

**Status of Report:** Public

**Meeting:** Combined Fire Authority

**Date:** 16 June 2021

**Subject:** Urgent Action taken by the Chief Fire and Rescue Officer - Firefighter Pension Scheme Age Discrimination Remedy.

**Report by:** The Chief Fire and Rescue Officer

**Author:** Callum Faint, The Chief Fire and Rescue Officer

**For:** Information Only

### **Purpose**

1. The purpose of this report is to advise the Combined Fire Authority of urgent action taken by the Chief Fire and Rescue Officer, following consultation with the Chair and Vice Chair regarding action required to the fire fighters' pension scheme as a result of the recent court ruling concerning age discrimination. Without action this presented risks to the Combined Fire Authority which needed to be addressed immediately and could not wait for consideration at its next meeting.

### **Recommendation**

2. It is recommended that the Combined Fire Authority
  - a. Notes the urgent action taken by the Chief Fire and Rescue Officer to mitigate the risks presented by recent court rulings relating to the Scheme, pension calculations and paying of pensions.
  - b. Endorses the specific actions taken by the Chief Fire and Rescue Officer, these being:
    - i. Cessation of the tapering of members on to the FPS 2015 scheme with immediate effect;
    - ii. Allowing Pension Scheme members who were approaching retirement and any ill health related cases the choice to have retirement benefits calculated in their legacy scheme or in the FPS 2015;
    - iii. A retrospective review of the calculations for pensioners who retired after 1 April 2015 on the grounds of ill health with a view to moving them back into their legacy scheme at an early stage, where appropriate;
    - iv. A retrospective review of all retired members since 1 April 2015 with a view to moving them back to their legacy scheme, where appropriate.

- c. Notes that a further report will be presented to a future meeting when further advice and guidance is received to enable the Local Pension Board and the CFA to consider the wider implications.

### **Executive Summary**

- 3. A number of court cases and rulings mean that the Firefighter pension scheme environment is very fluid at the moment and some immediate changes have been required to mitigate risks to the CFA as they emerge.
- 4. The urgent action taken by the CFO discussed in this report has mitigated the immediate pressures and work is already underway with relevant cases. However, the pension scheme rules, guidance and underpinning mechanisms are still awaited from HM Treasury and may lead to further changes when available.
- 5. The urgent action was taken as the risks to the Combined Fire Authority needed to be addressed immediately and could not wait for consideration at its next meeting.

### **Background**

- 6. The background to this matter is complex and spans a number of years but originated in 2015 when the Government altered the pension schemes.
- 7. The full and detailed background has been presented to the CFA's Local Pension Board and is referenced in the background papers section below.
- 8. To briefly summarise, in 2015, the Government closed all legacy pension schemes (the 1992 and 2006 Firefighter pension schemes) and moved eligible staff into the new 2015 pension scheme.
- 9. In doing this a number of staff were protected and received tapering protection under the old schemes. This was based on the age of the pension scheme member with the intent of protecting those closest to retirement from significant changes in relation to which they may not have had time to appropriately adjust in time for retirement.
- 10. This approach was legally challenged by the Fire Brigades Union (FBU) on the grounds that the protection discriminated on the grounds of age (a protected characteristic under the Equality Act 2010) against younger pension scheme members. The courts ruled that the Government's approach was age discrimination and that the matter needed to be remedied.
- 11. Post the ruling there was a need for local Pension Scheme Managers (in Leicester, Leicestershire and Rutland this is the CFA) to process any eligible retirees under their legacy schemes i.e. the 1992 or 2006 scheme, along with the associated benefits.

12. However, to date none of the pension scheme rules or legal guidance from HM Treasury have been updated to allow this to occur. The ruling is accepted but the mechanisms that allowed it to be enabled are not yet in place, thus leaving Pension Schemes in a difficult position - it accepts the ruling but can't pay out accordingly as the mechanisms don't allow it to occur. Combined Fire Authorities took the position of waiting for the updated guidance before remedying all cases appropriately.
13. This position was then subsequently challenged again by the FBU in an Employment Appeal Tribunal (EAT). The tribunal supported the FBU's position and found that the stance taken by all Pension Scheme Managers i.e. to wait for further guidance before taking action to be incorrect.
14. The EAT ruled that as age discrimination had been found to exist it must be removed. Waiting for the underpinning rules and guidance to be updated was not an acceptable position and Pension Scheme managers should take steps immediately pay out on the legacy schemes.
15. The FBU have subsequently written to all Chief Fire Officers across England, demanding all Services take heed of the EAT ruling and have made it clear any Service not adopting it will be challenged legally.
16. This represents a risk for the Combined Fire Authority, so in discussion with the Monitoring Officer, Treasurer and officers, the Chief Fire and Rescue Officer requested approval from the Chairman and Vice Chairman to take urgent action to mitigate as much risk as possible at this time.
17. The Chairman and Vice Chairman approved the urgent action (as shown in the recommendations). This is in line with most Fire and Rescue Services' position across England.
18. These recommendations were also presented to the Local Pension Board meeting on 20 April 2021, where the membership also includes FBU officials. The position taken was acceptable to the FBU at that time.
19. Guidance from the HM Treasury is still awaited. When this is released the Local Pension Board and the CFA will be updated as it may mean further changes are required in due course.

### **Report Implications/Impact**

20. Legal (including crime and disorder)
  - a) This report has been written to inform Members of the current legal cases relating to the Firefighters' Pension Schemes and how the service is working on resolving the current situation. The legal implications of the age discrimination case, transitional arrangements and immediate detriment issues are as set out in the body of the report.

- b) 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 Pension Board members to assist the Scheme Manager in ensuring that effective administration arrangements are in place.

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

- a) A number of financial risks are associated with these matters. If no action is taken it is likely there will be a number of legal challenges against the CFA, which will attract associated costs. There is still the potential that in taking the immediate recommended actions, these may prove to be not entirely correct (when further guidance is issued). However, the anticipated cost of any further corrections are expected to be less if action is taken now, an approach being mirrored by an increasing number of FRAs.
- b) There is also an anticipated financial liability to some scheme members who are affected by the remedy. Annual pension contribution limits may be breached, unless national tax rules are changed.

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

The CFA faces a number of risks associated with the management of pensions which are outlined in this report.

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

An equality impact assessment has not been separately carried out as the purpose of this report is to inform members on how the Service is trying to correct inequalities identified by the recent court cases.

24. Environmental

There are no environmental implications arising from the recommendations in this report.

25. Impact upon "Our Plan" Objectives

There are no direct links to our plan, however there are clear impacts on all "People" related elements of the Plan.

## **Background Papers**

CFA Local Pension Board 20 April 2021, agenda item 4 - Firefighters' Pension Scheme - Age Discrimination Remedy

<https://leics-fire.gov.uk/wp-content/uploads/2021/04/the-report-item-4-pages-9-20.pdf>

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