

Staff and Pensions Committee

13 June 2022

Firefighter Pension Schemes - Immediate Detriment Update

Recommendation

That the Committee notes and comments on the position set out in the report and the decision from 1 April 2022 to pause the processing of all 'Category 1' cases.

1. Background

- 1.1 In December 2018, in the case of Sargeant and others, the Court of Appeal decided that the transitional provisions of the 2015 Firefighters Pension Scheme discriminated against scheme members on the grounds of age.
- 1.2 Since that decision, the Government has committed to removing and remedying the discriminatory impact of these provisions through new legislation. However, that legislation may not come into force until late 2023.
- 1.3 There are two categories of cases: Category 1 cases are those who have not retired but will retire before the new legislation comes into force and Category 2 cases are those who have retired since April 2015 and whose benefits are already in payment.
- 1.4 In August 2020, the Home Office issued guidance to pension scheme administrators which allowed them, pending new legislation, to take steps to avoid 'immediate detriment' to Category 1 firefighters who are approaching retirement. Broadly, those firefighters are able to retire under the scheme which is most beneficial to them. The Scheme Manager decided to apply the guidance where possible and an assessment was made on each case to identify any complexities which could lead to an incorrect value of benefits being paid.
- 1.5 In November 2021, shortly after the Fire Brigades Union and the Local Government Association had agreed a Memorandum of Understanding on the processing of cases, the Home Office withdrew its guidance. The explanation provided for the withdrawal was further work being done between HMT and

HMRC in drafting the remedy in the Public Service Pensions and Judicial Offices Bill. This highlighted the uncertainties regarding taxation implications for Fire and Rescue Authorities, who may incur unauthorised payment charges in certain cases processed prior to the new legislation coming into force.

- 1.6 Taking into account the legal risks inherent in failing to apply the immediate detriment guidance where this was otherwise possible, the Scheme Manager decided to continue to process Category 1 cases which were unlikely to incur taxation complications, and continued to do so up to 31st March 2022.
- 1.7 The National Fire Chiefs Council (NFCC) circulated a letter dated 25th March 2022 which stated that there is now a significant push for Fire Authorities to pause payment of any immediate detriment cases. HM Treasury's view remains that processing immediate detriment cases before all the necessary legislation is in place could give rise to significant consequences for schemes, pension scheme members and services.

2. Financial Implications

- 2.1 It is not anticipated that there are any new financial implications arising from the decision to cease processing Category 1 cases, save for potential legal costs arising, should the relevant Trade Unions choose to challenge the decision.

3. Environmental Implications

None

4. Supporting Information

- 4.1 The Scheme Manager has sought to maintain a consistent approach in relation to the processing of Category 1 cases, with a view to removing (where possible) the discriminatory impact of the transitional provisions on firefighter pensions at the earliest possible stage. This approach has been informed by legal advice and has required an assessment of the balance of risk between legal challenge by the Trade Unions in respect of failure to remedy the ongoing discriminatory impact of the transitional provisions, and the uncertainties surrounding the cost to the Fire and Rescue Authority of tax charges on unauthorised payments.
- 4.2 However, following the NFCC's letter, the Scheme Manager considers that the balance is now in favour of pausing the processing of Category 1 cases. This is supported by the Assistant Director for Finance, Andrew Felton and the Chief Fire Officer, Ben Brook.

- 4.3 There are up to 18 members who could choose to retire in the period April 2022 to October 2023 and may wish to elect to take benefits from their legacy scheme for the remedy period. These individuals will be informed that benefits will be paid under current regulations and then revisited once legislation has been passed to allow the recalculation of benefits.
- 4.4 The Board should be aware that it is possible that as a result of this decision, Trade Unions may seek to take further legal action against the Fire and Rescue Authority, in which case, the Scheme Manager will review the position.

5. Timescales associated with the decision and next steps

None

Appendices

None

Background Papers

None

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The report was circulated to the following members prior to publication:

Local Member(s): none

Other members: n/a