

LOCAL PENSION BOARD

FIREFIGHTER PENSION SCHEMES



The Matthews Case Remedy

Background

1. 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).
2. 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.
3. 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.
4. 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

5. 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.

6. The following individuals are in scope for the second options exercise:
- Retained firefighters employed on any date between 7 April 2000 and 30 June 2000 (inclusive);
 - 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);
 - 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 – Progress Update

7. CFA identified 88 members as being in scope for the second options exercise, all were written to and advised of their eligibility and requirement for them to express their interest.
8. The deadline for receiving expressions of interest was 31 March 2024, 59 responses were received and acknowledged.
9. As there were still 29 nil respondents, and to satisfy ourselves that ‘best endeavours’ had been made to make contact with them, we engaged a tracing company who undertook a mortality and address check. The results provided us with information that confirmed 5 had passed away, 7 were living at the address we already held on file, 16 had changed address and 1 was untraceable.
10. In response we sent letters to the 5 beneficiaries and 16 whose address had changed, and they were given until 31 July 2024 to express their interest.
11. A further 14 expressions of interest were received taking our total number to 73, which is 83% of the individuals identified as being in scope for the remedy.
12. CFA has adopted the LGA’s guidance on the priority order of which cases should be processed:
- Priority 1 – Immediate entitlement to benefits and deceased cases
 - Priority 2 – Imminent entitlement to benefits; those who are entitled to become a pensioner before 31st March 2025
 - Priority 3 – No immediate or imminent to benefits; those who are not entitled to become a pensioner before 31st March 2025

13. The breakdown of CFA's member categories and priority order is shown below:

Category	No. Cases	Priority Order
Deceased	5	Priority 1 Waiting for further info from Home Office
Pensioner	38	Priority 1
Deferred Imminent entitlement	1	Priority 2
Deferred Not immediate/imminent	26	Priority 3
Active	3	Priority 3

14. To date CFA have calculated the benefits for 9 Pensioner members and have received a positive election from 4 members. We continue to work our way through the Priority 1 calculations and expect that these will be complete by the end of November 2024 after which point we will move onto processing the Priority 2 cases.

15. It is acknowledged that Deceased members should be treated as Priority 1 cases however, we are waiting for additional guidance from the Home Office on eligibility for this, as current guidance only covers those that were deceased prior to 6th April 2006 or those that elected to join the modified scheme and died before 31st March 2025. Unfortunately, CFA's cases relate to those that have died before being able to make an election so as soon as the guidance is received and if the outcome is positive for their situation, then the 5 cases will be prioritised for processing.

16. An indication of costs associated with the remedy of these cases will be provided at the next LPB.