



Buckinghamshire & Milton Keynes Fire Authority

Meeting and date: Executive Committee, 17 November 2021

Report title: Immediate Detriment Framework

Lead Member: Councillor David Hopkins

Report sponsor: Mark Hemming, Director of Finance and Assets

Author and contact: Mark Hemming, mhemming@bucksfire.gov.uk

Action: Decision

Recommendations:

1. That the Immediate Detriment Framework be adopted on behalf of the Authority (the Scheme Manager of the Authority's firefighter pension schemes).
2. That the Director of Finance and Assets be the authorised signatory for any 'Record of Agreed Compensation and Remedy' ('Compensation Record') on behalf of the Authority.

Executive summary:

This report outlines the latest position in relation to immediate detriment cases under the McCloud/Sargeant ruling.

In advance of any changes to legislation, the Home Office had previously issued informal guidance in relation to immediate detriment cases. Legal advice was then sought on whether it was lawful and appropriate for the Authority to apply this guidance in the circumstances indicated. At its meeting on 24 March 2021, the Committee resolved that all firefighters who were members of the Firefighters' Pension Scheme 1992 or New Firefighters' Pension Scheme 2006 ("their old schemes"), subject to the criteria detailed in that report, were to be treated as if in their old scheme. That resolution applied to those due to retire and those due to taper from the date of the resolution, where the calculation of benefits under legacy scheme for the remedy period is possible. It did not apply to members who had already retired.

Since then, legal cases were brought in the High Court against the London Fire Commissioner and Nottinghamshire and City of Nottingham Fire and Rescue Authority. The cases concerned Immediate Detriment issues in relation to the McCloud/Sargeant judgment and the claimants were supported by the Fire Brigades Union (FBU). The FBU was clear that matters for affected individuals needed to be

resolved sooner rather than later and it would, if necessary, support further legal cases. Many Fire and Rescue Authorities (**FRAs**) across the UK on an individual basis had indicated that they wished to be able to deal with Immediate Detriment issues as soon as possible. The problem was not an unwillingness to do so but rather the need to identify and develop a suitable mechanism to be able to do so in a way which minimised the risks while the Government is putting in place the McCloud/Sargeant remedying legislation.

With that in mind, the Local Government Association (**LGA**) and the FBU have been in discussions to identify a mutually acceptable Framework, setting out a mechanism for handling Immediate Detriment cases, to assist all parties prior to completion and implementation of the McCloud/Sargeant remedying legislation. This will help in resolving the genuine difficulties that had arisen for FRAs in making payments to those affected and in removing the potential for further court claims.

On 8 October 2021, the LGA and FBU announced that they had reached agreement on the Memorandum of Understanding (**MoU**) and Framework (see Appendices 1 and 2). Each FRA is asked to consider adoption of the Framework. The FBU are of course party to the MoU which contains the Framework agreement, and in that MoU they agree that where a member receives a remedy/compensation under the Framework they will not provide any financial or other support to the member to bring legal action relating to such remedy/compensation.

The MoU (para. 4.1) makes a distinction between Category 1 and Category 2 cases:

- Category 1 - members who have not yet had benefits brought into payment
- Category 2 - members who have had benefits brought into payment.

The exception to the above is members who did not qualify for ill-health retirement under the FPS 2015 and are not currently in receipt of benefits and are applying for FPS 1992 ill-health benefits, who are treated as Category 2.

The key elements of the process outlined within Annex 2 of the MoU are that:

- Any Member who believes they fall within either Category 1 or 2 may give notice to the FRA which last employed the Member concerned requiring the FRA to investigate their case
- Within **14 days** of receipt, the FRA shall acknowledge receipt of any such notice in writing
- If the FRA accepts that the Member is entitled to a remedy under the Framework, as soon as reasonably practicable and in any event within **62 days** after receiving an application, the FRA shall send to the Member all the information they require to decide whether to receive benefits under their legacy scheme or the 2015 Scheme.

The LGA has produced guidance for FRAs on the Framework in their role as scheme managers (see Appendix 3) (the Authority is the 'scheme manager' of the firefighter

pension schemes). This sets out (pp. 2-3) the following steps FRAs should undertake when considering adoption of the Framework:

1. Obtain the necessary agreement to adopt the Framework
2. Notify their administrator of their intention to make use of the Framework and the timescales contained.
3. Discuss with the administrator the necessary resourcing and/or re-prioritising of work.
4. If the decision is that the Framework will not be adopted, it will be for the FRA to make their own arrangements with regard to any claims and payments made by/to members in this area. In this case, the Service would continue to treat Category 1 cases in accordance with the decision taken at the meeting of the Executive Committee on 24 March 2021. A further paper would need to be brought to the Committee on how to treat Category 2 cases.
5. If the Framework is adopted, scheme members should be made aware of their right to apply under the Framework and the local process for doing so.
6. This step provides further detail on what to include in the communication noted in step 5.

The LGA guidance also covers the detailed steps to be taken when undertaking remedy calculations if the Framework is adopted.

As noted earlier, the Authority has already made the decision to treat members who have not yet had benefits brought into payment as if they were in their old scheme. The MoU and Framework will help to ensure consistency of treatment of members in Category 1 across all FRAs that adopt the Framework. If the Authority adopts the Framework, it will need to revisit the benefits of those subject to immediate detriment who have already retired (Category 2). It is estimated that this could be up to 30 cases.

Financial implications:

It is not possible at this stage to identify the specific costs associated with the recommendations of this report as these will be identified on a case-by-case basis. Using the immediate detriment framework now will not increase any direct amounts payable, it will simply bring some of those costs forward.

In not applying the framework, further legal action could be taken by the Fire Brigades' Union and result in further litigation costs.

Risk management:

The impact of changes to firefighter pension schemes is noted as a red risk on the Corporate Risk Register. While the MoU and Framework don't directly address any of the budgetary or resourcing impacts, it does reduce the risk of a potential failure to comply with legal requirements.

Legal implications:

The MoU contains a 'Compensation Record' (Annex 3 of the MoU) which the member signs and which is signed on behalf of the FRA, recording the benefits provided to the member under the Framework process. In addition, the Compensation Record also states that the benefits provided are in full and final settlement of the relevant issues noted in the Compensation Record, and the member agrees not to issue proceedings in respect of them against the FRA either as employer or as scheme manager, other than if there is a failure to abide by the agreement.

The MoU covers compensation as set out in the Framework. It does not cover any additional remedies as that is currently under consideration in the Employment Tribunal, such as injury to feelings. Therefore, the Compensation Record does not seek to settle those claims.

Although the Compensation Record states it is in full and final settlement of the Framework issues, it is not a formal settlement agreement or ACAS (Advisory Conciliation and Arbitration Service) COT3 agreement which would prevent an employee bringing a tribunal claim in respect of the issues.

The LGA has advised FRAs that:

1. The terms of the MoU give comfort in that the FBU agrees that it will not provide any financial or other support to members who have received compensation or are otherwise remedied under the Framework. Whilst this does not mean that claims will not or cannot be brought on an individual or collective basis supported by 'no win no fees' type solicitors, one would expect that fewer firefighters would want to embark on claims themselves, and no win no fee solicitors would be aware of the risk of no awards being made for such claims, due to 'just and equitable' considerations¹;
2. If FRAs were to try to enter into mass settlement agreements or COT3s it would be difficult to organise (as it is likely to be on an individual basis) and if it is by way of a settlement agreement there would be a cost per agreement for the independent legal advice which the FRA would usually be expected to cover. A standard cost would be around £300 plus VAT for an agreement where the terms are agreed in principle; and
3. Moreover, COT3s and settlement agreements usually exclude the right to claim accrued pension rights from any waiver as a matter of public policy as

¹ The general principle for compensation for age discrimination is that it is "just and equitable" and so there should be strong arguments that a tribunal hearing such a claim should take into account, and so set off, any compensation already paid in respect of the same loss. That concept is effectively supported by the provisions in the Public Service Pensions and Judicial Offices Bill (the primary remedy legislation) designed to prevent double recovery.

set out in s.91 of the Pensions Act 1995, which prevents such a waiver subject to some very limited exceptions.

Privacy and security implications: No direct impact.

Duty to collaborate: The Memorandum of Understanding and Framework are available for all fire and rescue services to adopt.

Health and safety implications: No direct impact.

Environmental implications: No direct impact.

Equality, diversity, and inclusion implications:

To reduce the risk of discrimination, this report proposes that in applying the immediate detriment framework, individuals who meet the eligibility criteria are provided a choice of which scheme they would like to be in for the remedy period regardless of whether they are a claimant or non-claimant.

The public sector equality duty requires public bodies to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010. The resolution in this report aims to meet this duty.

Consultation and communication:

The Service has already received a number of enquiries from members and retired members in relation to the MoU and Framework. They have been advised that the Executive Committee will be considering whether to adopt the Framework at its meeting on 17 November 2021, and that further correspondence will be provided after that decision has been made.

If the Framework is adopted scheme members will be made aware of their right to apply under the Framework and the local process for doing so.

Background papers: Executive Committee. 24 March 2021. Firefighters' Pension Scheme – Age Discrimination Remedy and Employment Appeal Tribunal Judgment. Available at: <https://bucksfire.gov.uk/documents/2021/03/ec-240321-item-8.pdf/>

Appendix	Title	Protective Marking
1	LGA/FBU. 8 October 2021. Framework for Managing Immediate Detriment Issues (Joint Statement)	
2	LGA/FBU. 8 October 2021. Memorandum of Understanding between the LGA and FBU.	
3	LGA. 8 October 2021. Immediate Detriment Framework (IDF) - Guidance for Fire and	

	Rescue Authorities in their role as scheme managers.	
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**To: Fire and Rescue Authorities and Services
Fire Brigades Union members**

FRAMEWORK FOR MANAGING IMMEDIATE DETRIMENT ISSUES

You will be aware of legal cases brought in the High Court against the London Fire Commissioner (LFC) and Nottinghamshire and City of Nottingham Fire and Rescue Authority (NFRA). The cases concerned Immediate Detriment issues in relation to the McCloud/Sargeant judgment and the claimants were supported by the Fire Brigades Union (FBU).

It was apparent similar issues would arise more widely across the sector. The FBU was clear that matters for affected individuals needed to be resolved sooner rather than later and it would, if necessary, support further legal cases. Many Fire and Rescue Authorities (FRAs) across the UK on an individual basis had indicated that they wished to be able to deal with Immediate Detriment issues as soon as possible. The problem was not an unwillingness to do so but rather the need to identify and develop a suitable mechanism to be able to do so in a way which minimised the risks while the Government is putting in place the McCloud/Sargeant remedying legislation.

With that in mind, the Local Government Association (LGA) and the FBU have been in discussions to identify a mutually acceptable Framework, setting out a mechanism for handling Immediate Detriment cases, to assist all parties prior to completion and implementation of the McCloud/Sargeant remedying legislation. This would help in resolving the genuine difficulties that had arisen for FRAs in making payments to those affected (including for example issues around unauthorised payment charges and contribution holidays) and in removing the potential for further court claims (not just against NFRA and LFC).

During the course of the discussions, the Government laid primary legislation before Parliament in the Public Service Pensions and Judicial Offices Bill and will make secondary legislation pursuant to the Bill (together, the Remedying Legislation) to provide the affected pension scheme members with a remedy for the discrimination found in the McCloud/Sargeant claims.

Following a series of complex discussions including respective legal representatives, which were also able to utilise the longstanding national relationship between the LGA and FBU, we are pleased to advise you that agreement has today been reached on the attached Memorandum of Understanding and Framework.

We believe the Memorandum of Understanding and Framework are consistent with the principles currently set out in the Bill and will mean that appropriate action can be taken. As and when parts of the Remedying Legislation covering the relevant part of the Framework come into effect the MoU and Framework indicate that the relevant Remedying Legislation will then be used instead.

Each FRA is asked to consider adoption of the Framework and we would encourage such adoption in order to provide a consistent approach to Immediate Detriment cases across the fire and rescue service.

You may also wish to be aware that, separately, we and respective legal representatives have worked with NFRA and LFC in respect of the High Court cases and can also advise that settlement has been reached. Settlement took into account the principles in the Framework, however, as is the norm in such settlements, details will remain confidential. The Summary Judgment hearing due to be heard in the High Court later this month is therefore no longer required.



Jeff Houston
Local Government Association



Matt Wrack
Fire Brigades Union

8 October 2021

Dated 8 October 2021

MEMORANDUM OF UNDERSTANDING

PARTIES

- (1) Local Government Association of 18 Smith Square, Westminster, London, SW1P 3HZ (the **LGA**); and
- (2) Fire Brigades Union of Bradley House, 68 Coombe Rd, Kingston-upon-Thames, Surrey, KT2 7AE (the **FBU**).

1 BACKGROUND

- 1.1 The LGA represents Fire & Rescue Authorities (**FRAs**) in England, Scotland, Wales and Northern Ireland in connection with the matters covered by this memorandum of understanding (**MoU**).
- 1.2 The FBU is a trade union that represents firefighters and other employees employed by the FRAs (together the '**Members**') who are affected by the matters covered by this MoU.
- 1.3 The LGA (on behalf of the FRAs) and the FBU (on behalf of the Members) wish to record the basis on which they will collaborate with each other to ensure that Members who have (or will) suffer an "**Immediate Detriment**" (as described in para. 4.1 below) by reason of their retirement (or impending retirement), following the decision made by the Court of Appeal on 20 December 2018 and the Employment Appeal Tribunal on 12 February 2021 in the *Sargeant* claims, are provided with a remedy as swiftly as possible.
- 1.4 A framework (the **Framework**) and a timetable for providing a remedy for each affected Member is set out in Annex 1 and Annex 2 to this MoU, which the parties expect the FRAs and Members to adhere to. Nothing in the MoU shall be interpreted to mean that the FBU will not initiate or support legal proceedings on behalf of any Member whose case is not dealt with in accordance with the Framework or that timetable.
- 1.5 The MoU only covers compensation relating to any shortfall in the pension commencement lump sum, pensions benefits and contributions payable to or payable by a Member (including issues relating to tax relief, interest and charges connected to those amounts) as set out in Annex 1. This MoU does not cover any additional remedies currently under consideration in the Employment Tribunal.
- 1.6 In this MoU:
 - 1.6.1 references to a Member's **Legacy Scheme** are references to the pension scheme in which the Member was an active member on 31 March 2012; and
 - 1.6.2 references to the **2015 Scheme** are references to the firefighters' pension schemes in England, Wales and Scotland created under the Public Service Pensions Act 2013.

2 OBJECTIVES

- 2.1 The parties acknowledge the importance of ensuring that Members who have suffered (or will suffer) an Immediate Detriment (as described in para. 4.1 below) receive compensation or are otherwise remedied now. They recognise that the Government has laid primary legislation before Parliament in the Public Service Pensions and Judicial Offices Bill (the **Bill**), and will make secondary legislation pursuant to the Bill (together, the **Remedying Legislation**) to provide the affected Members with a remedy for the discrimination found in the *Sargeant* claims.

The parties believe that the Framework is consistent with the principles currently set out in the Bill. In particular, any compensation or remedy provided to Members under this MoU:

2.1.1 amounts to “compensation” of the type anticipated by clause 21¹ of the Bill; and/or

2.1.2 is to be taken into account when assessing whether the Member has:

(a) “benefited from an immediate detriment remedy” for the purposes of clause 29 of the Bill; and/or

(b) been provided with a remedy under any scheme regulations of the type anticipated by clause 28 of the Bill

(to avoid a situation where the Member receives additional recoveries under the Bill which have already been compensated for under this MoU).

2.2 This MOU is separate from, and is not subject to or dependent on, any guidance issued in relation to “Immediate Detriment” before the Remedying Legislation comes into force.

3 PRINCIPLES OF COLLABORATION

3.1 The LGA will request that the FRAs, and the FBU will request that its Members, adopt the following principles:

3.1.1 Collaborate and co-operate. To adhere to the Framework so that activities are delivered and actions taken as required;

3.1.2 Act in a timely manner. Recognise the importance of moving things forward swiftly and responding accordingly to reasonable requests for support; and

3.1.3 Act in good faith to support achievement of the objectives and adherence to these principles.

4 IMMEDIATE DETRIMENT CASES IN SCOPE

4.1 The Framework will apply to Immediate Detriment cases that have already arisen, or arise before the Remedying Legislation comes into force, namely cases for:

4.1.1 Members who, at the date of this MoU, are employed by an FRA and:

(a) become eligible to retire (for any reason, including ill-health) and draw any pension and/or lump sum benefit and want to have all their benefits paid from their Legacy Scheme (not the 2015 Scheme); or

(b) do 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 an immediately payable pension, but would be entitled to such a pension under their Legacy Scheme

(Category 1 cases);

4.1.2 Members who, at the date of this MoU:

¹ In this MoU, references to clause numbers in the Bill refer to the clauses as numbered on the date when the MoU is signed.

- (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 but would be entitled to such a pension under their Legacy Scheme

(Category 2 cases).

- 4.2 The Category 2 cases include the claims set out in High Court claim number QB-2021-000636, although the parties acknowledge that the claimants and the defendants in that claim will (subject to agreeing the position on legal costs) need to file a consent order recording any settlement achieved in accordance with the Framework set out in this MoU.

5 FRAMEWORK

- 5.1 The parties intend that the various issues that arise in relation to Category 1 and Category 2 cases will be resolved in accordance with the Framework set out at Annex 1 to this MoU.
- 5.2 The parties anticipate that the Remediating Legislation will provide a mechanism that will allow some matters to be dealt with more conveniently once it comes into force. These matters are:
- 5.2.1 compensation for any tax relief foregone on the arrears of contributions payable by the Member (except for Category 1 cases where the contribution arrears can be processed through PAYE);
 - 5.2.2 interest payable by the Member on the arrears of contributions;
 - 5.2.3 interest payable to the Member on adjusted employee contributions under the 2006 Scheme; and
 - 5.2.4 CETVs and added pension (for Category 1 cases).
- 5.3 These matters (and only these matters) will be calculated and processed once the Remediating Legislation is in force. Where applicable, the way they will be dealt with until that point is reached is set out in Annex 1. The parties agree that the mechanism provided by the Remediating Legislation will be used to make the calculation and the amounts will be processed in accordance with the Remediating Legislation.
- 5.4 The LGA and the FBU will encourage the relevant FRA and Member to document the agreed compensation or remedy in line with the template set out at Annex 3 to this MoU (the **Compensation Record**). This does not apply to the High Court claim referred to in para. 4.2 above where the terms of any settlement will be recorded in a confidential settlement agreement attached to a consent order.
- 5.5 The FBU agrees that it will not provide any financial or other support to Members who have received compensation or are otherwise remedied under the Framework to bring any court or tribunal proceedings relating to matters which have been (or are being) addressed under the Framework (or, in the case of those matters listed at para. 5.2 above, will be addressed under the Remediating Legislation). The FBU's agreement does not apply, however, to any question or dispute as to whether the Framework has been applied correctly in accordance with this MoU, or to any question or dispute regarding a matter that is not covered by the Framework.

6 CONCERNS OR COMPLAINTS

- 6.1 If either party has any issues, concerns or complaints about any matter in this MoU that party shall notify the other party and the parties shall then seek to resolve the issue through discussion (consistent with the objectives and principles set out at paras. 2 and 3 above). Those discussions may involve the relevant FRA and Member where appropriate.
- 6.2 Either party may terminate such discussions at any time. Where it has been agreed that the Framework is being used, the fact that such discussions could be commenced or have been commenced will not act as an impediment to any Member who alleges that the FRA concerned is not dealing with their case in accordance with the Framework and seeks relief from the Court. Nor will it act as an impediment to the FBU providing legal or other support to such a Member.

7 REVIEW, TERM AND TERMINATION

- 7.1 This MoU shall commence on the date of signature by both parties.
- 7.2 The parties will meet periodically on dates to be agreed between them (the first such meeting to take place within five weeks of the date of this MoU) to:
- 7.2.1 review the application of the Framework and the process set out in Annex 2, paying attention, in particular, to the timetable for processing cases in the light of the number of cases being dealt with by FRAs; and
 - 7.2.2 discuss whether any changes to the Framework are needed if the passage of the Bill (and the secondary legislation made pursuant to the Bill) adversely affects the ability of an FRA or a Member to implement the Framework and/or the process set out in Annex 2 and work in a spirit of cooperation to agree those changes.
- 7.3 If, on the date Remediating Legislation applicable to an issue set out in Annex 1 comes into force, a case that includes that issue is still being processed under the Framework, that issue will instead be processed under the Remediating Legislation and that fact will be noted in the Compensation Record (Annex 3). For the avoidance of doubt the rest of the issues in the case will be dealt with in accordance with Annex 1.
- 7.4 If all of the issues relevant to a case are covered by Remediating Legislation which has come into force before a Compensation Record is signed by the Member and the FRA that case will instead be processed under the Remediating Legislation.
- 7.5 This MoU will automatically expire on the last date on which Remediating Legislation applicable to all of the issues set out in Annex 1 comes in to force and will in any event expire on 1 October 2023. However, the parties agree that the timeframes set out in Annex 2 will continue to apply to the issues set out in Annex 1 where those issues are being processed under the Remediating Legislation provided that the timeframes do not put an FRA in breach of its obligations under the Remediating Legislation.
- 7.6 This MoU may be terminated (in whole or in part) by agreement in writing between the parties.
- 7.7 This MoU may be terminated by either party if the other party is in serious or repeated breach of its terms, and does not remedy the breach within 21 days of notice being given requiring it to do so.

8 VARIATION

- 8.1 This MoU, including Annexes 1, 2 and 3, may only be varied by written agreement of the parties.

9 CHARGES AND LIABILITIES

- 9.1 Liability for the legal costs incurred in High Court claim number QB-2021-000636 will be payable in accordance with any agreement reached between the parties to that claim or any order made by the Court in those proceedings.
- 9.2 Subject to para 9.1, and except as otherwise provided, the parties, FRAs and Members shall each bear their own costs and expenses incurred in agreeing to and implementing this MoU and the Framework.
- 9.3 Each party shall remain liable for any losses or liabilities incurred due to their own actions and neither party intends that the other party shall be liable for any loss it suffers as a result of this MoU.

10 STATUS

- 10.1 This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the parties from this MoU. The parties enter into the MoU intending to honour all their obligations.
- 10.2 Nothing in this MoU is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party as the agent of the other party, or authorise either of the parties to make or enter into any commitments for or on behalf of the other party.

11 GOVERNING LAW AND JURISDICTION

- 11.1 This MoU shall be governed by and construed in accordance with the laws of England and Wales and, without affecting the procedure set out in para. 6, each party agrees to submit to the non-exclusive jurisdiction of the courts of England and Wales.

Signed by **JEFF HOUSTON**

for and on behalf of the **LGA**



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HEAD OF PENSIONS

8th October 2021

[Date]

Signed by **MATT WRACK**

for and on behalf of the **FBU**



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GENERAL SECRETARY

8 October 2021

CONTACT POINTS

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ANNEX 1 – FRAMEWORK

Issue	Category 1 cases	Category 2 cases
Shortfall in retirement lump sum and past pension payments	Retirement lump sum and benefits paid on retirement through Legacy scheme (so that no shortfall arises).	Pay as lump sums (comprising pension lump sum and arrears lump sum likely made in two payments) through the 1992 scheme (as arrears). Pension arrears will be subject to PAYE, but if any additional income tax is payable by the member that would not have been payable if the member had never been treated as a member of the 2015 Scheme, the FRA will compensate the member for that tax liability.
Interest on shortfall in retirement lump sum and past pension payments	No interest due because correct lump sum and pension benefits will be paid on retirement.	Interest paid at 3% p.a. simple, from the date lump sum / benefits should have been paid.
Employee contributions: 1992 Scheme	Member pays shortfall (since 2015) through payor as a deduction from retirement lump sum.	Member pays any shortfall (since 2015) as a deduction from retirement lump sum. If no lump sum is payable, the member will need to pay any contributions owed from their own resources and to be given a reasonable time to pay based on their individual circumstances.
Employee contributions: 2006 Scheme	Compensation for excess contributions to be paid on retirement. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.	FRA to pay compensation for excess contributions. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.
Tax relief on employee contributions	<p>Process through PAYE to the extent possible if time/amount allows. If time does not allow, then any tax relief not collected through PAYE will be calculated and paid when the remedying legislation is in force.</p> <p>FBU and FRAs will encourage members to give as much notice of retirement as possible to facilitate payment through PAYE.</p>	Compensation for any tax relief foregone will be paid to the individual when the remedying legislation is in force. So, for now, individuals will pay the gross amount of contributions due.

Interest payable on adjusted employee contributions (1992 Scheme)	Interest to be paid by the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation). If tax relief was not processed through PAYE (because time/amount did not allow), where the individual is due to receive a future payment to compensate him or her for the tax relief foregone, the interest amounts will be deducted from that payment.	Interest to be paid by the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation). Where the individual is due to receive a future payment to compensate him or her for the tax relief foregone, the interest amount will be deducted from that payment.
Interest payable on adjusted employee contributions – compensatory amount (2006 Scheme)	Interest to be paid to the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation).	Interest to be paid to the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation).
Contribution holidays: excess employee contributions	Compensation for excess contributions to be paid on retirement. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.	FRA to pay compensation for excess contributions. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.
CETVs and added pension	If an issue arises, then look at it at that point. Individual and FRA will work together to agree a holding compromise that the CETV/added pension will stay in the 2015 scheme until the legislative solution arrives.	Deal with as and when arises.
Annual Allowance charges	<p>Recalculate pension input amount for each year of remedy.</p> <p>If an annual allowance charge would have arisen if the individual had not been transferred to the 2015 Scheme, the charge remains payable by the member (through scheme pays or otherwise).</p> <p>If an annual allowance charge would not have arisen (or a lesser charge applied) if the member had not transferred to the 2015 Scheme, the member will pay that charge and the FRA will compensate the member for the annual allowance</p>	<p>Recalculate pension input amount for each year of remedy.</p> <p>If an annual allowance charge would have arisen if the individual had not been transferred to the 2015 Scheme, the charge remains payable by the member (through scheme pays or otherwise).</p> <p>If an annual allowance charge would not have arisen (or a lesser charge applied) if the member had not transferred to the 2015 Scheme, the member will pay that charge and the FRA will compensate the member for any annual allowance</p>

	charge that is demanded (or any excess over the lesser charge that would have applied).	charge that is demanded (or any excess over the lesser charge that would have applied).
Scheme pays (MSP/VSP)	Member pays tax through VSP for statutory tax years for which it becomes due.	Member pays tax through VSP for statutory tax years for which it becomes due.
Converting scheme pays debits	FRA to recalculate the pension debit as if taken at time of original scheme pays election using actuarial factors applicable at time.	FRA to recalculate the pension debit as if taken at time of original scheme pays election using actuarial factors applicable at time.
Converting pension sharing debits	Deal with on a case by case basis as issues arise.	Deal with on a case by case basis as issues arise.
Dependents	Deal with on a case by case basis as issues arise (and in accordance with the timeframes set out in Annex 2 where reasonably practicable).	Deal with on a case by case basis as issues arise (and in accordance with the timeframes set out in Annex 2 where reasonably practicable).
Taper members	Tapering to stop (because that is the only step that is consistent with the ET decision).	Tapering to stop (because that is the only step that is consistent with the ET decision).
Unauthorised payments	N/A	The FRA will compensate the member for unauthorised payment charges which the member has had to pay and which he or she would not have had to pay if the member had not transferred to the 2015 Scheme.

ANNEX 2 – THE PROCESS

- 1 Any Member who believes that he or she is a Category 1 or a Category 2 case, and any person who believes that he or she is a dependant of a Category 1 or a Category 2 case Member ('an **Applicant**'), may give notice to the FRA which last employed the Member concerned requiring the FRA to investigate their case. Any such notice must be given in writing (by post or by email).
- 2 Within 14 days of receipt, the FRA shall acknowledge receipt of any such notice in writing (by post or by email), and inform the Applicant:
 - 2.1 either that the FRA accepts that the Applicant is entitled to a remedy under the Framework; or
 - 2.2 explain why, in the FRA's view, the Applicant is not entitled to a remedy under the Framework.
- 3 If the FRA accepts that the Applicant is entitled to a remedy under the Framework, as soon as reasonably practicable and in any event within 62 days after receiving an application under paragraph 1, the FRA shall send to the Applicant:
 - 3.1 In a Category 1 Case:
 - 3.1.1 a statement of the benefits that the Member would be entitled to receive if he or she retires under the rules of the Member's Legacy Scheme;
 - 3.1.2 a statement of the benefits that the Member would be entitled to receive if he or she retires under the rules of the 2015 Scheme; and,
 - 3.1.3 a form inviting the Applicant to choose to take benefits in accordance with the rules of the 2015 Scheme or the Member's Legacy Scheme.
 - 3.2 In a Category 2 Case:
 - 3.2.1 a statement of the benefits that the Member would have received if he or she had retired under the rules of the Member's Legacy Scheme, calculated as at the date of retirement or, in the case of a Member who left employment without an immediate pension, as at the date of leaving;
 - 3.2.2 a statement of the benefits that the Member received or was prospectively entitled to receive under the rules of the 2015 Scheme, calculated as at the date of retirement or, in the case of a Member who left employment without an immediate pension, as at the date of leaving;
 - 3.2.3 a statement of the arrears of pension and lump sum that the FRA will pay if the Applicant chooses to take benefits under the terms of the Member's Legacy Scheme;
 - 3.2.4 a statement of the arrears of contributions that will have to be paid or that will be reimbursed (if any) if the Applicant chooses to take benefits under the terms of the Member's Legacy Scheme;
 - 3.2.5 a statement of any tax adjustments that will have to be made if the Applicant chooses to take benefits under the terms of the Member's Legacy Scheme (including details of any "scheme pays" election that the Applicant might be able to make); and

3.2.6 a form inviting the Applicant to choose to take benefits in accordance with the rules of the 2015 Scheme or the Member's Legacy Scheme.

4 If the Member's entitlements under their Legacy Scheme cannot be determined without further medical advice, the period between the date of the request for further medical advice and the date when that advice is received shall be ignored for the purposes of the timetable set out in paragraphs 2 and 3 above.

5 Once the FRA receives notice of the Applicant's election, and if the Applicant chooses to receive benefits under the rules of the Member's Legacy Scheme:

5.1 In a Category 1 Case, the Applicant's entitlements shall be progressed as "business as usual".

5.2 In a Category 2 Case, the FRA shall:

5.2.1 adjust the Applicant's pension debit if required to allow for any "scheme pays" election that the Applicant makes on account of any annual allowance charge that would have arisen if the Member had never been treated as a Member of the 2015 Scheme;

5.2.2 begin to pay benefits in accordance with the Legacy Scheme rules with effect from the next pension payroll date which is at least one month after the receipt of the Applicant's election;

5.2.3 as soon as reasonably practicable and in any event within 28 days after receipt of the Applicant's election, pay to the Applicant the arrears of pension and lump sum, calculated under 3.2.3 above and rolled forward to the date of payment, with interest calculated in accordance with the Framework to the date of payment, plus compensation for any excess contributions paid, after deducting:

(a) any arrears of contributions calculated under 3.2.4 above; and

(b) any additional tax required to be paid under PAYE on arrears of pension that would have arisen if the Member had never been treated as a Member of the 2015 Scheme.

If the deductions to be made under paragraph 5.2.3(a) and (b) exceed the arrears to be paid under 5.2.3, the FRA shall not be obliged to begin to pay benefits under the Legacy Scheme rules in accordance with 5.2.2 until a reasonable schedule for payment of the excess has been agreed between the Applicant and the FRA.

6 In a Category 2 case, no further action is required if the Applicant chooses to continue to receive benefits under the Rules of the 2015 Scheme.

7 Until the Applicant makes an election under paragraph 3.1.3 or 3.2.6, no further action is required.

8 Giving effect to the Applicant's election under paragraph 3.1.3 or 3.2.6 to receive benefits calculated in accordance with the Legacy Scheme rules shall be conditional on the Applicant signing and returning a settlement agreement substantially in the form of the record of agreed compensation and remedy set out in Annex 3 to the MoU.

9 The member and an FRA's commitment to adhere to the process and timeframes as set out above is in consideration of the Principles of Collaboration and the ongoing review of the Framework as provided for at clauses 3 and 7.2 of the MoU respectively.

ANNEX 3 – RECORD OF AGREED COMPENSATION / REMEDY

I [NAME OF MEMBER] have agreed with [NAME OF FRA] in its capacity as both an employer and scheme manager to receive compensation and/or a remedy in line with the framework set out in the MoU dated [DATE] between the LGA (on behalf of FRAs) and the FBU (on behalf of its members).

I am a “Category [1/2]” case.

I understand and agree that:

- the Government has proposed to make new legislation that is intended to provide me with the pension benefits that I could have received if the pension changes made in 2015 had not been made, but that new legislation may not come into force until October 2023;
- some of the issues relating to my pension benefits have not been fully resolved and will not be fully resolved until the new legislation comes into force in October 2023, and as a consequence some payments (including tax relief and some interest amounts) might be calculated and processed once the new legislation comes into force. These issues are noted in the table below;
- The compensation I have received will be taken into account for the purposes of the new legislation (to avoid a situation where I receive additional amounts under the new legislation which have already been compensated for under the agreed framework);
- I understand that survivor benefits under the 1992 Firefighters Pension scheme are payable only to a legal spouse or civil partner, meaning a partner with whom I have entered into a formal registered civil partnership. If I choose to receive benefits under the rules of the Firefighters’ Pension Scheme 1992 and I am unmarried and not in a civil partnership at the date of my death then a survivor’s pension will not be payable;
- The decision I make to receive benefits under the rules of the Firefighters’ Pension Scheme 1992/ Firefighters’ Pension Scheme 2006/ Firefighters’ Pension Scheme 2015 [delete as applicable] is irrevocable. Neither I nor my dependants will be given an option to reconsider this decision once the new legislation comes into force;
- The way in which the issues relevant to my case are dealt with under the framework (as noted in the table below) amounts to a full and final settlement of my claim. I will not commence or continue any court or tribunal proceedings against [NAME of FRA] (in its capacity as employer or pension scheme manager) in relation to any matters that are covered by this agreement (other than a failure to abide by the terms of this agreement); and

The issues in my case have or will be addressed as follows:

[PARTIES TO INSERT RELEVANT ROWS FROM THE ANNEX 1 FRAMEWORK TABLE WITH AN ADDITIONAL COLUMN TO DOCUMENT THE ACTUAL PAYMENT, ADJUSTMENT AND/OR RECORD ALTERATION MADE FOR EACH SPECIFIC ISSUE FOR THAT MEMBER.]

Signed by [NAME of MEMBER] on [DATE]

Signed by [NAME] on behalf of [FRA] on [DATE]

Immediate Detriment Framework (IDF) - Guidance for Fire and Rescue Authorities in their role as scheme managers

Version number	Date of publication
1.0	8 October 2021

The IDF has been developed and agreed by the LGA (in line with the decisions of the Steering Committee specifically set up to deal with matters arising from Sargeant) and the FBU based on the current understanding of the provisions contained for remedy in the [Public Service Pensions and Judicial Offices Bill 2021](#). Its purpose is to provide a framework under which members in scope can receive benefits prior to all remedying legislation being in force, therefore avoiding significant additional numbers of Immediate Detriment legal claims as a result of the [Sargeant age discrimination case](#).

This document makes reference to Category 1 (Cat 1) and Category 2 (Cat 2) cases. These are respectively those members who have not yet had benefits brought into payment and those who have had benefits brought into payment. The exception is members who did not qualify for ill-health retirement under the FPS 2015 and are not currently in receipt of benefits and are applying for FPS 1992 ill-health benefits, who are treated as Category 2.

Payments made under the IDF will either be a scheme payment and therefore from the pension fund account or an employer payment which cannot be met from the pension fund account. The table in [Annex 1](#) sets out which payments are from the pension fund account and which are not.

It is for each Fire and Rescue Authority (FRA) as the relevant [scheme manager](#) within the Firefighters Pension Scheme (FPS) to adopt the IDF. FRA's are encouraged to do so particularly given the breadth and complexity of the matters covered, which will support a consistent approach across FRAs.

In considering its decision an FRA will also wish to take into account the risks in terms of potential legal claims should they not do so, given the FBU has previously indicated its intention to bring claims should it feel a case has not been dealt with correctly.

The FBU are of course party to the Memorandum of Understanding (MoU) which contains the Framework agreement and in that MoU they agree that where a member receives a remedy/compensation under the IDF they will not provide any financial or other support to the member to bring legal action relating to such remedy/compensation (they can of course back action where there is a dispute about whether the Framework has been applied correctly).

Adoption of the Framework

In considering the adoption of the IDF, the FRA should undertake the following steps immediately on the announcement of the framework agreement:

1. Obtain the necessary FRA agreement to make use of the IDF, involving the FRA's Nominated Contact for the purposes of the transitional protections claims. Although we understand that the FBU will be communicating the details of the IDF to their members, FRAs should ensure that they communicate the timeframe for this decision to all scheme members.
2. Notify their administrator of their intention to make use of the IDF and the timescales contained.
3. **The FRA will need to discuss with the administrator the necessary resourcing and/or re-prioritising or work to ensure the IDF can be delivered or if this is not possible arrange for alternative resourcing to deliver the IDF.**
4. If the decision is that the IDF will not be adopted, it will be for the FRA to make their own arrangements with regard to any claims and payments made by/to members in this area.
5. Once the IDF is adopted, scheme members should be made aware of their right to apply under the IDF and the local process for doing so through an appropriately widespread and proven means of communication. Such communications could include, for example, a note on payslips of all post 2015 pensioners and a page on the intranet for active members. They should also indicate that the scheme member will need to sign the Compensation Record (set out at Annex 3 of the MoU)
6. These communications should include at least the following information/options:
 - i. The dates and rules for being in scope.
 - ii. The process for applying under the IDF – for example in writing/ by email/ completion of a form, and what information is required within the application. This could include the member's personal details, date of joining, FPS scheme they were a member of, any previous public service pension membership, and the basis for the application i.e. ill-health pension not in payment, or revision of normal retirement.

- iii. The potential for delay if incomplete or inaccurate information is supplied by the member (for example if the member has public service pension membership that has not already been notified to the FRA).

Implementing the framework

Once the FRA has adopted the IDF, the steps below will need to be undertaken in respect of members who apply under it. Although some of these steps will be undertaken by the appointed scheme administrator on behalf of the FRA, the FRA as scheme manager is responsible in law for managing the scheme and paying benefits and as employer for the payment of any compensation.

This document should be read in conjunction with the IDF, and particular attention is drawn to timescales in Annex 4 of the IDF.

Step 1 Collect the data required to assess if member is in scope of the IDF

1. Date of commencement in the FPS.
2. If the date of commencement is after 31 March 2012 and before 1 April 2015, the date of leaving any public service pension scheme in condition iii. below prior to the date of commencement in the FPS (the member will have to provide this if there is no record).
3. If the member is applying for retrospective ill-health benefits under the FPS 1992 the original report of the Independent Qualified Medical Practitioner's (IQMP) report (Cat 2 only). Note that FRAs were advised in [FPS Bulletin 28](#) to obtain IQMP assessments against both final salary and CARE schemes for current and new ill-health cases.

Step 2 Determine if member is in scope of the IDF

1. To be in scope a member must meet all of the following conditions:
 - i. They must have pensionable service under FPS 2015 in the period beginning 1 April 2015 and ending 31 March 2022 (the remedy period).
 - ii. That service would have been pensionable service under FPS 1992 or FPS 2006 but for the person's failure to meet the condition relating to the person's attainment of normal pension age by a specified date. (i.e., they are unprotected or tapered members).
 - iii. They must have been, on 31 March 2012 or any earlier day, in service in any employment or office that is pensionable service under:
 - a) a public service legacy scheme,
 - b) a judicial legacy scheme or
 - c) A local government legacy scheme.
 - iv. There must not be a continuous break of 5 years or more without any pensionable service in the schemes listed in condition iii., from the last

day of pensionable service in condition iii. to the first day of pensionable service in condition i.

2. If the member is applying for retrospective ill-health retirement under the FPS 1992 in addition to meeting the conditions above, they must also meet the qualifying conditions for ill-health retirement in that scheme.
3. If a Category 1 member meets each of the conditions above, they should be informed within 14 days of application that they are in scope of the IDF and that their options and figures will be available at the time they take their benefits. Although the steps below are not immediately required in these cases, FRAs are advised to begin the process set out in step 3 to ensure they have the necessary data in place when the member does take their benefits. The remainder of the steps should be followed once the member has notified the FRA of their intention to retire.
4. If a Category 2 member meets each of the conditions above, they should be informed within 14 days of application that they are in scope of the IDF and that their options and figures will follow.
5. If the member does not meet the conditions above, they should be informed within 14 days of application that that they are not in scope of the IDF and the conditions which they did not meet.

Step 3 Data required for calculations of ID

FRAs are advised to read this section in conjunction with the [Age discrimination remedy data collection guidance for administrators and FRAs](#).

1. Obtain a breakdown of the original benefit calculation to include:
 - i. The FPS 2015 pension and lump sum
 - ii. The total pensionable service, pensionable pay, commutation decision, pension, and lump sum in respect of the FPS 1992 or FPS 2006.
2. Determine the pensionable service which would have been accrued under the FPS 1992 or FPS 2006 during each year of the remedy period (the “remediable service”). For further information on pensionable service please see the [Age discrimination remedy data collection - Guidance for administrators and FRAs](#).
3. Determine the appropriate pensionable pay and any Additional Pension Benefits (APBs) due for each year of remediable service. Any entitlement to a two-pension award should also be determined at this point. For further information on pensionable pay and two pensions please see the [Age discrimination remedy data collection - Guidance for administrators and FRAs](#).
4. Determine the total gross contributions which were paid by the member during each year of remediable service

5. Determine the FPS 1992 or FPS 2006 employee contribution rates applicable to each year of remediable service as per the tables in the following links:

[FPS 1992 contribution rates 2015/16 - 2021/22](#)

[FPS 2006 \(standard\) contribution rates 2015/16 - 2021/22](#)

[FPS 2006 \(special\) contribution rates 2015/16 - 2021/22](#)

6. Determine to what extent the member would have qualified for a contributions holiday during the remedy period. For further information on contribution holidays please see the [Age discrimination remedy data collection - Guidance for administrators and FRAs](#)
7. If the member is applying on health grounds, determine if they would have qualified for ill-health retirement under the FPS 1992. See [FPS Bulletin 28](#) for more information on assessing current/ new or retrospective ill-health applications.
8. Obtain details of any transfers into the FPS 2015 scheme.
9. Obtain details of any contract in place to pay contributions for additional pension in the FPS 2015.
10. Obtain details of any divorce pension debit or scheme pays deductions in place.

Step 4 Determine any change in Annual Allowance (AA)

For some members the impact of treating them as if they had never left their previous final salary scheme might mean that they would have breached the annual allowance limits in former pension input period years.

1. For each pension input period calculate the opening balance and closing balance in respect of each year in the remedy period as if the member had remained in their relevant legacy scheme (FPS 1992 or FPS 2006).
2. Calculate the excess, if any, of the growth in each year (the difference between the opening and closing balance) over the relevant Annual Allowance limit including any carry forward.
3. Do the same calculations for the member based on the current mix of FPS 1992 or FPS 2006 plus FPS 2015 pension (the transitional benefits) and compare the two sets of values.
4. Further information on the Annual Allowance, including pension input periods, opening and closing balances, and carry forward can be found on the [Annual Allowance page](#) of the FPS member website or in [HMRC Tax Manual PTM051100 - Annual allowance: essential principles](#).

Step 4A Determine the extent of an FPS 1992 or FPS 2006 breach of the AA limit

5. If the Annual Allowance limit is breached (or the breach is increased) because of FPS 1992 or FPS 2006 benefits calculate the relevant amount of new or increased pension deduction under mandatory scheme pays or voluntary scheme pays using the relevant scheme factors. Note that the member is only liable for any charge that would have arisen if they had remained in their legacy scheme throughout the remedy period.

Mandatory scheme pays (MSP)

6. Section 237B of the Finance Act 2004 allows MSP where:
 - i. the tax charge is over £2,000, and
 - ii. the individual is subject the standard annual allowance (currently £40k)
 - iii. this relates to a single scheme and to the immediately preceding tax year.
7. If the conditions are met, then the scheme administrator becomes jointly and severally liable (with the member) for the annual allowance charge and must pay this to HMRC within a given timescale. They must also make a consequential adjustment to the member's pension savings or their benefits under the pension scheme.
8. MSP can only apply to the immediately preceding tax year, so MSP cannot be used to pay breaches of annual allowance in previous years within the remedy period.
9. For periods within the statutory time limits, where an individual has already used MSP, pension debits for previous years can be adjusted to accommodate any revisions to the annual allowance charge owed.

Voluntary Scheme Pays (VSP)

10. Where in certain circumstances an individual cannot use MSP to pay a relevant HMRC tax charge, they may be able to use VSP, so called because the scheme can agree to voluntarily pay the tax charge and deduct from the member via the debit.
11. As a voluntary arrangement there are no conditions attached to it other than the scheme agreeing they can pay it.
12. However, under VSP the member is individually and solely liable and the charge must be paid within the normal HMRC rules for paying tax (31 January following the year of tax charge).

13. In May 2017, following legal advice a [technical note](#) was issued to confirm that FRAs were able to utilise VSP to pay tax charges on a member's behalf, and guidance was subsequently issued with [FPS Bulletin 4](#) including election forms for the member and scheme manager.
14. FRAs may now wish to re-visit the decisions they made about allowing VSP, to amend the conditions they apply to payments under VSP.
15. For more information on calculating the scheme pays debit see the [Tax charge debits \(scheme pays\) page](#) on the FPS Regulations and Guidance website

Step 4B Determine the extent of an FPS 2015 breach of the AA limit

16. If the Annual Allowance was breached under the FPS 2015 benefits but is not breached or the breach is less under FPS 1992 or FPS 2006 benefits calculate any new amount of reduced pension deduction under mandatory scheme pays or voluntary scheme pays using the relevant scheme factors.
17. For more information on calculating the scheme pays debit see the [Tax charge debits \(scheme pays\) page](#) on the FPS Regulations and Guidance website.
18. If applicable, calculate the amount of compensation equal to the excess scheme pays deductions made as a result of 16 above since the member took their benefits.

Step 5 Calculate the difference in benefits payable (Category 2 only)

1. Calculate FPS 1992 or FPS 2006 pension and any lump sum as if the member had continued in that scheme until the date they retired.
2. These calculations should be performed using the original commutation decision made by the member. Note that the effect of the Bill provision is understood to effectively return the member back to immediately prior their benefits coming into payment so they could, if they wish, revisit the commutation decision made at the time and should be informed accordingly as set out below.
3. If the member has applied to have their ill health decision and/or benefits revisited under the IDF then the FRA should reassess the qualification for ill health under the FPS 1992, including obtaining an IQMP determination if this is not already available, and if appropriate calculate the amount of benefits payable under that scheme.
4. If the FPS 1992 or FPS 2006 benefits are higher than those currently in payment, calculate the amount of arrears of pension and lump sum due.

5. Calculate interest on the arrears of benefits payable to the member at a rate of 3% per annum simple. Note this interest will be subject to tax at 20%, and the FRA will need to deduct that on paying it to the scheme member. Interest on pension arrears must be calculated for each month or part month at 3% simple (without compounding), for the period between the date of the original monthly pension payment and the date of the arrears payment.

Step 6 Calculate the lump sum unauthorised payment charge and compensation

1. Calculate the revised unauthorised payment charge in respect of the arrears of lump sum relating to the excess over 25% (maximum tax-free cash).
2. Calculate the unauthorised payment charge in respect of late payment of the arrears of lump sum (if payable more than 12 months after the original date that the benefits came into payment).
3. The amount of unauthorised payment charge compensation is equal to the amount in respect of late payment but not that in respect of exceeding 25%.
4. The LGA's current understanding is that compensation for unauthorised payment charges in relation to late payments is not subject to tax and should therefore be paid without a deduction for tax. It is anticipated that legislation will confirm the position on tax in relation to compensation for unauthorised payment charges. Should this compensation be determined, either by legislation or HMRC prior to the laying of legislation, to be taxable the FRA will be required to further compensate the member for any tax which becomes payable.

Step 7 Calculate contributions owed by the member – FPS 1992 (ignoring any contribution holiday)

1. For each year of remediable service calculate the gross employee contributions due under the FPS 1992 using the appropriate pensionable pay and contribution rates. The effect of any contribution holidays should be ignored as any overpayment will be compensated for later in the process.
2. Compare the result with the actual gross contributions paid under the FPS 2015.
3. If the amount paid is less than amount due the member will owe an amount equal to the difference which they may elect to be deducted from any arrears of lump sum. If no lump sum is payable, the member will need to pay any contributions owed from their own resources and to be given a reasonable time to pay based on their individual circumstances.
4. Category 1 members can pay arrears through their pay or as a deduction from their pension commencement lump sum (PCLS).

Step 8 – Calculate compensation for an amount equivalent to net contributions overpaid by an FPS 1992 or FPS 2006 member

1. It is important to be aware that this part of the process does not impact whatsoever on the amount of contributions paid into the scheme and does not constitute neither refund of contributions nor a reconciliation of tax as if the contributions had not been made. It is designed to compensate the member for contributions which were overpaid and will remain so.
2. **The amount calculated in 8A and 8B below is payable as compensation for overpaid contributions NOT as a refund of contributions.**

Step 8A – Calculate contributions owed to the member – FPS 2006

3. For each year of remediable service calculate the gross employee contributions due under the FPS 2006 using the appropriate pensionable pay and contribution rates.
4. Compare the result with the actual gross contributions paid under the FPS 2015.
5. If the FPS 2015 contributions are greater than the FPS 2006 contributions, calculate a best estimate of the net amount of contributions overpaid. This should be done using the marginal rate for the member at the time the contributions were deducted.
6. Calculate the gross compensation necessary to achieve the net figure in 5 above when applying the current marginal rate. If both rates are 20% the gross compensation will be the same as the gross contributions. If not, the gross compensation will need to be adjusted to result in the correct net outcome – see example below.
7. The amount deducted from the compensation should be withheld until the tax position of compensation is clarified by legislation. If this does not happen before the tax becomes due, the FRA should contact the member to agree that it should be paid to HMRC on their behalf to avoid any tax liability falling on the member.

Examples of compensation calculation

Example 1

The member paid a gross excess contribution of £100 in a period when the member's marginal rate was 20%. The net overpayment was therefore £80.

The member's marginal rate now is also 20% so the amount of gross compensation required to achieve an outcome after tax of £80 is also £100

Example 2

The member paid a gross excess contribution of £100 in a period when the member's marginal rate was 40%. The net overpayment was therefore £60.

The member's marginal rate now is 20% so the amount of gross compensation required to achieve an outcome after tax of £60 is £75

Example 3

The member paid a gross excess contribution of £100 in a period when the member's marginal rate was 20%. The net overpayment was therefore £80.

The member's marginal rate now is 40% so the amount of gross compensation required to achieve an outcome after tax of £80 is £133

Step 8B – Contributions holiday for an FPS 1992 member

8. Under the terms of the FPS 1992 the maximum pensionable service that a member can accrue is 30 years' service, while the earliest point at which they can retire is at age 50. This means that some scheme members – mainly those who joined before age 20 – must continue to pay employee contributions beyond the point of accruing maximum pensionable service but before they are able to retire.
9. For example, if someone joined the scheme at 18 and paid contributions for 30 years by age 48, they would have accrued maximum pensionable service in the pension scheme yet could not retire until age 50.
10. The government introduced an employee contributions holiday for FPS 1992 members who accrue the maximum 30 years' pensionable service prior to age 50. This applies from the point of accruing maximum pensionable service in the scheme until the member's 50th birthday.
11. Calculate the gross amount of contributions which would have been payable by the member under the FPS 1992 including the effect of their contributions holiday during the appropriate years of remediable service.
12. Compare the result with the actual gross contributions paid under the FPS 2015.
13. If FPS 2015 contributions are greater than FPS 1992 contributions including the effect of the contributions holiday, then calculate a best estimate of the net amount of contributions overpaid and gross compensation using the same method as shown above for an FPS 2006 member.
14. The amount deducted from the compensation should be withheld until the tax position of compensation is clarified by legislation. If this does not happen before the tax becomes due, the FRA should contact the member to agree

that it should be paid to HMRC on their behalf to avoid any tax liability falling on the member.

Step 9 – Inform the member of their options (including mandate for deducting unauthorised payment tax from lump sum and scheme pays) and await a decision

1. The member should be notified of the results of the calculations and their options within 62 days (unless a revised medical opinion is required) of the date of application, in particular:
 - i. A statement of the benefits available under the FPS 1992 or FPS 2006, to include any dependents benefits available.
 - ii. The amount of arrears of pension and lump sum if the FPS 1992 or FPS 2006 benefits are higher than those currently in payment (Cat 2 only).
 - iii. Their right to revisit their original commutation decision, noting that such a revisit will delay the process as new calculations will be required (Cat 2 only).
 - iv. The amount of any unauthorised payment charge due to exceeding the maximum tax-free lump sum.
 - v. An estimate of any new, or increase or decrease in any existing, breach of the Annual Allowance together with any scheme pays deduction.
 - vi. The amount of underpaid gross contributions which will be deducted from the arrears of lump sum (or PCLS for Cat 1 members).
 - vii. The amounts of any compensation for late payment of lump sum unauthorised payment charges, overpaid contributions, or excess scheme pays deductions.
 - viii. The amount of interest on the appropriate elements of the above amounts.

2. The member should also be provided with:
 - i. The option to elect for benefits under the IDF and the Compensation Record (set out at Annex 3 of the MoU).
 - ii. A mandate for deducting unauthorised payment charges from the lump sum arrears.
 - iii. The option to deduct any underpaid gross contributions from the arrears of lump sum or PCLS. If the member does not elect for this, they must be informed that they will be required to pay the gross amount of contributions to the FRA directly.
 - iv. The option to confirm no change to the original commutation decision. If the member wishes to change their commutation decision, they

should be notified that further calculations will be required which will delay the payment of arrears.

Step 10 – Payment of sums due

The process for payment will depend which category the member is in.

Step 10A – Business as usual (Cat 1)

1. Category 1 members making a benefit election shall be processed as business as usual in line with an FRAs normal timescales/ dates for payment.

Step 10B – Revise the pension in payment (Cat 2)

2. Category 2 members making an election for legacy scheme benefits will have their pension in payment adjusted from the next pension payroll date, at least one month after the FRAs receives the election.

Step 10C – Arrears of pension and lump sum (Cat 2)

3. Arrears of pension and lump sum should be paid to the member within 28 days of their election.
4. The amount payable in respect of arrears of pension shall be made up of the total of pension underpaid relating to the remediable service plus interest at 3% simple less any new or increased deduction for scheme pays. Where possible this should be paid via the payroll in order to ensure the correct tax is taken. If this is not possible the member should be informed that they must declare the arrears as taxable income.
5. The amount payable in respect of lump sum shall be made up as follows:
 - i. The amount of underpaid lump sum
 - ii. Plus interest at 3% simple
 - iii. Less any mandated unauthorised payment deductions
 - iv. Less any amount of underpaid gross contributions
 - v. Plus any compensation

Governance

1. FRAs will need to ensure that the details of calculations, how they applied before remedy, and the underpinned benefits on the reformed basis are properly recorded to enable any rectification needed or answer questions once the legislation comes into force.
2. Local Pension Boards (LPBs) may want to consider what assurances they can seek that additional processes are in place to check decision making.

3. LPBs will also want to assure themselves that TPR requirements are being complied with. Particularly to ensure:
 - i. The policies in place to support the [six key processes](#) TPR use to measure performance are updated to ensure they take account of immediate detriment decision making and payments.
 - ii. How [breaches of law](#) will be recorded and reported to TPR.
 - iii. How immediate detriment data will be measured as part of the TPR [data scoring requirements](#), without automated systems, and methods to record the data.

Issue	Category 1 cases	Category 2 cases	Payment type
Shortfall in retirement lump sum and past pension payments	Retirement lump sum and benefits paid on retirement through Legacy scheme (so that no shortfall arises).	Pay as lump sums (comprising pension lump sum and arrears lump sum likely made in two payments) through the 1992 scheme (as arrears). Pension arrears will be subject to PAYE, but if any additional income tax is payable by the member that would not have been payable if the member had never been treated as a member of the 2015 Scheme, the FRA will compensate the member for that tax liability.	Scheme benefit payable from the pension fund account under Section 61 Equality Act
Interest on shortfall in retirement lump sum and past pension payments	No interest due because correct lump sum and pension benefits will be paid on retirement.	Interest paid at 3% p.a. simple, from the date lump sum / benefits should have been paid.	Non scheme benefit. Compensation for loss payable under section 92 of the Local Government Act 2000 and Article 7(7) of The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012.
Employee contributions: 1992 Scheme	Member pays shortfall (since 2015) through pay or as a deduction from retirement lump sum.	Member pays any shortfall (since 2015) as a deduction from retirement lump sum. If no lump sum is payable, the member will need to pay any contributions owed from their own resources and to be given a reasonable time to pay based on their individual circumstances.	N/A

Employee contributions: 2006 Scheme	Compensation for excess contributions to be paid on retirement. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.	FRA to pay compensation for excess contributions. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.	Non scheme benefit. Compensation for loss payable under section 92 of the Local Government Act 2000 and Article 7(7) of The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012.
Tax relief on employee contributions	<p>Process through PAYE to the extent possible if time/amount allows. If time does not allow, then any tax relief not collected through PAYE will be calculated and paid when the remedying legislation is in force.</p> <p>FBU and FRAs will encourage members to give as much notice of retirement as possible to facilitate payment through PAYE.</p>	Compensation for any tax relief foregone will be paid to the individual when the remedying legislation is in force. So, for now, individuals will pay the gross amount of contributions due.	N/A – will be dealt with when legislation is available
Interest payable on adjusted employee contributions (1992 Scheme)	Interest to be paid by the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation). If tax relief was not processed through PAYE (because time/amount did not allow), where the individual is due to receive a future payment to compensate him or her for the tax relief foregone, the interest amount will be deducted from that payment.	Interest to be paid by the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation). Where the individual is due to receive a future payment to compensate him or her for the tax relief foregone, the interest amount will be deducted from that payment.	N/A

Interest payable on adjusted employee contributions – compensatory amount (2006 Scheme)	Interest to be paid to the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation).	Interest to be paid to the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation).	N/A – will be dealt with when legislation is available
Contribution holidays: excess employee contributions	Compensation for excess contributions to be paid on retirement. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.	FRA to pay compensation for excess contributions. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.	Non scheme benefit. Compensation for loss payable under section 92 of the Local Government Act 2000 and Article 7(7) of The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012.
CETVs and added pension	If an issue arises, then look at it at that point. Individual and FRA will work together to agree a holding compromise that the CETV/added pension will stay in the 2015 scheme until the legislative solution arrives.	Deal with as and when arises.	N/A
Annual Allowance charges	<p>Recalculate pension input amount for each year of remedy.</p> <p>If an annual allowance charge would have arisen if the individual had not been transferred to the 2015 Scheme, the charge remains payable by the member (through scheme pays or otherwise).</p> <p>If an annual allowance charge would not have arisen (or a lesser charge applied) if the member had</p>	<p>Recalculate pension input amount for each year of remedy.</p> <p>If an annual allowance charge would have arisen if the individual had not been transferred to the 2015 Scheme, the charge remains payable by the member (through scheme pays or otherwise).</p> <p>If an annual allowance charge would not have arisen (or a lesser charge applied) if the member had not transferred to the 2015 Scheme, the member will pay that charge and the FRA will compensate the member for any</p>	Non scheme benefit. Compensation for loss payable under section 92 of the Local Government Act 2000 and Article 7(7) of The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012. Only relates to compensation for AA charges that would not have arisen save for the discrimination.

	not transferred to the 2015 Scheme, the member will pay that charge and the FRA will compensate the member for the annual allowance charge that is demanded (or any excess over the lesser charge that would have applied).	annual allowance charge that is demanded (or any excess over the lesser charge that would have applied).	
Scheme pays (MSP/VSP)	Member pays tax through VSP for statutory taxyears for which it becomes due.	Member pays tax through VSP for statutory taxyears for which it becomes due.	N/A
Converting scheme pays debits	FRA to recalculate the pension debit as if taken at time of original scheme pays election using actuarial factors applicable at time.	FRA to recalculate the pension debit as if taken at time of original scheme pays election using actuarial factors applicable at time.	N/A
Converting pension sharing debits	Deal with on a case-by-case basis as issues arise.	Deal with on a case-by-case basis as issues arise.	N/A
Dependents	Deal with on a case-by-case basis as issues arise (and in accordance with the timeframes set out in Annex 2 where reasonably practicable).	Deal with on a case-by-case basis as issues arise (and in accordance with the timeframes set out in Annex 2 where reasonably practicable).	Scheme benefit payable from the pension fund account under Section 61 Equality Act
Taper members	Tapering to stop (because that is the only step that is consistent with the ET decision).	Tapering to stop (because that is the only step that is consistent with the ET decision).	N/A
Unauthorised payments	N/A	The FRA will compensate the member for unauthorised payment charges which the member has had to pay and which he or she would not have had to pay if the member had not transferred to the 2015 Scheme.	Non scheme benefit. Compensation for loss payable under section 92 of the Local Government Act 2000 and Article 7(7) of The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012.