



Purpose: For Information

Committee report

Committee	ISLE OF WIGHT FIRE AUTHORITY FIRE PENSION BOARD
Date	14 OCTOBER 2020
Title	McCLOUD / SARGEANT CASE UPDATE
Report of	TECHNICAL FINANCE MANAGER

EXECUTIVE SUMMARY

1. Information contained in this report has been taken from the report to the Hampshire Fire and Rescue Authority (HFRA) Hampshire Firefighters' Pension Board for their meeting on 8 October 2020.
2. The Sargeant case, also known as McCloud, relates to the age discrimination court case that was brought against the transitional protections for the 2015 Fire Pension Scheme.
3. The board is asked to note the information contained in this report.

SARGEANT CASE – CONSULTATION

4. On 16 July 2020, HM Treasury published a consultation for all unfunded Public Service Pension Schemes, including Fire, Police, Teachers, NHS, Armed Forces, Civil Service and Judicial Schemes; the consultation closes on 11 October 2020. The Government's consultation webpage can be found in Appendix 1.
5. The Home Office have issued an FAQ document, and this can be found in Appendix 2.
6. As the consultation document is 70 pages long, which makes it a challenging and technical read, the Hampshire FRA's Employer Pension Manager has compiled a short summary which lists the key points. The summary can be found in Appendix 3.
7. There are many issues and concerns with the consultation, some of which are listed in the summary in Appendix 3. The LGA have raised several questions with the Home Office and have asked for urgent clarification.

8. The consultation provides some ideas of timescales for the completion of remedy, The Government intends to bring forward new primary legislation to take effect from April 2022, however it is likely to be some time after this before all the relevant scheme legislation is in place to enable administrators to implement remedy.
9. It is expected that the Government will respond to this consultation early next year, it is at this point that we will be a little clearer about the way forward and we hope it will also provide clarification on the likely timetable for implementation. The timescales will also need to include a further consultation period on proposed amendments to the Fire Pension Schemes legislation.
10. In addition to the issues of implementing remedy, HFRA have identified an additional complication due to the CFA taking effect from 1 April 2021. Because of both the payroll arrangements and HMRC requirements to make all employees a new starter under the new employer; it means that there will not be access to historical payroll data prior to 1 April 2021.
11. This means that we will not be able to use the SAP HR/Payroll system to automatically calculate the necessary member contributions and pay details that will be required for the remedy period for both the legacy and reformed schemes.
12. There will be significant challenges to calculate the relevant information for all members of the CFA and members that have left HFRA or IWFRS within the remedy period, as all this work will need to be done manually.
13. The Employer Pension Groups are agreeing the way forward as the work required for the McCloud / Sargeant remedy is substantial and will require a lot of resources. We are currently looking at this and starting to put some plans in place. It is anticipated that the additional resources required for this project will inevitably mean that there will be increased costs for all partners.
14. Hampshire FRA have drafted a response to the consultation as set out in Appendix 4, which was presented to their board meeting on 8 October 2020. The Technical Finance Manager will provide feedback from this meeting.

SARGEANT CASE – IMMEDIATE DETRIMENT CASES

15. The Home Office issued guidance on 21 August 2020 on the treatment of “immediate detriment” cases. This would apply to two groups of people, who were unprotected members or who had tapered protection:
 - (a) who become eligible to retire at age 50 with at least 25 years’ service and want to have all their benefits paid from the legacy scheme; or
 - (b) who don’t qualify for lower tier ill health pension under the single pot but would do so under the ill health arrangements in their legacy scheme.
16. This six-page note, which can be found in Appendix 5, does not go into enough detail to provide any real clarity for administrators and raises yet more questions.

- (a) This guidance means that it cannot be applied to anyone that has already retired, yet it does not clarify what date that it is effective from.
 - (b) We do not know the legal status of this guidance and whether it can apply to all relevant members. The Home Office have said that it is legally underpinned and can be used. The LGA have said that in their opinion, this can only be applied to claimants and that there is no legal basis to be able to apply this to non-claimants as there is no tribunal order, or legislation to rely on.
 - (c) There are a number of unresolved issues such as contributions, transfers into the 2015 scheme, scheme pays and annual allowance assessments etc.
17. Should we use the “immediate detriment” guidance for any members, then they will be required to sign declarations / waivers, and after April 2022, we will be obliged to revisit these cases to finalise any unresolved issues, which may mean that the member will have a further bill to pay. This would leave the member with some degree of uncertainty with an unknown amount that would need to be paid in the future. There may also be decisions in the outcome of the consultation which could impact any benefits in payment.

RECOMMENDATION

18. The Board is asked to note the content of this report.

APPENDICES ATTACHED

- 19. Appendix 1 – Home Office consultation page
- 20. Appendix 2 – Home Office consultation FAQ document
- 21. Appendix 3 – HFRA summary of consultation
- 22. Appendix 4 – HFRA Draft consultation response
- 23. Appendix 5 – Immediate Detriment Guidance note

BACKGROUND PAPERS

24. Hampshire HFRA Fire Pension Board meeting 8 October 2020
<https://democracy.hants.gov.uk/ieListDocuments.aspx?CId=196&MId=6615>

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