To: Fire and Rescue Authorities and Services
Fire Brigades Union members

FRAMEWORK FOR MANAGING IMMEDIATE DETRIMENT ISSUES - UPDATE

1. We write to update you on a matter relating to the Memorandum of Understanding (MoU) agreed between the LGA and FBU on 8 October 2021, which set out a mechanism for handling Immediate Detriment cases, to assist all parties prior to completion and implementation of the McCloud/Sargeant remedying legislation. It includes a Framework under which members in scope could receive benefits prior to all remedying legislation being in force.

2. The content of the Framework was based on the understanding of the Public Service Pensions and Judicial Offices Bill (draft primary legislation). The Government needs also to make secondary legislation pursuant to the Bill (together, the Remedying Legislation) to provide affected pension scheme members with a remedy for the discrimination found in the McCloud/Sargeant claims.

3. Since publication of the Framework, HMRC has published a policy document and a Finance (No.2) Bill which both now indicate a move towards making payments of lump sums paid more than 12 months after retirement ('late lump sums') authorised.

4. This is contrary to the earlier indications given by the Government and the provisions of the Pensions and Judicial Offices Bill that late lump sum payments would be unauthorised and that under the remedy FRAs would be required to compensate the member for any tax charges which could ultimately be reclaimed from Government. This change will only affect Category 2 members who left the scheme more than 12 months ago.

5. Category 2 members are defined as Members who, at the date of the MoU (8 October):

   (a) have already retired (for any reason, including ill-health) and who are receiving a pension under the 2015 Scheme, and who wish to be treated as having retired as a member of their Legacy Scheme; or

   (b) have left the fire and rescue service and did not qualify for a lower-tier (and therefore higher-tier) ill-health pension under the single pot ill-health retirement arrangement provided for in the 2015 Scheme, and are therefore left without a pension in payment.

6. Currently both the extent (whether such authorisation would apply in all cases) and the timing (the date from which payments become authorised) are not yet clear and may not become clear until secondary legislation implementing the Finance (No.2) Bill is available. Any payments outside of the extent or prior to the implementation of these provisions would continue to be unauthorised and would carry the risk that the FRA may not be able to recover those compensation costs. This is because despite the FRAs continued position that the Government must fund all the costs of remedy, the Government has indicated that where immediate detriment payments are made that are not consistent with its proposed method of providing remedy it will not fund the costs of those payments.

7. Government's position in the policy document and Finance (No.2) Bill was unexpected and accordingly has been discussed at a recent MoU review meeting. Clarification is currently being sought on the extent and timing of this change and in any case, joint contact will be made by the LGA and the FBU to UK Government seeking to achieve a change of position, primarily on making all late lump sum payments made to remedy the discrimination found in the McCloud/Sargeant claims authorised regardless of when the payments were made. Depending on the outcome of that, contact will also be made with the governments of Scotland, Wales and Northern Ireland where the consequences of this UK Government change could impact upon them specifically.

8. The LGA and the FBU will continue discussions on this issue in a spirit of cooperation as the MoU requires. This decision should not in general delay an FRAs decision to adopt the Framework. Both parties agree that the Framework remains a pragmatic way forward in order that issues can be dealt with as soon as possible and to avoid further legal cases. In particular, they agree that:

    - Any problems with paying a top-up lump sum can only arise where members retired or left more than 12 months ago. Therefore, if a member is approaching the anniversary of their departure, their case should be processed urgently.

    - This problem does not affect any other payments under the Framework.

    - FRAs should continue to provide affected members with their lump sum calculation.

9. The reason why clarification or a change of position from UK government is being sought as a matter of urgency is because this new HMRC position means an FRA will need to be mindful of the risks that would be created in proceeding to make top-up lump sum payments until such time as the HMRC position is amended or an implementation date is clear. It should be noted that the difficulties apply to any such late lump sum payments irrespective of whether they are made under the Framework process or not.

10. The FBU recognises that there is an issue, but it cannot accept any further delay. Accordingly, its position is that if FRAs do not operate the provision in the Framework as originally intended, it will assist members in pursuing legal action to secure their entitlements. That may take the form of complaints to the Pensions Ombudsman where compensation would be sought for the distress and inconvenience caused by late payment or non-payment.

11. We will continue to keep you updated on this matter.





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