FIRE BRIGADES UNION

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To: All Members

Dear Brother/Sister

The Firefighters' Pensions (Remediable Service) Regulations 2023

The remedying legislation comes into force 1 October 2023, it seeks to resolve all of the issues that arose following the Fire Brigades Union victory through the courts against the discrimination in the 2015 Scheme transitional protection arrangements which has left many members not in receipt of their full pension.

The regulations are detailed and specific, this circular under subject headings makes reference to the relevant part(s) of the regulations which can be found here:

https://www.legislation.gov.uk/uksi/2023/843/contents/made

This circular updates FBU members in relation to many of the general issues affecting them due to remedy. It is not intended to be a comprehensive update that addresses every issue resulting from remedy, as many individual cases will require detailed case by case examination.

Background

On 10 March 2022 the Public Service Pensions and Judicial Offices Act 2022 ('the 2022 Act') gained Royal Assent. The 2022 Act put in place a legal framework to rectify the unlawful discrimination identified by the McCloud judgment, in which the Court of Appeal found that the transitional protections provided when reformed public service pension schemes were introduced in 2015 were discriminatory.

These transitional protections allowed older pension scheme members to continue building pension benefits in legacy public service pension schemes, whereas younger pension scheme members without protection were moved into the reformed schemes.

The Home Office has developed regulations to implement the retrospective part of the McCloud remedy from 1 October 2023 (the deadline set by the Act.) From this point on, Pension Scheme members affected by the McCloud judgment will be offered a choice as to whether to receive legacy (1992/2006 Pension Scheme) or reformed scheme (2015 Pension Scheme) benefits for the period in which the discrimination existed (1 April 2015 to 31 March 2022 – "the remediable service period"). This choice will be offered immediately on or after 1 October 2023 for pensioner members of the scheme, or at the time of retirement for active and deferred scheme members.

Immediate Choice Members

Immediate Choice members are pensioners or dependents who were in receipt of their benefits prior to 1 October 2023 and who are now to be given a choice under the Regulations between legacy scheme benefits and reformed scheme benefits for the remedy period, 1 April 2015 to 31 March 2022. To make a choice, a Remediable Service Statement (RSS) needs to be issued to these members within eighteen months from 1 October 2023. The recipient then has a year to make their decision. Immediate Choice members are covered under Part 3, Chapter 2 (Regulations 7 to 10).

Immediate Choice members can change the decision that they made when they originally became entitled to their benefits. Although not included in the regulations, the consultation response from the Home Office confirms under paragraph 6.133 that "on revisiting commutation decisions, the Public Service Pensions and Judicial Offices Act 2022 (PSPJOA) allows a member to choose alternative benefits to those in payment, so part of that is being able to alter commutation decisions." The Regulations confirm that once a choice is made, it is irrevocable.

Deferred Choice Members

In respect of Deferred Choice members, who are members that have not yet taken their benefits on 1 October 2023, the timeframe under which a member must give the scheme manager notice of their intention to retire under Regulation 13 (paragraph 2) of the final regulations is three to six months, with the provision that a scheme manager can consider other periods of time.

Remediable Service Statements

Part 2, Regulation 4 of The Firefighters' Pensions (Remediable Service) Regulations 2023 sets out the requirements for a scheme manager to provide a Remediable Service Statement (RSS) to a remedy member in accordance with section 29 of the Public Service Pensions and Judicial Offices Act 2022 and section 20 of The HMT Treasury directions.

Contributions

Deferred Choice Members

In respect of contributions, Regulation 66 confirms that the amount of contributions owed by a member, in respect of Deferred Choice members, must be paid by lump sum within 3 months of receiving an RSS (either the first one or annually) or at retirement.

The regulation goes on to say that if the member has not paid by retirement, "the scheme manager may deduct such sums from benefits payable to P under a firefighters' pension scheme as seem reasonable to the scheme manager for the purpose of discharging P's liability." It is not clear from the Regulations how these sums may be deducted from benefits and whether this includes the choice of periodical contributions. The Home Office has been written to for clarity on this point.

Immediate Choice Members

The Regulations confirm that the adjustment of member contributions for Immediate Choice members will be done at the point of election and must be paid within six months of notification.

Opt out contingent decision cases

Under the Regulations, it is possible for firefighters to place a contingent decision claim in certain circumstances if they opted out because of the 2015 pension reform.

A contingent decision is a decision(s) that individuals took or didn't take as a result of the (actual or perceived) implications of the introduction of the reformed scheme. It is acknowledged that scheme members may wish to argue that they would have taken a different course of action had they known that continued membership of their legacy scheme during the remedy period was an option.

Those people who opted out up to six months prior to the start of the remedy period (1 April 2015) would be automatically accepted upon receipt of their claim. Optant outs before the 6-month period need to provide evidence that their decision was due to reform.

Claims can be made by the “eligible decision-maker” determined in accordance with the Schedule for those people who are now deceased.

Once a claim has been accepted, an election must be made within twelve months of the RSS being provided. **To make it more reasonable for successful applicants to repay the contributions for the seven year period (1st April 2015 to 31 March 2022), Regulation 66 gives these members fourteen years to repay the owed contributions.**

Contribution holiday cases

In the consultation response, under 6.128, the Home Office confirmed that employee contributions paid under the reformed scheme which wouldn't have been paid had the member been in the legacy scheme are subject to correction under sections 15 to 17 of the PSPJOA, this also covers the period where an individual becomes retrospectively entitled to a contributions holiday after being rolled back into their legacy 1992 Scheme.

Government Actuary’s Department (GAD) contribution calculator

GAD are currently finalising a contributions calculator which will provide FRAs with the output required so that they can inform a firefighter of the amount of contributions that they will owe or be owed depending on the choice they make upon receipt of their RSS. The calculator will make the necessary adjustments for interest and tax relief and will be able to cope with opt out contingent decision cases.

Ill health cases

Regulation 51 of the final regulations makes it clear that dismissal on capability grounds has been included in the provisions.

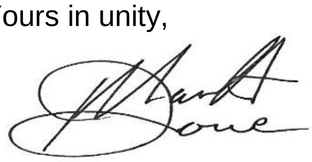
Added Pension

A full refund of added pension contributions plus interest is not necessarily the best option for some members, especially those who end up choosing 2015 scheme pension benefits for the remedy period.

The Home Office consultation response indicates that “on the point about an eligible member who had bought added pension in the 2015 scheme automatically qualifying as having sufficient evidence for a contingent decision that they would have bought added service that seems reasonable. However, this should be considered part of the administration process and the obligation to do this will not be provided by scheme regulations.” This indicates that the Home Office supports an automatic approach to these scenarios.

There are other Remedy issues which are not explicitly referred to in this circular that are dealt with within the Regulations. There are however, some other areas of work resulting from Remedy that require further dialogue, these continue to be worked through and processes put in place. Enquiries relating to Remedy and its application should, in the first instance, be made to your fire and rescue service.

Yours in unity,



Mark Rowe
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MR/jr