

L **O** **C** **A** **L** **P** **E** **N** **S** **I** **O** **N** **B** **O** **A** **R** **D** **FIREFIGHTER PENSION SCHEMES**



The Matthews Case Remedy

Background

The case of Matthews & others v Kent & Medway Towns Fire Authority & others concerns the application of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 for retained duty system employees. Those Regulations were brought into force on 1 July 2000 to implement the EU Part-time Workers Directive (albeit that had an implementation deadline of 7 April 2000).

In response to this case, the category of members of the Firefighters' Pension Scheme 2006 (FPS 2006) known as "special members" was introduced in 2014, and allowed retained firefighters employed between 1 July 2000 and 5 April 2006 to join the FPS 2006 with retrospective effect to 1 July 2000. A time-limited options exercise took place between 2014 and 2015 to allow eligible individuals to join.

More recently, following the European Court of Justice's decision in O'Brien v Ministry of Justice, the judgment held that remedy could extend back before the Part-time Workers Directive was required to be implemented on 7 April 2000.

After an extended period of negotiations on the scope and mechanics of the settlement, a Memorandum of Understanding (MoU) was agreed between the Home Office, LGA, FBU and FRSA on 9 March 2022 and it was confirmed that remedy for retained firefighters affected by the O'Brien judgment will be provided by way of a second options exercise, allowing in-scope individuals the opportunity to purchase pension entitlement as a special member of the FPS 2006.

Scope of Remedy

Retained firefighters in scope will be able to purchase pension entitlement as a special member for some or all their service between 7 April 2000 and 5 April 2006, as well as any continuous service up to 7 April 2000 and / or continuous service from 5 April 2006.

The following individuals are in scope for the second options exercise:

1. Retained firefighters employed on any date between 7 April 2000 and 30 June 2000 (inclusive);
2. Retained firefighters employed on any date between 7 April 2000 and 30 June 2000 (inclusive) as well as on any date between 1 July 2000 and 5 April 2006 (inclusive);
3. Retained firefighters employed on any date between 1 July 2000 and 5 April 2006 (inclusive) who were eligible to take part in the first options exercise but were not given opportunity to do so.

The Second Options Exercise

The regulations to implement the second options exercise in England will be drafted by the Home Office and consulted on before they are laid before Parliament. The Home Office has a maximum period of 18 months to draft, consult, and introduce the necessary secondary legislation.

FRAs will be expected to start the second options exercise as soon as possible after the legislation comes into force. The exercise will run for a maximum period of 18 months after it begins.

Immediate Actions for FRAs

Prior to the legislation coming into force, the LGA has advised FRAs to take steps to identify retained firefighters who were employed between the relevant dates and ascertain what steps were taken to identify and contact individuals who were eligible for the first options exercise.

CFB has identified 88 members as being in scope for the second options exercise, 8 of which are still employed, and communications with the affected workforce has already begun.

CFB has also been selected to participate in a data collection exercise by GAD to support them in estimating the possible impact on scheme liabilities, project scheme cashflows in future years and the development of a calculator for FRAs and administrators to use for the second options exercise.

We await further information on the second options exercise.