



September 2021

## **Firefighters' Pension Schemes (FPS) Reforms & Age Discrimination Remedy**

### **HOW WILL MY BENEFITS BE AFFECTED BY THE SARGEANT LEGAL CASE?**

We understand that many of you have questions about what the outcome of the McCloud/Sargeant case means for you and the impact on your pension. This note explains what has happened so far and what the service is doing to try and address the issues raised.

In 2015, new laws introduced a new reformed Career Averaged Revalued Earnings (CARE) Scheme for firefighters - the Firefighters' Pension Scheme 2015 (FPS 2015). These laws included protections which meant that some members of the existing legacy final salary pension schemes (FPS 1992 and FPS 2006) didn't join FPS 2015 either straight away or at all, depending on their age. Following a legal challenge known as McCloud/Sargeant, the courts determined that the protections given to those members were age discriminatory.

On 15 July 2019, the government made a written statement accepting the court's decision. They confirmed that they would engage with the Employment Tribunal to agree how to fix the discrimination. The written statement confirmed that this fix, known as the 'remedy', would apply across all public sector schemes.

Between July 2020 and October 2020, the government consulted on their proposals.

On 4 February 2021, the consultation response document was published. This document forms the basis of government policy and will become law.

The response confirms that discrimination will be addressed in two parts:

#### **Future discrimination (prospective)**

- To remove future discrimination from the scheme and ensure equal treatment, all remaining protected members who are not currently members of FPS 2015 will transfer into the FPS 2015 scheme from 1 April 2022. It should be noted here that all such members will have reached their normal retirement age in their legacy final salary scheme before April 2022.
- This means that all future service for all members from 1 April 2022 will build up in the CARE Scheme - FPS 2015 - the scheme is not changing. Benefits already built up in either of the previous legacy final salary schemes are fully protected.

## Past discrimination (retrospective)

- The period while discrimination was in place - 1 April 2015 to 31 March 2022 - is known as the remedy period. Members who moved into FPS 2015 on 1 April 2015 or later will have their benefits converted to their former final salary scheme for the whole of their service in the remedy period. The benefits built up in FPS 2015 will be kept as an underpinned record (ie: underpinning their legacy final salary scheme benefits).
- At retirement, eligible members will be able to keep their legacy final salary benefits or choose to receive the underpinned FPS 2015 benefits for the same period. This is known as Deferred Choice Underpin (DCU).

All eligible members will be automatically entitled to remedy without having to make a claim. To be eligible, the member must have been in service on or before 31 March 2012 **and** on or after 1 April 2015. Due to the scale and complexity of the work required to implement the Remedy, the government has agreed an initial target date for this work to be completed by October 2023.

## Age Discrimination Remedy & Immediate Detriment – East Sussex Fire & Rescue Authority Decision

There are a number of urgent and pressing cases (known as “immediate detriment” cases).

Immediate Detriment cases are where firefighters who belonged to the legacy pension schemes were obliged to transfer to the FPS 2015 scheme and are looking to retire now and take pension benefits (ie: before late 2023).

- Some would have qualified for retirement under the legacy schemes and are very keen to claim those pensions now and believe that their pensions would be more advantageous to them if the rules in the legacy final salary schemes applied to them rather than the FPS 2015.
- Others are urgently seeking Ill Health Retirement pensions and believe that those pensions would be significantly better if the terms of the pre-2015 legacy final salary schemes applied to them.

Following requests from the Firefighters Pension Scheme (England) Scheme Advisory Board (SAB) and the Fire Brigades Union (FBU) for guidance on how to deal with Immediate Detriment cases, on 21 August 2020, The Home Office issued a note directly to English Fire and Rescue Authorities (FRAs) entitled ‘*McCloud/Sargeant ruling – Guidance on treatment of ‘Immediate Detriment’ cases*’. This original note lacked clarity in many of the more complex areas about how to actually apply the Immediate Detriment payments in all circumstances.

- The note begins by stating; ‘*The purpose of this note is to provide **informal guidance** to Fire and Rescue Authorities (in England) on processing ‘immediate detriment’ cases in advance of a decision on the Government’s final approach to removing the age discrimination as found in the McCloud/Sargeant Employment Tribunal litigation.*’
- It may be possible for schemes to offer members a choice before the final DCU legislation is implemented, however, the legislation that allows schemes to do this is limited in effect.

- Whilst it allows schemes to return eligible members who retire from the reformed schemes to the legacy schemes in relation to service after 1 April 2015 it does not allow for all consequential matters to be dealt with satisfactorily in all cases. This means that not all cases can be paid under Immediate Detriment.

Following extensive consultations with the Local Government Association (LGA) and the Scheme Advisory Board (SAB) to try to address many of the missing complexities in applying Immediate Detriment, on 10 June 2021 the Home Office issued an updated Version 2 of the guidance note on Immediate Detriment cases.

- This states; *'As the guidance is non statutory and informal, it does not in itself place legal obligations on FRAs. However, FRAs have the power to calculate and pay pension entitlements for those members who fall within either of the two categories under their legacy schemes, through the application of section 61 of the Equality Act 2010...'*
- *'This guidance **should not** be seen as providing a definitive resolution to all of the consequences arising from the discrimination, rather as a way to progress certain immediate detriment cases (as defined in this guidance) now there is some clarity as to how certain issues should be approached. It is important **to note that ALL cases processed using this guidance will need to be revisited** once the full detail of the Government's approach is finalised, and legislation is in place. Legislation is expected to be in place by October 2023.'*
- Version 2 of the guidance repeats the express instruction that was in version 1, that it **should not** be applied to scheme members who have already retired and are in receipt of their pension payments. The note refers to these cases being more complex to address, especially due to complexities in rectifying the member's tax position.

At a meeting of the Policy & Resources Panel of East Sussex Fire & Rescue Authority held on 22 July 2021, the decision to offer the option to pay employees retiring from the Firefighters' Pension Schemes under the Home Office Immediate Detriment Guidance wherever possible was ratified. So going forward employees will be offered this option wherever possible.

However; it should be noted that the current Home Office Guidance does not allow for the option for benefits to be paid under Immediate Detriment in all cases. The following are some of those currently out of scope according the latest Home Office Guidance;

- Scheme members who have already retired and are in receipt of their pension payments.
- Death in Service
- Where an individual has overpaid contributions and is therefore due a refund
- Members who by virtue of age and service would have qualified for a contribution holiday under the legacy 1992 Firefighters' Pension Scheme, having reached 30 years' service before age 50

There is further information and ongoing updates are available on the Firefighters' Pension Scheme website set up for members of the Firefighters Pension Scheme by the Local Government Association (LGA) which can be found through the following links;

<https://fpsmember.org/>

<https://fpsmember.org/how-will-my-benefits-be-affected-sargeant-legal-case> '

We are working hard to respond to the many queries we have received as a result of these changes. Our priority is to deal with the Immediate Detriment cases and to rebuild scheme member's legacy final salary pension scheme records for the seven year remedy period.

So; if you have any non-urgent general queries we would ask you refer to the Firefighters' Pension Scheme website [in](#) the first instance.

If you have any non-urgent enquiries about your own pension situation please look at the information available on your Firefighters Pension Scheme 'mypension' portal at <https://mypension.wypf.org.uk/login?ReturnUrl=/> in the first instance.

If the information you require is not there, please contact East Sussex Fire & Rescue Service Firefighters' Pension Scheme Administrators, West Yorkshire Pension Fund (WYPF), as follows;

E-mail: [pensions@wypf.org.uk](mailto:pensions@wypf.org.uk)

Phone: 01274 434999

Fax: 01274 723228

For all postal enquiries write to:

WYPF  
PO Box 67  
Bradford  
BD1 1UP

Please always quote your date of birth and national insurance number for identification purposes.