)

A number of financial risks continue to present themselves, including actions taken proving to not be entirely correct or with unresolved and/or unforeseen consequences. There is also a potential financial liability on the Authority and/or retiring members, for example tax costs of breaching annual allowances pending the intended changes to tax regulations.

Payments made under the Immediate Detriment Framework will either be a scheme payment and therefore from the pension fund account, or an employer payment which cannot be met from the pension fund account and will fall to the Authority to fund. The LGA is negotiating New Burdens funding from Central Government to cover these costs, although there is a risk that it will not cover them in their entirety. The funding for personal tax liabilities ahead of changes to tax legislation is however a particular risk, and could fall to the CFA to fund.

16. Risk (including corporate and operational, health and safety and any impact on the continuity of service delivery)

The CFA continues to face a number of risks associated with the management of pensions and the implementation of the remedy.

17. Staff, Service Users and Stakeholders (including the Equality Impact Assessment)

An equality impact assessment has not been carried out, as the Service is trying to correct inequalities as identified by court proceedings and judgements.

18. Environmental

There are no environmental implications arising from this report.

19. Impact upon "Our Plan" Objectives

There are no specific impacts, although there is a general impact on all 'People' related elements of the plan.

Appendix

None.

Background Papers

Firefighters' Pension Scheme - Age Discrimination Remedy Update, CFA, 9 February 2022
<https://leics-fire.gov.uk/wp-content/uploads/2022/02/item-14-firefighters-pension-scheme-age-discrimination-remedy-update.pdf>

Firefighters' Pension Scheme - Age Discrimination Remedy Update, Local Pension Board, 10 March 2022 (rearranged from 9 February 2022)
<https://leics-fire.gov.uk/wp-content/uploads/2022/02/item-5-firefighters-pension-scheme-age-discrimination-remedy-update.pdf>

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