

## **Information Regarding Pension Election – Immediate Detriment Cases**

### **Preliminary Matters :**

1. This document has been prepared considering the following documents, :-
  - a) The Home Office Guidance issued on the 21<sup>st</sup> August, 2020 entitled : *“McCloud / Sargeant ruling – Guidance on treatment of ‘Immediate Detriment’ cases”*, (“the Home Office Guidance”); and
  - b) The Government’s publication of February, 2021 headed : *“Public service pension schemes: changes to the transitional arrangements to the 2015 schemes Government response to consultation”*.
2. You have chosen to retire from the employment of the East Sussex Fire and Rescue Service, (“the Fire Service”), on the [enter date].
3. The 2015 Firefighters Pension Scheme, (“the 2015 Scheme”), has been the subject of litigation in the cases of “McCloud and Sargeant”. In summary, the Court of Appeal held in 2018 that the transitional protection arrangements allowing certain pension members to remain in the 1992 Firefighters Pension Scheme, (“the 1992 Scheme”), when closed to other members gave rise to unlawful age discrimination, with transitional protection limited to older members of the 1992 Scheme, ie. those closer to retirement age would be fully, or partially excluded from the intended pension reforms.
4. You are impacted by the outcome of “McCloud and Sargeant” and fall under the category of Immediate Detriment Cases. Immediate Detriment Cases includes pension scheme members who were in service on, or before the 31<sup>st</sup> March, 2012 and on, or after the 1 April 2015, (including those with a qualifying break in service of less than 5 years), and who did not benefit from full protection and were moved into the 2015 Scheme on, or after 1 April 2015, :-
  - a) Who become eligible to retire with an ordinary pension and want to have all their benefits paid from their legacy scheme, i.e. do not accept deferred 2015 scheme benefits); or
  - b) Who do not qualify for lower-tier, (and therefore higher-tier), ill-health pension under the single pot Ill-Health Retirement, (IHR), arrangement, but would do so under the 1992 Scheme.
5. As you fall within one of the above two categories you can have your pension calculated and put into payment in accordance with the options set out below at Paragraphs 7 to 14.
6. The Government has confirmed that it is to introduce legislation, (when Parliamentary time allows), to ensure that the discriminatory features of the 2015

Scheme relating to the period 1<sup>st</sup> April, 2015 to the 31<sup>st</sup> March, 2022 and the transition arrangements are removed with effect from the 1<sup>st</sup> April, 2022. The 1992 Scheme will close on the 31<sup>st</sup> March, 2022.

**Election of Pension Benefits :**

7. Pursuant to Section 61 and Schedule 22 of the Equality Act 2010 and the Home Office Guidance, you are being offered the choice of whether scheme benefits under the 1992 Scheme, or the 2015 Scheme are to apply to you for the period 1<sup>st</sup> April, 2015 to the 31<sup>st</sup> March, 2022.
8. To enable you to decide you have been provided with estimates of your pension entitlements available to you under the 1992 Scheme and the 2015 Scheme. These estimates are included within the information pack.
9. West Yorkshire Pension Fund, (“the Pension Fund”), administers your pension fund on behalf of the Fire Service. In providing you with pension estimates the Pension Fund has requested that the following important matters be brought to your attention, :-
  - a) The pension estimates for the different options are based on their current understanding of the position of the 2015 Scheme and the age discrimination cases brought in respect of it;
  - b) The final legal position may change as cases are heard that relate to the 2015 Scheme. The Government has not yet provided definitive guidance on how to implement the changes that will be needed as a result of the cases already heard;
  - c) Any figures provided may change in the future, even though the Pension Fund has provided them based on its best understanding of the current position and having taken legal advice;
  - d) If you decide to take benefits based on any quotations provided by the Pension Fund it will need to review and possibly re-calculate those benefits once the Government has provided its final guidance and the changes made to the 2015 Scheme;
  - e) The Pension Fund will need review benefits that members have elected to receive, but which have not yet been put into payment, if at that point its understanding of the approach has changed. If this happens, the Pension Fund will issue another quotation, so that the member can decide whether to draw benefits based on that quotation;
  - f) If members need to make any additional contributions in order to qualify for the higher benefits under the 1992 Scheme, then the Pension Fund will need

confirmation that these have been made before benefits can come into payment;

- g) If a member elects to take benefits and afterwards the law is made clear, (ie. the basis on which the Pension Fund calculated these benefits has changed), then the Pension Fund will need to recalculate and adjust a member's benefits at a point after they have been put into payment. This could mean the benefits could go up, or down. In the first instance the member is responsible for any overpayment that occurs;
- h) If benefits go up, members will receive an extra sum to cover the extra benefits. If this is the case, then the member will need to pay additional contributions in respect of those extra benefits. How this will be done will be determined at the time. However, it may be that a decision is made that the extra lump sum paid is reduced to cover any additional contributions required from the member; and
- i) If the benefits go down, the member will need to repay the extra benefits over a period of time. That will be done by reducing the member's benefits temporarily until the overpayment is recovered. The recovery period will be agreed with the member.

10. If you do not want your pension to be considered as an Immediate Detriment Case you can retire under the provisions of the 2015 Scheme.

11. The three options available to you are, :-

- 1. A pension, payable immediately based on membership of the 1992 Scheme from **(START DATE)** until your date of retirement. Choosing this option will require you to pay the additional employee pension contributions of **(AMOUNT)** before tax relief. This is an Immediate Detriment Case option;
- 2. A pension payable immediately based on membership of the 1992 Scheme from **(START DATE)** to **31 March 2015** and a deferred pension from the 2015 Scheme based on membership of that scheme from the 1<sup>st</sup> April, 2015 until your date of retirement. Choosing this option will result in a refund of employee pension contributions of **(AMOUNT)** before tax. This is an Immediate Detriment Case option; or
- 3. Alternatively, you have the option of retiring under current legislation i.e. FPS1992/2015.

12. Your case will be revisited when final legislation has been implemented by the Government.

13. Before you decide which option to select, the following considerations are highlighted for your benefit, :-

- i. The 2015 Scheme is due to be amended retrospectively from the 1<sup>st</sup> April, 2019 in line with the regular scheme valuation and cost cap exercise. This amendment may result in the value of the stated benefits under the 2015 Scheme altering. This alteration may increase, or decrease the benefits payable to you under the 2015 Scheme;
- ii. Survivor benefits under the 1992 Scheme are payable only to a legal spouse, or civil partner. If you choose to receive your benefits under the 1992 Scheme and are unmarried and not in a civil partnership at the date of your death, a survivor's pension will not be payable. If you choose to receive benefits under the 2015 Scheme a survivor's pension may be payable to anyone with whom you are in an enduring relationship at the date of death based only on the benefits in the 2015 Scheme. Spouse's pensions cease on remarriage under the 1992 Scheme, but are payable for life under the 2015 Scheme;
- iii. Any contributions payable, or refundable under your chosen option have been calculated on the basis of the amounts that would have been due had you been in the chosen that scheme. Under the final legislation interest will be payable on these amounts. The rate of interest is yet to be determined. We will contact you to arrange collection of any additional amounts, or make payment of any further refund due;
- iv. The calculations provided are based on our best understanding of how the final remedy will be implemented. Once final legislation comes into force your case will be reviewed. If our initial interpretation was wrong your pension will automatically be recalculated. In the event of an underpayment, your pension will immediately be uprated and backdated arrears will be paid. In the event of an overpayment, your pension will immediately be adjusted to reflect the correct position. You will have to repay any overpayment. You will have the option to repay any overpayment in its entirety from the outset. Alternatively, your benefits will be temporarily reduced until the overpayment is recovered. Please note that any recovery option will be discussed and agreed at the time;
- v. By choosing to retire using the Home Office Guidance changes to your tax liability under the Annual Allowance Scheme will occur. These are detailed in the document headed "Annual Allowance". Should you have any queries regarding this document you are advised to discuss them with an appropriately qualified person. This may include An Accountant, or a Tax Consultant. Should any tax implications occur once the final legislation is enacted, it is your responsibility to take this up with HMRC; and

vi. If you elect one of the Immediate Detriment Case options your decision is irrevocable. You will not be given the option to reconsider this option once the final legislation is enacted.

14. To accept your chosen option please complete and return the attached form : Pension Declaration Option Form – Immediate Detriment. The form is required to be returned to the following address : [to be set out].

**Concluding Comments :**

15. You should retain copies of all forms and documents that you return to the Fire Service, ie. in case of future queries.

16. To support your decision-making process a copy of the Scheme Guides for both the 1992 Scheme and the 2015 Scheme have been provided to you. You should read both documents before making your pension choice. These documents are contained in the information pack.

17. It is recommended that you take independent financial advice about the options that are available to you regarding your pension. You may also want to take advice from your respective Trade Union, should you be a member of a Trade Union.

18. Should you have any queries concerning the information set out in this document then please contact : [set out name and contact details]

## **Pension Declaration Option Form – Immediate Detriment**

1. I have chosen to retire from the employment of the xxx Fire and Rescue Service, (“the Fire Service”), on the **[enter date]** and have set out below my signed pension Option that I have selected in line with the information contained in the documented headed : Information Regarding Pension Election – Immediate Detriment Cases; and
  
2. I agree and understand the following matters, :-
  - a) That I am required to repay any contributions required as outlined in the quotation for the Option chosen prior to receiving my pension benefits;
  - b) Should I choose to retire using the Home Office Guidance my choice will be irrevocable, unless subsequent legislation allows otherwise;
  - c) Once legislation is enacted my case will be reviewed and, if necessary, my pension will be adjusted in line with the revised pension scheme rules. This adjustment may result in an increase, or a decrease in my pension benefits. I understand that the Fire Service will reclaim any overpayments made;
  - d) Should interest be payable on any the additional contributions due from me in line with the Option chose, I agree to pay the relevant sum on demand;
  - e) There are significant differences in the survivor benefits offered by both schemes and I have considered the impact on any future spouse, or partner’s entitlements; and
  - f) I have read and fully understood the documentation provided to me by the Fire Service.

I **(NAME)** elect the following Option (please tick), :-

**Option 1** : Under Immediate Detriment, a pension payable immediately based on membership of the 1992 Firefighters Pension Scheme until my date of retirement. Choosing this Option will require me to pay the additional employee pension contributions of **(AMOUNT)** before tax relief.

**Option 2** : Under Immediate Detriment, a pension payable immediately based on membership of the 1992 Firefighters Pension Scheme until the **31<sup>st</sup> March, 2015** and a deferred pension from the 2015 Firefighters Pension Scheme based on membership of that scheme from the 1<sup>st</sup> April, 2015 until the date of my retirement.

**Option 3** : Under current regulations, a pension payable immediately based on membership of the 1992 Firefighters Pension Scheme until **Taper Date** and a deferred pension from the 2015 Firefighters Pension Scheme based on membership of that scheme from **Taper Date** until my date of retirement.

I understand that in choosing the above Option that I have selected my case will be revisited when final legislation has been implemented.

**Signed :**..... **Dated :**.....

[Insert Name]