

IN THE LOOP - McCloud/Sargeant

Fire Pensions

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Immediate Detriment Framework

Due to issues surrounding Immediate Detriment and legal challenges brought to the High Court, on 8 October 2021, the Fire Brigades Union (FBU) and Local Government Association (LGA) jointly published a Memorandum of Understanding (MoU) and Framework to be adopted by FRA's to ensure that members who have suffered (or will suffer) an Immediate Detriment are remedied now ahead of legislation with immediate effect.

The FBU and LGA believe that the framework is in line with the principles set out in the remedy Bill.

The MOU and framework are separate from any other Immediate Detriment guidance issued prior to the implementation of remedy legislation and as such can be acted on outside of current guidance which it is also not reliant on.

The MoU is made up of 3 areas: Annex 1 – The Framework, Annex 2 – The Process and Annex 3 - The Record of Agreed compensation/remedy.

To successfully implement the MoU and framework, The LGA and FBU request that FRA's and members adhere to the framework, recognise the importance of moving things forward in a timely manner and respond accordingly to requests for support and act in good faith to fulfil the framework objective.

It is worthwhile to point out that the outstanding court cases in relation to Immediate Detriment have now been settled and although details cannot be disclosed, it did consider the principles of this framework.

The MoU will be governed in accordance with the laws of England and Wales and is not intended to be legally binding and is without legal rights and obligations.

Who is affected?

The Framework will apply to Immediate Detriment cases for active members that will occur prior to legislation implementation (Category 1) and to impacted members who have already retired (Category 2).

Category 1 members:

These are members who are actively employed by an FRA and become eligible to retire for any reason and want to have all their benefits paid from their Legacy Scheme or those 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.



Editorial:

Welcome to the latest edition of "In the loop" – our bulletins designed to keep you - the FRA's updated with all of the latest developments surrounding public sector pension reform.

In this bulletin we look at the Immediate Detriment MoU and Framework published jointly by the LGA and FBU and the implications for you and your members. This is an interim overview of the framework due to outstanding areas requiring further clarification and as such more detailed information and processes will be available in due course.

We will continue to keep you updated with Remedy developments.

We welcome you to contact us with any content suggestions that you would like to see featured in future editions of In the Loop.

If you have any queries relating to the content of this bulletin, please contact leanne.ferreira@xpsplc.com.

Whilst care has been taken to ensure its accuracy XPS cannot accept liability for any loss caused as a result of any actions taken based solely on information contained in this document.

Category 2 members:

These are members who have already retired for any reason and who are receiving a pension under and who wish to be treated as having retired as a member of their legacy scheme or those that have left 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 an immediately payable pension but would be entitled to such a pension under their Legacy Scheme.

The LGA and FBU recognise that although the Framework and MoU will enable the processing of Immediate Detriment cases, remedy legislation will still be required to provide resolution in some areas such as compensation for any lost tax relief on the arrears of member pension contributions (except for Category 1 cases where the contribution arrears can be processed through PAYE), interest payable by members on pension contributions due, interest payable to members where members are owed contributions (2006 members), CETV's and added pension.

Annex 1 – Framework

For Category 1 members (Active members), the framework can be summarised as follows:

- Tapering to cease.
- Retirement lump sum and benefits to be paid on retirement through the legacy scheme.
- No interest due on pension or lump sum.
- Member pension contributions due for 1992 scheme legacy membership will need to be paid back by the member via employer payroll deduction or via lump sum deduction. If paid back through the members lump sum the member would not benefit from tax relief at source and would need to be revisited to reclaim tax once legislation is implemented.
- To restore contributions and membership back into the 2006 legacy scheme the member would be owed contributions from the employer and as such would receive an amount of what the difference of contributions would be due to the member post tax deduction.
- Interest due to be paid by the member on the 1992 scheme contributions due will be arranged once legislation is in place at the rate specified under that legislation. If the contributions were paid back via lump sum and as such the member did not qualify for tax relief interest amounts owed will be deducted from the compensation due from that payment once amounts known after implementation of legislation.
- For 2006 scheme members contribution interest will be owed to the member and will be paid once legislation is in place under the specified rate.
- Contributions owed to members due to contribution holidays under the 1992 scheme will be paid on retirement by the FRA. The amount paid to members will be the net amount owed, with the FRA working these details out and making calculations to assume post tax contributions owed.
- Cases where members have had transfers (CETV's) into the reformed scheme or they have purchased additional pension can be processed, however, the credit or added pension component will remain in the 2015 scheme and will be addressed under remedy legislation.
- For Annual Allowance, each year of remedy will need to be revisited and recalculated. If a charge would have arisen if the member had not been transferred to the 2015 Scheme, the charge remains payable by the member (through scheme pays or otherwise).
If a charge would not have arisen (or a lesser charge applied) if the member had not transferred to the 2015 Scheme, the member must 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).
- In scheme pays cases members pay tax through VSP for statutory tax years for which it becomes due.
- For converting scheme pays debits FRA's must recalculate the pension debit as if it was taken at the time of the original scheme pays election using actuarial factors applicable at that time.
- Reformed scheme pension debits due to sharing orders are to be reviewed on a case-by-case basis.

For Category 2 members (retired members), the framework can be summarised as follows:

- Additional pension and lump sum payments must be paid as lump sum payment through the 1992 scheme. Pension arrears and additional lump sums will be subject to tax, however, 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 of 3% per annum from the date the lump sum and benefits should have been paid will be payable.
- To restore member pension contributions due to the level required for 1992 scheme membership the member will have to pay back contributions via the additional lump sum due. If no lump sum is payable, the member will need to pay any contributions owed from their own resources and should be given reasonable time to pay based on their individual circumstances. The amount of contributions payable will be the gross amount with compensation for tax relief being applied upon legislation implementation.
- To restore member contributions into the 2006 legacy scheme the member would be owed contributions from the employer and as such would receive an amount of what the difference of contributions would be due to the member post tax deduction.
- Interest due from members on the member contributions owed to restore 1992 membership and interest due to 2006 members will be visited once legislation is in place at a rate specified within that legislation.
- For members owed contributions back due to contribution holidays in the 1992 scheme, these will be paid by the FRA as a best estimate of an amount equivalent to the net contributions owed to the member.

- Cases where members have had a transfer into the reformed scheme or have purchased additional pension should be addressed on a case-by-case basis.
- For Annual Allowance, each year of remedy will need to be revisited and recalculated. If a charge would have arisen if the member had not been transferred to the 2015 Scheme, the charge remains payable by the member (through scheme pays or otherwise).
If a 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 charge that is demanded (or any excess over the lesser charge that would have applied).
- For scheme pays members pay tax through VSP for statutory tax years for which it becomes due.
- 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.
- For converting scheme pays debits the FRA's are to recalculate the pension debit as if it were taken at the time of original scheme pays election using actuarial factors applicable at that time.
- Pension debit cases are to be reviewed on a case-by-case basis.

Annex 2 – The Process

Affected category 1 or 2 members (and in some very limited cases dependents of deceased members) are referred to as Applicants and must give written notice to the employing FRA either via letter or email to request payment under the framework.

Within 14 days of this request the FRA must acknowledge receipt in writing confirming whether the applicant is entitled or not to remedy under the framework.

Where applicants are not entitled to remedy the FRA must explain why in their written confirmation.

For category 1 cases (active members) where the FRA accepts that an applicant is entitled to remedy, the FRA must provide retirement options showing the benefits payable under the legacy scheme and the benefits payable under the current reformed scheme regulations and a form to record the members choice within 62 days. The members options will then be processed as business as usual.

For category 2 cases (retired members) where the FRA accepts that the member is entitled to remedy, they must provide options of the benefits that member would have received if they had retired and taken their full benefits from their legacy scheme along with a statement showing the extra lump sum and arrears that would be payable under the legacy scheme, a statement showing the contributions that will be owed or due to the member under the legacy scheme, a statement of any tax adjustments as a result of receiving the legacy scheme benefits (including scheme pays) and an option form for the member to exercise their choice. Where entitlement under the legacy Scheme cannot be determined without further medical advice the timescales for providing these options will not be considered.

Upon a member's option being received, where a member opts to retain their current benefits no further action will be required, however, where a member opts to receive legacy schemes benefits the FRA must:

- Begin to pay the legacy scheme benefits as soon as possible and within 28 days of the members election pay the arrears and additional lump sum due along with the specified interest and deductions for the pension contributions owed or pay any contributions due with any interest due.
- Make adjustment for any scheme pays debit.
- Deduct 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.
- Where deductions for contributions and tax exceed the arrears due to the member the FRA are not obligated to pay the legacy scheme benefits until an agreement for the payment of the excess has been agreed.

No further action is required in cases where members do not return a signed election making their choice.

Category 1 members – Process & Timescale summary:

- Written request received from member.
- Written reply to be sent to member within 14 days of receipt confirming decision.
- If request accepted, options to be provided to member within 62 days.
- Once member option returned to be processed as business as usual.

Category 2 members – Process & Timescale summary:

- Written request received from member.
- Written reply to member within 14 days of receipt confirming decision.
- If request accepted options to be provided to member within 62 days.
- Once member option returned to be processed and paid within 28 days.

Annex 3 – Record of Agreed Compensation/Remedy

The FRA and member are expected to document the fact that they have been provided with an Immediate Detriment choice and have opted to receive legacy scheme benefits and that they will not be provided with another option under the implementation of remedy legislation. This record of Agreed Compensation will need to be applied in all cases.

Framework Review & amendment

The LGA and FBU will meet periodically to review the Framework, process, and timescales in line with the progress and details of remedy legislation. Amendments will be via written agreement and may be terminated where there is a serious or repeated breach of its terms which is not resolved within 21 days of notice being given requiring it to do so.

For ongoing cases not resolved under the Framework, including the member not signing their election before the date that the remedy legislation is implemented, this will instead be processed under the remedy legislation. The MoU will automatically expire upon remedy legislation implementation and in any event expire on 1 October 2023. However, cases that have started under the MoU and framework before this date where agreed will be processed until the legislation is implemented, should it fall after this expected date.

NEXT STEPS

As stated at the beginning of this bulletin, although we envisage being able to comply with this framework, there are a number of areas where we require more guidance and information from the Government/Home Office. For example, in relation to the treatment of tax and unauthorised payments, this is especially the case in relation to pensioner members. We look forward to providing more details on processes and our approach to implementing the MoU in due course.

You will be sent details of the number of potential Immediate Detriment cases for your scheme and will need to decide whether or not to apply the Framework for your affected members and whether this will cause amendment to any current Immediate Detriment policies that you have in place. You should note that as with the current Government Immediate Detriment Guidance, the MoU is not legally binding.

The application of current agreed Immediate Detriment cases requires significant notice from FRA's, and a policy and this will still be the case under this framework in order for XPS to arrange resource to perform these complex calculations outside of current legislation and software systems. As such, current Immediate Detriment charges will still also apply.

A new Project Initiation document will be provided to you as soon as possible taking this new framework into account.



ACTION REQUIRED!

You should consider your data and processes for dealing with potential Immediate Detriment cases. Plans should be considered for the calculation of member pension contributions owed and due under the relevant schemes and for contribution holidays. Processes for treating applications in a timely manner will also need to be set up due the tight 14-day turn-around timescales.