
DRAFT

1. This COT3 is made between [the individual member] and Avon Fire Authority (“AFA”).

2.
 - (1) [the individual member]/was a firefighter employed by AFA. He/she wishes to retire on his/her full pension with effect from [] 2021.

 - (2) [the individual member] became, on his/hers appointment, a member of the FPS 1992. However, he/she did not qualify for full protection from being transferred into the FPS 2015 and was so transferred on [] under the age discriminatory protection provisions purportedly contained in Schedule 2 of S.I. 2014/2848 which Regulations were made under powers contained in the Public Service Pensions Act 2013.

 - (3) The effect of the Judgment of the Court of Appeal of 20 December 2018 in the case of Sargeant and McLoud and of the Judgment of the EAT of 12 February 2021 in the FRAs’ appeal in regard to Schedule 22 of the Equality Act 2010 is that those age discriminatory protection provisions are disapplied by law on the basis of the effect of Section 61 of the Equality Act 2010.

- (4) [the individual member's] circumstances arise in and out of the context of the multiple litigation known by the name of Sargeant and McLoud and the Government has committed itself to applying the effects of that litigation to all similarly affected pension scheme members whether they are actual Claimants or not.
- (5) As a result of the above, all who belonged to the FPS 1992 are deemed to be protected from transfer into the FPS 2015 and are therefore deemed never to have ceased to belong to the FPS 1992.
- (6) [the individual member] is an "immediate detriment" case within the Home Office Guidance of 21 August 2020 and the further Home Office Guidance dated 10th June 2021 and under that Guidance FRAs such as AFA are entitled if they wish during the period of 1 April 2015 to 31 March 2022 to allow those who had originally been members of the FPS 1992 to retire on pensions pursuant to the terms of the FPS 1992.
- (7) AFA does wish to allow [the individual member] to do so but only on the condition that [the individual member] enters into the terms of this COT3 and [the individual member] is agreeable to the above course.
3. AFA agrees to authorise payment of the full pension due to [] under the terms of the FPS 1992 when he/she retires after his final day of active service on []. However, AFA agrees so to act on the basis that, and in consideration of the fact that, [the individual member] agrees in exchange that he/she accepts and agrees to the fact that:-

- (1) the Government has made clear that its plans for reform of public service pensions and remedying the past age discrimination have not been finalised and it may be that that finalisation will entail that previous agreements and undertakings as to pension benefits will need to be revised and changed including, potentially, involving the reduction, or deferment, of benefits;
- (2) there are a number of issues that do or might arise in terms of seeking to treat those who had in fact been transferred into the FPS 2015 for a period as if they had always remained in the FPS 1992, such as is the case with [the individual member], that are unresolved and are uncertain, for example in regard to future tax liabilities or the need for members to make further pensions contributions or to repay monies into the FPS 2015 or FPS 1992 or make interest payments and it may be that [the individual member] will be subject to liabilities in regard to the above or in regard to similar, as yet unidentified, liabilities; and where an overpayment of pension contributions have been made or monies owed, then [the individual member] will be reimbursed.
- (3) further, there are some outstanding issues that, if they are found to apply to a particular case, may make it impractical at present for the intention to return members who had in fact been transferred into the FPS 2015 into the FPS 1992 and to treat them as if they had always remained in the FPS 1992 to be achieved. The above might apply to [the individual member] and/or might entail that existing calculations in

terms of pensions have to be modified and possibly reduced or deferred;

- (4) [the individual member] may be the party who is found to be liable to make the above payments or face the above liabilities or be subject to the above potential changes to, or deferment of, arrangements and payments in connection with pensions; (This should also make it clear that if the any calculations and payments may have to be modified and increased, then these payments will be
- (5) further, [the individual member] agrees that he/she will not seek to claim against AFA that it is AFA who is liable to make the above payments or to face the above liabilities and agrees that he/she will not bring proceedings against AFA in connection with any of the above matters and [the individual member] agrees that by this COT3 [the individual member] fully and finally settles any claims he/she might have against AFA in connection with the above. He/she does so in exchange for, and in consideration of, AFA agreeing to authorise payment of [the individual member's] pension under the FPS 1992 from [] as set out above. For the avoidance of doubt [the individual member's] agreement as set out above is given notwithstanding the terms set out at paragraph 3(3) above.
- (6) Any subsequent agreement/ or MoU reached between the FBU and Avon Fire Authority supersedes this local agreement and any such

agreement or MoU would be abided by in full by Avon Fire Authority,
including timescales.

SIGNED:.....

SIGNED:.....

SIGNED:.....

DATED:.....

DATED:.....

DATED:.....