



**NOTTINGHAMSHIRE**  
**Fire & Rescue Service**  
*Creating Safer Communities*

Nottinghamshire and City of Nottingham  
Fire and Rescue Authority  
Policy and Strategy Committee

# **LOCAL FIREFIGHTER PENSION ANNUAL REPORT 2020/21**

Report of the Chief Fire Officer

**Date:** 12 November 2021

**Purpose of Report:**

To report to Members on the activities of the Local Firefighter Pension Board and Scheme Manager up to 31 October 2021.

**Recommendation:**

It is recommended that Members:

- Take note of the activity of the Pension Board and Pension Scheme Manager along with the update on current pension issues.
- Approve the adoption of the Framework for Managing Immediate Detriment Issues (Appendix C).

## **CONTACT OFFICER**

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## **1. BACKGROUND**

- 1.1 The Public Service Pensions Act 2013 introduced a framework for the governance and administration of public service pension schemes, including those pension schemes for fire and rescue workers. The governance arrangements in place for this Authority's firefighter's pension scheme are attached at Appendix A. The Act included the requirement for a Local Pension Board to be established by each responsible Authority.
- 1.2 In April 2015, this Committee approved the creation of a Local Pension Board in respect of the firefighter pension schemes, in accordance with the requirements of the Public Services Pensions Act 2013 (the Act). This Board is known as the Local Firefighter Pension Board and has been operating ever since.
- 1.3 The Fire Authority is the Scheme Manager for the firefighter pension schemes, which is a role defined by the Act. The role of Scheme Manager is delegated to the Head of Finance post and this report therefore serves to communicate to the Fire Authority about the activities of the Head of Finance and of the Local Firefighter Pension Board to date.

## **2. REPORT**

### **CONSTITUTION**

- 2.1 A constitution for the Local Firefighter Pension Board was initially approved by the Policy and Strategy Committee at the time that the Board was created in 2015. It has since been updated to make necessary changes to improve the running of the board. The current constitution can be found at Appendix B.

### **FORMAT OF MEETINGS**

- 2.2 Two meetings have been held during the year, with a further one to be held late November to discuss the Immediate Detriment Framework. There was a meeting due to be held on 26 July 2021, but unfortunately this was cancelled at late notice due to attendance. Papers had already been circulated to Pension Board members and the Scheme Manager was available to answer any queries regarding the reports.
- 2.3 Meetings early in the year were held virtually due to Covid-19 restrictions. This meant that they were not able to be held as public meetings, as required by the Constitution. The meeting held on 22 March 2021 was streamed live and a recording is available on the Authority's website. From 21 September 2021 there was a return to public, face to face meetings.

- 2.4 Board members are required to declare any potential conflicts of interest to the Scheme Manager prior to each meeting, in line with the Local Firefighter Pension Board's Conflicts of Interest Policy.
- 2.5 At the end of each meeting there is usually a training session for Board members on an aspect of pensions.

## **BOARD MEMBERSHIP**

- 2.6 As set out in the constitution, there is an equal number of employer and employee representatives on the Board and there is now also one substitute member for each side. Substitute members are encouraged to attend meetings as observers, and they are able to act as Board members in the absence of one of the full members. Substitute members are also invited to attend training sessions as this helps to improve knowledge and understanding of pensions issues.
- 2.7 The Chair of the Local Firefighter Pension Board is currently a representative from the employer side. The requirement to rotate the appointment of Chair is set out in the constitution (Appendix B).
- 2.8 There are currently no vacancies on the Board.

## **TRAINING**

- 2.9 The Pensions Regulator has published a Code of Practice for the governance and administration of public service pension schemes and this code sets out the requirement for Board members to achieve and maintain knowledge and understanding sufficient to enable them to carry out the role of Board member.
- 2.10 There have been several training opportunities for the Board, including a McCloud remedy training session delivered to the Board by the Local Government Association (LGA) Senior Pensions Advisor and various LGA and Pensions Regulator virtual training sessions. There is online training available on the Pension Regulator website which members of the Board are encouraged to complete.
- 2.11 Each Board member has completed a training needs analysis and the Board has a Training Policy. A record of all training is maintained by the Scheme Manager.

## **BOARD ACTIVITY**

- 2.12 Since the Local Firefighter Pension Board was set up in 2015, the work of the Board has been shaped by the Board members and by Officers supporting the Board.
- 2.13 Some regular reports to the Board have been developed. These include:

- Updates on current pension issues;
- The Pension Fund Risk Register;
- A report from the Pension Administration Team;
- Annual updates on the financial position of the Pension Fund.

## **CURRENT PENSION ISSUES**

### **Transitional Protection for FFPS 2015 Claims - McCloud**

- 2.14 Following an employment tribunal and subsequent appeals, the transitional protections related to the 2015 Firefighters' Pension Scheme were found to be age discriminatory.
- 2.15 The case was referred to the Employment Tribunal (ET) to determine remedy. An interim declaration was made in December 2018 by the ET that claimants were entitled to be treated as if they remained in the 1992 or 2006 Firefighter's Pension Schemes.
- 2.16 On 12 February 2021, the Employment Appeal Tribunal (EAT) gave its judgment on a separate, but related, case (Transitional Protections Claims). The ruling has put pressure on FRAs to implement the remedy from the original ET cases without waiting for new pension legislation to be passed.
- 2.17 Following the ruling the Fire Brigades Union (FBU) commenced legal proceedings in the High Court for three test cases against FRAs. Two of these cases are against NFRS as they relate to former NFRS employees. A settlement agreement on these cases was reached on 8 October 2021. Alongside the settlement agreement the Local Government Association (LGA) and Fire Brigades Union (FBU) negotiated a Memorandum of Understanding (MoU) and a Framework agreement for handling Immediate Detriment cases – this is attached at Appendix C.
- 2.18 The document makes reference to Category 1 and Category 2 cases. These are respectively those members who have not yet had benefits brought into payment (i.e., not yet retired) and those who have had benefits brought into payment (have already retired). 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.
- 2.19 The decision to apply the remedy for those firefighters coming up to retirement (where reasonable to do so) was approved by Policy and Strategy Committee on 30 April 2021, along with the decision to cease tapering members who have not yet transitioned to the 2015 until all members are transitioned in April 2022. This decision already covers Category 1 cases identified in 2.18 above, although the Framework does provide additional clarity for these cases.
- 2.20 The adoption of the Framework will endorse this decision and also enable the Service to apply the Framework to Category 2 members - ie those who have already retired who are receiving a pension under the 2015 Firefighter's

Pension Scheme, and who wish to be treated as having retired as a member of their Legacy Scheme, or are covered by the ill health; or those members who did not qualify for an ill health pension under the 2015 Scheme but would be entitled to such a pension under the 1992 Scheme.

### **Risks of Adopting Framework**

- 2.21 The Framework provides guidance in many of the difficult areas associated with implementing the remedy. However, it should be noted that the final Remediating Legislation (due to come into force in October 2023) will provide a mechanism for some matters to be dealt with more conveniently once it comes into force. These include compensation for any foregone tax relief, transfers into the scheme and interest payable on adjusted member contributions.
- 2.22 Once the Remediating Legislation comes into force, it may be necessary to retrospectively adjust cases in areas where it differs from the Framework agreement.
- 2.23 The most challenging aspect of adopting the Framework is likely to be meeting the 62-day time limit for providing benefit calculations to applicants. Whilst it is likely that the service can identify and provide the relevant information to the Scheme Administrators (West Yorkshire Pension Fund – WYPF) it should be remembered that WYPF provide this service to 21 Fire and Rescue Services and, despite best efforts on all those involved this may cause a bottleneck in providing information. This being said, the Service will make best endeavours to work with WYPF to provide information within the timescale so far as is possible.
- 2.24 Whilst uncertainties remain, if the Authority did not adopt the Framework agreement, it would leave itself open to further challenges in the Courts.
- 2.25 The FBU are 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 (they can of course back action where there is a dispute about whether the Framework has been applied correctly).

### **Firefighters Pension Scheme Valuations / Review of the Cost Cap Mechanism**

- 2.26 The firefighter pension schemes are subject to an actuarial valuation every four years. The valuation is carried out by the Government Actuary Department (GAD) with the purpose being to assess the total future liabilities of the schemes as at the valuation date. The results of the 2016 valuation were announced in the Autumn 2018 following several delays.
- 2.27 The regulations for the 2015 scheme include provision that if the cost of the scheme changes by 2% or more then corrective action needs to be taken to bring costs back in line. The valuation fell below the 2% cap and as a result, changes to employee contributions or benefit accruals were initially

proposed. However, any changes have been suspended by the Government pending the outcome of the age discrimination remedy. This pause has now been lifted and GAD will now proceed with finalising the valuations.

- 2.28 Despite the cost cap being breached at the lower end, employer rates increased by 9% as these were calculated on a different basis which includes the Superannuation Contributions Adjusted for Past Experience (SCAPE) discount rate – this cost is not included in the cost cap calculation. It should also be noted that the increase in member benefits will result in further increases to employer rates.
- 2.29 It is hard to reconcile this outcome as it clearly it does not meet one of the primary objectives of the cost cap mechanism which was to protect taxpayers from unforeseen costs. As a consequence, GAD were requested to undertake a review of the cost control mechanism which concluded in June 2021.
- 2.30 Following the review the Treasury has published a consultation document on proposed changes to the cost cap mechanism. The document is consulting on:
- Making reforms to the existing scheme;
  - Widening the corridor from 2% to 3% change in costs;
  - Introduce an economic check to cover changes in long term economic assumptions.
- 2.31 There is a further consultation on the most appropriate methodology for setting the SCAPE discount rate.
- 2.32 The outcome of the consultation will not impact on the 2016 cost control valuations.
- 2.33 The 31 March 2020 valuation data has been submitted. The 2020 valuation will be subject to any recommendations from the consultation. Any changes to employer contribution rates resulting from the 2020 valuations will be delayed from April 2023 to April 2024.

### **Matthews & O'Brien Case – Modified Scheme**

- 2.34 Special members were introduced to the 2006 Firefighters' Pension Scheme in 2014 following Matthews court case which ruled that on-call firefighters employed between 1 July 2000 and 4 April 2006 should be allowed to retrospectively join the 2006 scheme.
- 2.35 Following a further European Court of Justice case (O'Brien) the UK Government have recognised the right for on-call firefighters employed before 1 July 2000 to elect to become a special member from the start of their employment.
- 2.36 This will necessitate a second options exercise for which legal discussions have commenced between Central Government, the LGA and trade union

representatives to consider who is in scope and the details of the settlement exercise.

- 2.37 Regulations will be drafted and consulted on following the conclusion of the legal discussions. Unfortunately, no timescales are known at this time.
- 2.38 This represents a significant problem for Fire Authorities because there is a lack of data going sufficiently far back. For NFRS there is incomplete employment and payroll data for cases going back beyond the early 1990s. It is unclear how this will be resolved.

## **SCHEME MANAGER ACTIVITY**

- 2.39 The role of the Scheme Manager is set out in the Governance Arrangements (Section 3, Appendix A). Much of the role of the Scheme Manager relates to ensuring that proper administrative and governance arrangements are in place. The effectiveness of current procedures was demonstrated by the Governance Audit and the Pension Audit undertaken in May 2017, both of which were judged to provide substantial assurance. These audits are due to be repeated as part of the 2021/22 Audit Plan. Once complete, the audit reports will be included in a report to Finance and Resources Committee.
- 2.40 Some of the Scheme Manager activity is undertaken by the Scheme Administrators (West Yorkshire Pension Fund (WYPF)). The Internal Audit function for WYPF is provided by Bradford City Council who have a 5-year audit plan in place. All audit reports are made available to NFRS. WYPF also provide a monthly activity report which is shared with Pension Board.
- 2.41 The scheme manager has responded to statutory and not statutory requests for information, including national surveys of the firefighter's pension scheme by The Pension Regulator, Treasury, and the Local Government Association. The results of these surveys are reviewed and provide the basis for making any necessary improvements.
- 2.42 Both the scheme manager and Human Resources advisor to the pension board have attended a number of local and national events to ensure that their knowledge and understanding remain up to date.
- 2.43 The Local Firefighter Pension Board is now well established and has made good progress in improving the knowledge and understanding of the Board about the current pension issues, and in ensuring that governance and administration of pensions is carried out effectively. Work has also been undertaken to communicate with pension scheme members about pension issues (particularly the McCloud remedy) and to raise the profile of this important subject. The Board will continue to ensure that good practice is maintained, and ongoing improvements are made in line with advice from the Scheme Advisory Board and The Pension Regulator.

### **3. FINANCIAL IMPLICATIONS**

- 3.1 Payments made under the Immediate Detriment Framework 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 and will fall to the Authority to fund. The LGA is negotiating New Burdens funding from Central Government to cover these costs, although there is a risk that it will not cover them in their entirety.
- 3.2 The Authority received a grant of £63k from the Home Office to help with the additional costs related to McCloud. This is expected to be largely required to cover the national costs of updating pension administration software systems. The additional costs of work undertaken by the Authority and the pension administrators will need to be borne by the Authority and will be built into 2021/22 budgets.
- 3.3 It is anticipated that additional staff will be required to address the Matthews / O'Brien case. It is not clear at this point whether there will be additional funding to help cover these costs.
- 3.4 The Authority continues to pay a levy to the Scheme Advisory Board (SAB) and this will cover the cost of the national fire pensions technical advisor post and support the work of the SAB. The aim of the SAB in setting this levy is to help fire authorities to achieve cost savings by producing guidance and communications centrally for authorities to share. The cost for 2020/21 was £5,861 and this has been provided for within the revenue budget.

### **4. HUMAN RESOURCES AND LEARNING AND DEVELOPMENT IMPLICATIONS**

- 4.1 There are significant implications to the workforce relating to the Firefighters' Pension Schemes – these are covered in the body of the report.
- 4.2 The members of the Board are required to achieve and maintain knowledge and understanding of pensions and this requirement is being managed and monitored by the Scheme Manager.

### **5. EQUALITIES IMPLICATIONS**

An equality impact assessment has not been undertaken because this report is not associated with a policy, function, or service.

### **6. CRIME AND DISORDER IMPLICATIONS**

There are no crime and disorder implications arising from this report.



## **7. LEGAL IMPLICATIONS**

The Local Firefighter Pension Board was created to fulfil the requirements of the Public Service Pensions Act 2013.

## **8. RISK MANAGEMENT IMPLICATIONS**

The risks associated with pension governance and administration are set out in the Board's risk register, which is actively managed by the Scheme Manager and monitored by the Board.

## **9. COLLABORATION IMPLICATIONS**

Nottinghamshire, Leicestershire, and Derbyshire Fire Authorities all share the same pension administrator, and this has allowed for a number of collaborative activities associated with pensions. There have been several regional meetings and information events to help keep up to date with pension issues and to share good practice. Derbyshire Fire and Rescue Service employ a pensions advisor on behalf of all three authorities to provide more pension specialist knowledge.

## **10. RECOMMENDATIONS**

It is recommended that Members:

- 10.1 Take note of the activity of the Pension Board and Pension Scheme Manager along with the update on current pension issues.
- 10.2 Approve the adoption of the Framework for Managing Immediate Detriment Issues (Appendix C).

## **11. BACKGROUND PAPERS FOR INSPECTION (OTHER THAN PUBLISHED DOCUMENTS)**

None.

John Buckley  
**CHIEF FIRE OFFICER**

**NOTTINGHAMSHIRE AND CITY OF  
NOTTINGHAM FIRE AND RESCUE AUTHORITY**

**Governance Arrangements for Firefighter Pensions**

**Introduction**

- 1.1 The purpose of this document is to set out the governance arrangements relating to all aspects of firefighter pensions. This document forms part of the overall corporate governance framework for the Authority.
- 1.2 The various firefighter pension schemes fall within the remit of the Public Service Pensions Act 2013. The Pensions Regulator has produced a code of practice for the governance and administration of public service pension schemes and this document is based upon the recommendations in this code of practice.

**Overview of Roles and Definitions**

- 2.1 The Public Service Pensions Act 2013 identifies a number of roles in relation to public service pension schemes. These are explained below and interpreted in the context of the Nottinghamshire and City of Nottingham Fire and Rescue Authority:
  - 2.1.1 **Responsible Authority.** The responsible authority has the power to make pension scheme regulations. The Act identifies Secretaries of State as responsible authorities, so for the firefighter schemes this would be the Secretary of State for Communities and Local Government.
  - 2.1.2 **Scheme Manager.** For locally administered schemes such as the firefighter schemes the scheme manager may be the local administering authority or a person representing an Authority. The Combined Fire Authority is therefore deemed to be the Scheme Manager, with the day-to-day responsibilities of the Scheme Manager delegated to the Head of Finance.
  - 2.1.3 **Pension Board.** The Local Pension Board is responsible for assisting the Scheme Manager to comply with the scheme regulations and other legislation relating to the governance and administration of the firefighter schemes. Scheme regulations and the Scheme Manager will determine what the Pension Board's role and responsibilities will be and for this Authority these are set out in the Constitution of the Local Pension Board.
  - 2.1.4 **Scheme Advisory Board.** Each defined benefit public service pension scheme set up under section 1 of the 2013 Act has a Scheme Advisory Board with responsibility for providing advice to the Responsible Authority on the desirability of changes to the scheme when requested to do so. The Department for Housing Communities and Local Government has set up a Scheme Advisory Board for the Firefighter Pension Scheme 2015.

2.2 Other roles which are not necessarily defined by the Act, but which are relevant to firefighter pension schemes are:

2.2.1 **Employer.** The employer is the Combined Fire Authority, with day-to-day employer responsibilities delegated to the Chief Fire Officer.

2.2.2 **Scheme Administrator.** This role deals with day-to-day pension administration of firefighter pensions including the keeping of pension records and the calculation of pension benefits. This function is outsourced, currently to Leicestershire County Council.

2.2.3 **Scheme Advisers.** Advisers and service providers can help those governing and administering schemes to make informed decisions. In practice a range of people and bodies act as Scheme Advisers including the Scheme Administrator, the Chief Fire Officer and other Officers within the Service, the Local Government Association, the Scheme Advisory Board and the Department for Communities and Local Government.

## **Roles and Responsibilities**

### Scheme Manager:

- 3.1 The Scheme Manager is responsible for providing certain information, including:
- Annual benefits information to scheme members
  - Certain information to scheme members (and others in certain circumstances) on request including: basic scheme information, significant changes to schemes, information about future benefits
- 3.2 The Scheme Manager is responsible for publishing information about the Local Pension Board, including who the board members are, representation on the board, matters for which the board is responsible, terms of reference, the appointment process, the employment and job title and any other relevant position held by board members, any specific responsibilities of board members. Consideration should be given to publishing Local Pension Board agendas, papers, and minutes.
- 3.3 The Scheme Manager is responsible for publishing any other specific information as directed by the Responsible Authority or other Government department.
- 3.4 The Scheme Manager is responsible for keeping records of member and beneficiary information and transactions. The Scheme Manager is responsible for ensuring that record keeping processes are effective, that member data is regularly reviewed and evaluated, and that data is held for an appropriate length of time. In practice certain records are held by the Service and others are held by the Scheme Administrator.
- 3.5 The Scheme Manager is responsible for arranging Local Pension Board meetings in accordance with the constitution for the Local Pension Board.

This will include preparing agendas and ensuring that reports are provided to board meetings as required.

- 3.6 The Scheme Manager is responsible for keeping records of pension board meetings and decisions. This must include the date, time, and place of the meeting; the names of all pension board members invited to the meeting; the name of any person attending and in what capacity; the minutes of the meeting and any decisions made at the meeting.
- 3.7 The Scheme Manager is responsible for ensuring that pension board members do not have conflicts of interest and for managing any potential conflicts of interest.
- 3.8 The Scheme Manager is responsible for establishing and operating adequate internal controls to manage risks relating to the schemes. This will include having a process to identify, evaluate and manage risks as well as monitor controls.
- 3.9 The Scheme Manager is responsible for ensuring that pension contributions are paid into schemes on time and in full. This will include having a process to monitor payments and identify and resolve contribution payment failures. The Scheme manager must report significant contribution payment failures to the Pensions Regulator within 10 working days.
- 3.10 The Scheme Manager is responsible for making and implementing arrangements which comply with legal requirements for resolving internal disputes with members and others, and for regularly checking that the arrangements work effectively. This responsibility is delegated to the Head of HR Services.
- 3.11 Some of the responsibilities of the Scheme Manager are carried out by the Scheme Administrator on the Scheme Manager's behalf.

#### Local Pension Board:

- 3.12 The Local Pension Board is responsible for assisting the Scheme Manager in securing compliance with scheme regulations, governance and administration legislation and any requirements of the Pensions Regulator.
- 3.13 The Local Pension Board is responsible for establishing and maintaining a training and development policy and framework to address the legal requirement for board members to have sufficient knowledge and understanding to carry out their role.
- 3.14 Members of the Local Pension Board are responsible for the appointment of a Chair to the board in accordance with the constitution of the Local Pension Board.
- 3.15 Members of the Local Pension Board are responsible for declaring any potential conflict of interest arising as a result of their position on the board to the Chief Fire Officer.

3.16 Members of the Local Pension Board are responsible for participating in training and development as required to achieve sufficient knowledge and understanding to carry out their role.

#### Employer

3.17 The Employer is responsible for paying contributions into pension schemes and keeping and providing data to the Scheme Manager and / or the Scheme Administrator. This responsibility is delegated to the Head of Finance.

3.18 The Employer is responsible for dealing with disputes. This responsibility is delegated to the Head of HR Services.

3.19 The Employer is responsible for the administration of firefighter pensions. This activity is outsourced and responsibility for managing the contract is delegated to the Head of Finance.

#### All Roles

3.20 The Scheme Manager, members of the Local Pension Board, the Scheme Administrator and any Scheme Adviser are all responsible for reporting breaches of the law to the Pensions Regulator where that breach is likely to be of material significance.

Reviewed May 2019  
Becky Smeathers  
Scheme Manager

**LOCAL FIREFIGHTER PENSION BOARD OF NOTTINGHAMSHIRE AND CITY  
OF  
NOTTINGHAM FIRE AUTHORITY**

**CONSTITUTION**

**1. Statement of Purpose**

The purpose of the Board is to assist Nottinghamshire and City of Nottingham Fire and Rescue Authority (The Fire Authority) in its role as the Scheme Manager of the Fire Fighters Pension Schemes (1992, 2006, 2015 and Retained Modified). Such assistance is to:

- a) secure compliance with the Scheme's regulations, any other legislation relating to the governance and administration of the Scheme, and requirements imposed by the Pensions Regulator in relation to the Scheme.
- b) ensure the effective and efficient governance and administration of the Scheme.

**2. Duties of the Board**

The Board should at all times act in a reasonable manner in the conduct of its purpose. In support of this duty Board Members:

- a) should act always in the interests of the Scheme and not seek to promote the interests of any stakeholder group above another.
- b) should be subject to and abide by Fire Authority's Codes of Conduct for Members and Employees.

**3. Membership**

The Board will comprise an equal number of employer and member representatives with a minimum requirement of no less than four in total.

**4. Scheme Member Representatives**

- 4.1. 2 Scheme Member representatives shall be appointed to the Board by the 2 largest trades unions recognised by the Fire Authority who represent Scheme Members (i.e., FBU and FOA) but in default of any such appointments being made the Fire Authority shall invite expressions of interest from Scheme Members and appoint such Scheme Member representatives who it regards as best suited to the role of Board Member.
- 4.2. Scheme Member representatives shall be current Scheme Members.

- 4.3. Scheme Member representatives should be able to demonstrate their capacity to attend and complete the necessary preparation for meetings and participate in training as required.

## **5. Employer Representatives**

- 5.1. 2 Employer representatives shall be appointed to the Board by the Fire Authority.
- 5.2. Employer representatives shall be 1 Fire Authority Member and 1 Principal Officer provided that neither Officer nor Members exercise delegated responsibility for discharging the Scheme Manager function of the Fire Authority.
- 5.3. Employer representatives should be able to demonstrate their capacity to attend and complete the necessary preparation for meetings and participate in training as required.
- 5.4. Employer representatives shall be appointed by the Fire Authority in a manner which it considers best promotes the purpose of the Board.

## **6. Appointment of Chair**

- 6.1. The Board shall appoint its own chair for a period of 12 months rotating the appointment between scheme member representatives and employer representatives.
- 6.2. The duties of the Chair should be in accordance with the duties of a committee chair under the Fire Authority's Constitution.

## **7. Substitute Board Members**

- 7.1. The Board may appoint one substitute Scheme Member Representative and one substitute Employer Representative. Substitute representatives can take part in Board meetings only in the place of an appointed representative of the same group who cannot attend a meeting.
- 7.2. A substitute representative may attend, and participate in, any training events for Board members.
- 7.3. A substitute representative may attend a Board meeting as an observer, if all representatives of the same group are attending that meeting. In this situation, the substitute representative must not participate in the business of the meeting.

## **8. Notification of Appointments**

On appointment to the Board the Fire Authority shall publish the name of the appointees, the process followed in the appointment together with the way in which the appointments support the effective delivery of the purpose of the Board.

## **9. Conflicts of Interest**

- 9.1. All members of the Board must declare to the Chief Fire Officer on appointment and at any such time as their circumstances change any potential conflict of interest arising as a result of their position on the Board.
- 9.2. On appointment to the Board and following any subsequent declaration of potential conflict the Chief Fire Officer shall ensure that any potential conflict is effectively managed in line with both the internal procedures of the Fire Authority and the requirements of the Pensions Regulators codes of practice on conflict of interest for Board members.

## **10. Knowledge and understanding (including Training)**

- 10.1. Knowledge and understanding must be considered in light of the role of the Board to assist the Fire Authority in line with the requirements outlined in paragraph 2 above. The Board should establish and maintain a policy and framework to address the knowledge and understanding requirements that apply to Board Members. That policy and framework shall set out the degree of knowledge and understanding required as well as how knowledge and understanding is acquired, reviewed, and updated.
- 10.2. Board Members shall attend and participate in training arranged in order to meet and maintain the requirements set out in the Board's knowledge and understanding policy and framework.
- 10.3. Board Members shall participate in such personal training needs analysis or other processes that are put in place in order to ensure that they maintain the required level of knowledge and understanding to carry out their role on the Board.

## **11. Term of Office**

- 11.1. The term of office for Board Members shall be 2 Municipal Years and there shall be no restriction on reappointment at the expiry of a Board Member's term.
- 11.2. Board membership shall be terminated prior to the end of the term of office due to:
  - a) A Scheme Member representative ceases to be a Scheme Member.
  - b) An Employer representative ceases to be a Fire Authority Member.
- 11.3. Board membership may be terminated prior to the end of the term of office by a resolution of the Fire Authority where the Board Member is no longer able to



demonstrate their capacity to attend and prepare for meetings or to participate in required training.

## **12. Meetings**

12.1. The Board shall as a minimum meet 3 times per year.

12.2. The Chair, with the consent of the other Board Members, may call additional meetings. Urgent business of the Board between meetings may, in exceptional circumstances, be conducted via communications between members of the Board including telephone conferencing and e-mails.

12.3. Meetings shall be open to the public and shall be conducted in accordance with the Fire Authority's constitution as regards to the attendance of the public at meetings. Meetings will be advertised on the Service website at least one week prior to the date of the meeting with a link to the agenda, papers, and minutes of the previous meeting.

12.4. If there are any reports or papers containing confidential matters these will not be published. In this case the Board meeting will consist of part one for all non-confidential items, open to the public, and part two for all confidential items, closed to the public. Matters will be deemed confidential by reference to the personal data provisions of the Data Protection Act.

## **13. Quorum**

A meeting is only quorate when 4 members are present, 2 scheme member representatives and 2 employer representatives.

## **14. Voting**

14.1. The Board shall as far as possible make any decisions by consensus but where this proves not to be possible the Board may vote upon an issue.

14.2. Each Board Member shall have 1 vote and in the event of an equality of votes the Chair shall have a casting vote.

## **15. Support to the Board**

15.1. The Chief Fire Officer shall provide such support to the Board as it requires to discharge its functions.

15.2. The Board may request information from the Chief Fire Officer with regard to any aspect of the Scheme Manager function. Any such a request should be reasonably complied with in both scope and timing.

15.3. The Board may make recommendations to the Chief Fire Officer which should be considered, and a response made to the Board on the outcome within a reasonable period of time.

## **16. Relationship with Firefighters Pension Scheme Advisory Board**

16.1. The national Scheme Advisory Board has been established in accordance with the Public Service Pensions Act 2013 and its objectives include the provision of advice to Local Pension Boards in relation to the effective and efficient administration of the pension scheme. Communications from the Scheme Advisory Board are likely to be made via the Chair of the Local Pension Board who must ensure that the Fire Authority, as Scheme Manager, is kept informed of any new requirements.

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**Dated 8 October 2021**

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**MEMORANDUM OF UNDERSTANDING**

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## 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 21<sup>1</sup> 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:

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<sup>1</sup> 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.

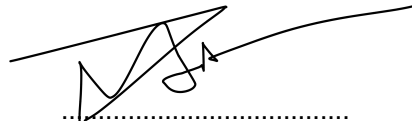
## **11 GOVERNING LAW AND JURISDICTION**

- 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**



.....

**GENERAL SECRETARY**

8 October 2021

#### CONTACT POINTS

##### **LGA**

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3HZ  
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##### **FBU**

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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]