

EAST SUSSEX FIRE AUTHORITY

Panel Policy & Resources Panel

Date 9 November 2023

Title of Report Firefighters' Pension Schemes (FPS)
Age Discrimination, Remedy & Immediate Detriment Briefing Note

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Background Papers East Sussex Fire Authority – Firefighters pension scheme's remedy & immediate Detriment further briefing note May 2021

Firefighters' Pension Schemes (FPS) Age Discrimination, Remedy and Immediate Detriment Briefing Note and Update – SLT 25 March 2021 Item 8

Appendices None

Implications (please tick ✓ and attach to report)

CORPORATE RISK		LEGAL	X
ENVIRONMENTAL		POLICY	X
FINANCIAL	X	POLITICAL	X
HEALTH & SAFETY		OTHER (please specify)	
HUMAN RESOURCES		CORE BRIEF	

PURPOSE OF REPORT: The purpose of this report is to present an update on the situation relating to McCloud/Sargeant judgement on Age Discrimination and the on-going process of correcting pension scheme members records and payments, known as Remedy, that came into force on the 1st October 2023.

EXECUTIVE SUMMARY: This report is to inform the P&R Panel on the current position East Sussex Fire & Rescue Authority with regard to Age Discrimination and Cases in the Firefighters' Pension Schemes.

RECOMMENDATION: The Policy & Resources Panel is asked to note the content of this report.

1. AGE DISCRIMINATION REMEDY FOLLOWING THE MCCLOUD SARGEANT EMPLOYMENT TRIBUNAL

- 1.1 In December 2019, the Courts ruled that the introduction of the Fire Pension Scheme 2015 discriminated against younger scheme members as those closer to retirement were permitted to extend their membership to the legacy schemes.
- 1.2 The legislation that all Fire Services require to reposition the pensions for those affected by the discrimination come into force from 1st October 2023.
- 1.3 The guidance for Fire Services and Pension Administrators has also been provided from the Home Office and LGA.
- 1.4 Over the past 8 months the ESFRS pensions team has been working solidly to populate the earnings and contributions template provided by West Yorkshire Pension Fund (WYPF). This was completed and passed to WYPF before the end August 2023.
- 1.5 WYPF will be working through this template in the months to come in their efforts to resolve all pension members who have been affected by age discrimination.
- 1.6 During September 2023, WYPF have also written to all affected members to recognise those in the process and offer reassurance that they are included in the process and let them know what they should expect to happen.
- 1.7 An internal communication (via Service Brief) was published on 22nd September. A copy of which can be found at appendix 2. This was designed to keep FPS members up to date with the process.
- 1.8 The guidance has set out a priority for the application of Remedy which allows pension administrators to resolve cases in a consistent way.
- 1.9 First on the list will be new retirees. Every case will be presented with choices to retire under either legacy or FPS2015 schemes. This comes into effect from 1st October when it will be all FRA's legal requirement to process retirees in this way.
- 1.10 Next will be those who have already retired since 2015, starting from the most recent retirees.
- 1.11 Finally, will be all other current pension scheme members. This will ultimately deliver revised annual benefit statements displaying members choices of what they would expect to receive.
- 1.12 The legislation allows approximately 18 months for pension scheme manager to complete although our understanding that 1.10 will be addressed as soon as possible as this group are likely to be financially impacted.

2. PENSION SCHEME MEMBERS EFFECTED BY AGE DISCRIMINATION REMEDY

2.1 The table below displays the numbers of cases where members have been affected by age discrimination and will all ultimately receive a Remedial Service Statement (RSS) from WYPF.

2.2

Remedy Cases Analysis	
Retirees	
Ill Health Retirements and Deaths in Service	
Fully Protected	5
Under Immediate Detriment	2
Not Fully Protected	10 *
Other Retirements	
Fully Protected	82
Under Immediate Detriment	2
Not Fully Protected	34 **
Deferred Leavers	185
* = Highest Priority ** = High Priority	
Current Members	
Legacy FPS 1992	
Fully Protected	8
Taper Protection	34
Not Protected	103
Legacy FPS 2006	
Fully Protected	2
Taper Protection	23
Not Protected	83
Total Cases	573

2.3 As described in Section 1, there is a prescribed order that these cases must be addressed. I have marked the most pressing cases that are to be taken forward first.

These individuals are receiving pension benefits that are likely to be lower than those that will be offered to them on their RSS's. The retirees' retirement lump sums will also have been affected in a similar way.

Members who have been tapered into the FPS 2015 at different times, dependent on their ages, will have been affected by a range of financial impacts. Those who were closest to retirement age may only need a few months of pension membership to be adjusted whereas those younger members who retired may have 7 years of benefits to be added.

The Local Government Association has provided the timetable below:



IC cohort timetabling

October 2023 to March 2024 (Priority)

- Ill-health retirements (including re-assessments)
- Death in service beneficiaries

October 2023 to May 2024

- Ill-health retirement beneficiaries
- Unprotected and taper protected beneficiaries

October 2023 to November 2024 (Largest cohort)

- Unprotected and taper protected pensioners

January 2024 to July 2024

- Contingent decision (opt out)

POTENTIAL NEW RETIREES

3.1 Throughout the age discrimination process we have been reporting that the service has a number of employees that were able to retire before the legislation came into effect.

Of the 64 cases who originally formed this group, the 42 residual employees can be categorised as shown below:

- 2 Scheme members whose earliest date of retirement is before 1 April 2022, are over 50 years old and will have more than 25 years pensionable service and will also attain 30 years of service before October 2023.
- 1 Scheme member who has more than 25 years pensionable service and will reach the age of 55 before October 2023.
- 9 Scheme members whose earliest date of retirement is before October 2023 and are over 55 years old by that date.
- 30 Scheme members whose earliest date of retirement is before October 2023 and are over 50 years old and over 25 years pensionable by that date.

3.2 There was a general expectation that once remedy was in place that significant numbers of the employees would choose to retire. However, this has not been the case as only one new retirement application has been received to date.

FINANCIAL IMPLICATIONS

Those individuals who have had to wait for their improved legacy scheme benefits, will be allowed compensation in the form of interest. The Government Actuaries Department (GAD) have provided all FRA's with a calculator to assist this process which automatically offsets unpaid pension contributions with unpaid benefits and makes an adjustment for income tax.

It is not possible at this stage to provide the actual costs associated with the compensation payments as these will be reliant on the timings that cases are resolved on a case by case basis.

It is still anticipated that the costs associated with the administration of the remedy will be borne by FRAs whilst monies owed to members will be met by government.

The Sector continues to lobby Government to fully fund these additional costs and any further updates will be provided to the P&R panel.