

Cleveland Fire Authority

Firefighter Pension Schemes

IMMEDIATE DETRIMENT POSITION STATEMENT

INTRODUCTION

In 2015, the Government introduced changes to firefighters' pension entitlements. At that time, the existing pension schemes for firefighters were the schemes created by the Firefighters' Pension Scheme Order 1992 (**the 1992 Scheme**) and the Firefighters' Pension Scheme (England) Order 2006 (**the 2006 Scheme**). The effect of the changes (implemented under the Firefighters' Pension Scheme (England) Regulations 2014 (**the 2015 Scheme**)) for members of the 1992 Scheme was that:

- active members of the FPS 1992 Scheme born after 2 April 1971 (born after 2 April 1976 for NFPS 2006 active members) were moved to the 2015 Scheme with effect from 1 April 2015;
- active members of the 1992 Scheme who were born between 2 April 1967 and 2 April 1971 (born between 2 April 1972 and 2 April 1976 for NFPS 2006 active members) were moved to the 2015 Scheme on an age-related date specified in Schedule 2 to the 2014 Regulations; and
- active members of the 1992 Scheme who were born before 1 April 1967 (born before 1 April 1972 for NFPS 2006 active members) were allowed to remain in the 1992 Scheme.

In 2018, the Court of Appeal ruled that the transitional protection element of the 2015 public service pension reforms constituted unlawful age discrimination in the Firefighters' Pension Schemes. The Government stated that it respects the decision and has confirmed its intention to address the discrimination in two parts.

- i. To remove future discrimination from the schemes and ensure equal treatment, all remaining protected members who are not currently members of FPS 2015 will transfer into this scheme on 1 April 2022. This means that all future service for all members will build up in the reformed 2015 scheme. Final salary benefits already built up are fully protected.
- ii. For benefits built up during the period of discrimination, 1 April 2015 to 31 March 2022, unprotected and taper members will be credited with final salary build-up in their original legacy scheme. At retirement, all members will be able to keep their legacy final salary benefits or choose to receive the 2015 scheme benefits that they would have built up in the same period. While we expect that transferring remaining members into the 2015 scheme at 1 April 2022 will be relatively straightforward, the conversion of 2015 scheme benefits into final salary will involve complex administrative processes with adjustments of pay, contributions, tax relief, and pension tax liabilities.

IMMEDIATE DETRIMENT

Immediate detriment is the term used to refer to firefighters who will retire from the scheme before regulations are amended to bring in the Government's age discrimination remedies. There are two main categories of immediate detriment members:

- i. Those who have already retired
- ii. Those who will retire before the legislation is amended to bring in the Deferred Choice Underpin (DCU) remedy.

Following the 2018 Court of Appeal judgment, an interim order was made by the Employment Tribunal on **18 December 2019** which provided that members who had brought claims (claimants) are entitled 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

The Home Office have published updated guidance, which confirms that the power to calculate and pay pension entitlements under the legacy schemes is through the application of Section 61 of the Equality Act 2010. That provision means that these individuals have the right to be treated as though they have been in service in their legacy scheme since 1 April 2015. However, the revised guidance **only** aims to offer a pathway towards paying immediate detriment payments for those whose benefits are not already in payment (prospective cases).

The status of the revised guidance is still labelled as 'informal', and caveated that:

*"it **should not** be seen as providing a definitive resolution to all of the consequences arising from the discrimination, rather as a way to progress certain immediate detriment cases (as defined in this guidance) now there is some clarity as to how certain issues should be approached. It is important **to note that ALL cases processed using this guidance will need to be revisited** once the full detail of the Government's approach is finalised, and legislation is in place. Legislation is expected to be in place by October 2023."*

POLICY POSITION

Cleveland Fire Authority(CFA) welcome the publication of the Government response to the consultation confirming the decision to introduce retrospective remedy via the Deferred Choice Underpin (DCU), and the decision to allow for implementation by October 2023.

Equally, CFA welcome the publication of the updated guidance, which confirms that the power to calculate and pay pension entitlements under the legacy schemes is through the application of Section 61 of the Equality Act 2010 ('an occupational pension scheme must be taken to include a non-discrimination rule'). That provision means that these individuals have the right to be treated as though they have been in service in their legacy scheme since 1 April 2015.

POSITION STATEMENT No. 1

The revised guidance now sets out the Home Office assertion that the legal position which underpins the application of the guidance in the note is Section 61 of the Equality Act. Nevertheless, it is accepted that Section 61 cannot deal with all consequential effects of remedying the pension benefits. In the Government's Tax policies and consultations published on 23 March 2021, paragraph 3.8 deals with the amendments to tax legislation that will be needed as a consequence of the Court of Appeal judgement.

Being mindful of the Court of Appeal interim order which entitles claimants to be treated as members of the FPS 1992, and conscious of the unresolved pension issues, CFA have considered practically how they could give effect to the Home Office informal guidance.

Consequently, Cleveland Fire Authority:

- i. **are fully committed to the interim declaration made by the Employment Tribunal on 18 December 2019 that all existing claimants are entitled to be treated as members of the legacy Firefighters Pension Scheme for all pensionable service, between 31 March 2015 and 31 March 2022, and to have their pension contributions and entitlements calculated on that basis.**
- ii. **will seek to offer reformed scheme members who retire before October 2023 a choice of legacy or reformed scheme benefits for the relevant period at retirement, where, and to the extent, this is possible.**

In the absence of Government regulations to address the unresolved complexities and technical issues associated with the implementation of the age discrimination remedy (i.e. tax relief, contribution rates, tax charges, transfer values, etc.) Cleveland Fire Authority welcomes and supports the timely development of an interim settlement 'framework' to resolve all retrospective and prospective immediate detriment cases.

POSITION STATEMENT No. 2

There are a small number of individuals due to taper to the 2015 pension scheme from their legacy scheme, before 31 March 2022. The Government has indicated in its response to the consultation that individuals will be returned to the legacy scheme until they make their choice at retirement as to how they wish the remedy period to be treated. It is therefore proposed that individuals, will continue to compulsory transfer into the 2015 scheme at the end of their tapered protection until further details are known and new regulations are drafted.

CFA support the view that maintaining an age-based system of tapered protection could be seen to be perpetrating or indeed extending age discrimination, and that in accordance with the meaning and scope of Section 62 of the Equalities Act 2010 to make by resolution a non-discrimination alteration to the Scheme.

Consequently, Cleveland Fire Authority:

- i. support the immediate cessation of compulsory transfer into the 2015 Scheme at the expiry date of individual members' tapered protection.**

END

Ian Hayton

Chief Fire Officer & Scheme Manager

Cleveland Fire Brigade

These decisions are made by the Chief Fire Officer in the delegated role of Firefighter Pension Scheme Manager and endorsed by the Cleveland Fire Authority