

Henry Elks  
Deputy Director  
Workforce Pay and Pensions Team  
HM Treasury  
[henry.elks@hmtreasury.gov.uk](mailto:henry.elks@hmtreasury.gov.uk)

Peter Spreadbury  
Deputy Director  
Public Safety Group  
Home Office  
[peter.spreadbury@homeoffice.gov.uk](mailto:peter.spreadbury@homeoffice.gov.uk)

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BY EMAIL ONLY

Dear Messrs Elks and Spreadbury,

### **Firefighters Pension Scheme - Age discrimination remedy**

This letter is submitted jointly by the Local Government Association (LGA) on behalf of Fire and Rescue Authorities (FRAs), and by the Fire Brigades Union (FBU) on behalf of their members.

We cannot express strongly enough our continued frustration at the government's failure, as expressed by HM Treasury and Home Office, to support FRAs in ensuring affected FPS members are placed in the position required by the Court of Appeal in December 2018 (McCloud/Sargeant), prior to implementation of remedy legislation. Affected members are those who have, or are, taking benefits prior to the implementation of remedy legislation and therefore could face an immediate detriment.

As you are aware from discussions beforehand and correspondence with the LGA, we agreed a framework in October 2021 designed to make payments to FPS members in scope of remedy within existing legal powers on the basis that it would mitigate or avoid an immediate detriment to such members, therefore avoiding the need for continued legal action by those members.

Since that time we have seen the withdrawal of the Home Office Guidance and the position of HM Treasury, as expressed in the accompanying note, of opposing any possible solution for scheme members other than waiting for final regulations in October 2023. This has left FRA's in a position of uncertainty and affected scheme members are actively preparing legal action once again.

Should such action commence, that would again mean a separate set of proceedings running in parallel to the proceedings currently before the Employment

Tribunal, and also wholly avoidable legal costs to FRA's (and ultimately the taxpayer).

We accept that there are, as set out in the HMT note, significant difficulties in making *some* payments, in particular those connected with contributions until the tax position becomes clear and we would be happy to discuss with you how best to make progress in this area. The Claimants in any new proceedings will claim that they are entitled to damages that place them in the same position, net of any tax, that they would have found themselves in if there had been no discriminatory treatment (as did the Claimants in the proceedings that have already been issued and settled). If we assume that the court determines the claim in favour of the Claimants and grants the relief sought, at best, from the FRAs' perspective, that would mean having to pay compensation in respect of any additional tax charges and then spending very considerable administrative time and expense seeking recovery of the tax paid from HRMC. At worst it would mean paying compensation in respect of the tax and not being able to recover it.

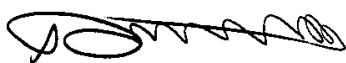
We do not however see any issues with the immediate payment of pension arrears or arrears of lump sum for those within 12 months of leaving and would be grateful for your support in making such payments, in particular, by confirming that such payments will be treated no differently from payments of pension outside of the scope of remedy with regard to funding.

Furthermore, with the Finance No 2 Bill gaining Royal Assent it is entirely within the gift of HM Treasury to bring forward regulations to authorise the payment of lump sum arrears beyond 12 months of leaving and we would ask that this is progressed as soon as possible.

Finally, your stance in respect of the position of members who receive payments prior to the implementation of the remedy legislation not being able to be regularised by remedy legislation is unhelpful. Although we can appreciate your desire to be prudent in not providing 'carte blanche' for unreasonable payments, the provisions of both the Public Service Pensions and Judicial Offices Act and the Finance Act 2022 appear to provide more than adequate flexibility to ensure the regularisation of scheme members benefiting from a considered approach to immediate detriment cases.

None of us wish to see taxpayer money being wasted on legal actions which will no doubt merely confirm a scheme member's right to payments in line with the Court of Appeal's judgment. We stand ready to meet with you at any time to discuss how this regrettable situation can be avoided.

Yours sincerely,



**Jo Donnelly**  
**Local Government Association**



**Matt Wrack**  
**Fire Brigades Union**