

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

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## Background

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

This document makes reference to Category 1 (Cat 1) and Category 2 (Cat 2) cases. These are respectively those members who have not yet had benefits brought into payment and those who have had benefits brought into payment. For the avoidance of doubt, Category 2 includes members under the age of 55 who have a pension in payment under the FPS 1992 and a deferred pension under the FPS 2015. 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.

All active scheme members are now accruing service in the FPS 2015 from 1 April 2022. Only benefits accrued up to 31 March 2022 can be paid under legacy scheme terms. Benefits accrued after that date are paid as FPS 2015 benefits or deferred as such if the member is under age 55.

For the purposes of the IDF, FPS 2006 special members should be treated in line with FPS 1992 members.

Payments made under the IDF will either be a scheme payment and therefore from the pension fund account or an employer payment which cannot be met from the pension fund account. The table in [Annex 1](#) sets out which payments are from the pension fund account, and which are not. The table was amended in April 2022 to provide further clarification against each element.

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

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

The attention of FRA's is drawn to the note on late lump sums in [Step 6](#) which applies only to Category 2 members who left the scheme more than 12 months ago. This note does not impact on any other part of the framework, nor does it prevent or impinge on the preparatory work needed for late lump sums.

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

In the joint statement of 19 November 2021, the FBU indicated that members whose cases are not processed in line with the terms of the Framework may be assisted in submitting complaints to the Pensions Ombudsman (TPO), where compensation would be sought for the distress and inconvenience caused by late payment or non-payment.

More information on such awards can be found in the Ombudsman's [redress for non-financial injustice factsheet](#).

On 29 November 2021, the Home Office withdrew its informal and non-statutory guidance on processing certain kinds of immediate detriment case ahead of legislation, with immediate effect.

The rationale for the decision to withdraw the guidance was indicated as being based on HM Treasury's current best assessment on the advisability of processing immediate detriment cases<sup>1</sup>. The Home Office has stated that, although the decision remains for scheme managers to make, it does not advise schemes to process any immediate detriment cases before legislation is in place, given in its view the risk and uncertainty of correcting benefits before the Public Service Pensions and Judicial Offices (PSPJO) Bill, scheme regulations and relevant tax legislation are finalised and all come into force in or before October 2023.

Although the MoU and the accompanying framework is separate from, and is not subject to or dependent on, any guidance issued in relation to immediate detriment before the legislation comes into force, HMT's note is a cause of concern to FRAs who: (a) are considering adopting the framework; or (b) who have already adopted the framework (but have not reached a final settlement with individual scheme members pursuant to the framework on or before 29 November 2021).

HMT's note suggests that Section 61 cannot be relied upon to fully rectify a member's benefits and may have unintended and adverse tax consequences. It also

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<sup>1</sup> [HMT withdrawal of Home Office immediate detriment guidance](#)

indicates that members may face multiple corrections to their benefits once legislation is in place.

Concerns have also been raised regarding the Home Office's latest position on funding for immediate detriment, which was communicated with the Treasury's note:

"... As the Government does not advise that immediate detriment cases should be processed in advance of the legislation coming into force, we will not be in a position to provide any additional funding for those costs which are paid outside of the pension account. These costs include payments that are not considered to be legitimate expenditure under the pension scheme regulations and any associated administration costs including any charges from your pension administrator. These will need to be funded locally by your fire and rescue authority from local budgets.

In relation to immediate detriment costs paid from the pension account in the course of processing pipeline cases, FRAs will need to ensure that these payments comply with the financing regulations of the pension scheme. If they are considered to be legitimate expenditure then they will be considered for payment as part of the established processes for claiming the AME top up grant."

There has never been a guarantee that costs arising from the Sargeant legal judgment would be covered by government. However, the FRAs position has long been that the government must fund all the costs of remedy, and we have always made that clear in our discussions with government. Further the LGA has been working with Bevan Brittan for some time on recovering costs for FRAs, including under the New Burdens doctrine.

**If you are taking decisions on immediate detriment cases, you should speak to your Nominated Contact.**

[Following the withdrawal of the Home Office guidance, the Scheme Advisory Board wrote to HMT outlining the challenges faced by FRAs and requesting more information on the risks and uncertainties mentioned in their assessment.](#)

[On 23 March 2022, HMT provided a response outlining the factors behind the withdrawal in more detail. The response highlights that Section 61 of the Equality Act 2010 does not, in HMT's opinion, allow for amendment of a member's tax position. The response details several tax complexities which have been identified and will be dealt with through legislation.](#)

[While the Board welcomed the response, members were not content that all of the questions raised had been addressed satisfactorily, and that the tone of the letter was inconsistent – varying between what the implications 'would' or 'could' be. A further letter was submitted to HMT on 15 June 2022 seeking further clarity. A response is still awaited as at September 2022.](#)

[The LGA is continuing to explore with the FBU and respective legal representatives what, if any, amendments could be agreed to the Framework to minimise risk to FRAs and scheme members in light of recent statements from the Home Office and HMT, and which would further assist FRAs in being able to process immediate](#)

detriment cases under that Framework. This includes seeking specialist legal advice where necessary.

As previously advised, the FBU's position has long been that it will pursue legal action if immediate detriment issues cannot be resolved in a timely manner including using the MoU and Framework that were agreed in October 2021.

We are aware that FRAs may be receiving correspondence/ queries from scheme members or representative bodies regarding immediate detriment and future legal action by the FBU. We ask FRAs to be alert to the receipt of future claims brought on behalf of scheme members, and to inform the LGA immediately on such receipt.

TPO issued a factsheet on McCloud remedy in July 2022 which gives a useful insight into the Ombudsman's current position on immediate detriment related complaints.

## Adoption of the Framework

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

1. Obtain the necessary FRA agreement to make use of the IDF, involving the FRA's Nominated Contact for the purposes of the transitional protections claims. Although we understand that the FBU will be communicating the details of the IDF to their members, FRAs should ensure that they communicate the timeframe for this decision to all scheme members.
2. To assist FRAs with their decision on whether to adopt the IDF, the LGA pensions team has worked together with the NFCC to develop a modeller to forecast an FRA's potential financial liability when processing immediate detriment cases. Guidance on using the spreadsheet has been published, along with template spreadsheets, and is available to access via the age discrimination page in the member protected area of the FPS Regulations and Guidance website.
3. The spreadsheet has been designed to provide FRAs with a basic estimate of their financial exposure. It does not cover every eventuality and it is based on the LGA's current understanding of what the main financial liabilities could be, taking into account the recent statements from the Home Office and HMT. FRAs will need to carry out their own calculation of the actual sums due to any member wishing to adopt the Framework in respect of which the LGA assumes no liability.
4. Notify their administrator of their intention to make use of the IDF and the timescales contained.
5. **The FRA will need to discuss with the administrator the necessary resourcing and/or re-prioritising or work to ensure the IDF can be**

**delivered or if this is not possible arrange for alternative resourcing to deliver the IDF.**

6. If the decision is that the IDF will not be adopted, it will be for the FRA to make their own arrangements with regard to any claims and payments made by/to members in this area.
7. Once the IDF is adopted, scheme members should be made aware of their right to apply under the IDF and the local process for doing so through an appropriately widespread and proven means of communication. Such communications could include, for example, a note on payslips of all post 2015 pensioners and a page on the intranet for active members. They should also indicate that the scheme member will need to sign the Compensation Record (set out at Annex 3 of the MoU).
8. These communications should include at least the following information/ options:
  - i. The dates and rules for being in scope.
  - ii. The process for applying under the IDF – for example in writing/ by email/ completion of a form, and what information is required within the application. This could include the member’s personal details, date of joining, FPS scheme they were a member of, any previous public service pension membership, and the basis for the application i.e. ill-health pension not in payment, or revision of normal retirement.
  - iii. The potential for delay if incomplete or inaccurate information is supplied by the member (for example, if the member has public service pension membership that has not already been notified to the FRA).

## Implementing the framework

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

This document should be read in conjunction with the IDF, and particular attention is drawn to timescales in Annex 2 of the IDF.

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

1. Date of commencement in the FPS.
2. If the date of commencement is after 31 March 2012 and before 1 April 2015, the date of leaving any public service pension scheme in condition iii. below prior to the date of commencement in the FPS (the member will have to provide this if there is no record).

3. If the member is applying for retrospective ill-health benefits under the FPS 1992 the original report of the Independent Qualified Medical Practitioner's (IQMP) report (Cat 2 only). Note that FRAs were advised in [FPS Bulletin 28](#) to obtain IQMP assessments against both final salary and CARE schemes for current and new ill-health cases.

## **Step 2 Determine if member is in scope of the IDF**

1. To be in scope a member must meet all of the following conditions:
  - i. They must have pensionable service under FPS 2015 in the period beginning 1 April 2015 and ending 31 March 2022 (the remedy period).
  - ii. That service would have been pensionable service under FPS 1992 or FPS 2006 but for the person's failure to meet the condition relating to the person's attainment of normal pension age by a specified date. (i.e., they are unprotected or tapered members).
  - iii. They must have been, on 31 March 2012 or any earlier day, in service in any employment or office that is pensionable service under:
    - a) a public service legacy scheme,
    - b) a judicial legacy scheme or
    - c) A local government legacy scheme.
  - iv. There must not be a continuous break of 5 years or more without any pensionable service in the schemes listed in condition iii., from the last day of pensionable service in condition iii. to the first day of pensionable service in condition i.
2. If the member is applying for retrospective ill-health retirement under the FPS 1992, in addition to meeting the conditions above, they must also meet the qualifying conditions for ill-health retirement in that scheme.
3. If a Category 1 member meets each of the conditions above, they should be informed within 14 days of application that they are in scope of the IDF and that their options and figures will be available at the time they take their benefits. Although the steps below are not immediately required in these cases, FRAs are advised to begin the process set out in step 3 to ensure they have the necessary data in place when the member does take their benefits. The remainder of the steps should be followed once the member has notified the FRA of their intention to retire.
4. If a Category 2 member meets each of the conditions above, they should be informed within 14 days of application that they are in scope of the IDF and that their options and figures will follow.
5. If the member does not meet the conditions above, they should be informed within 14 days of application that that they are not in scope of the IDF and the conditions which they did not meet.

### Step 3 Data required for calculations of ID

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

1. Obtain a breakdown of the original benefit calculation to include:
  - i. The FPS 2015 pension and lump sum
  - ii. The total pensionable service, pensionable pay, commutation decision, pension, and lump sum in respect of the FPS 1992 or FPS 2006.
2. Determine the pensionable service which would have been accrued under the FPS 1992 or FPS 2006 during each year of the remedy period (the “remediable service”). For further information on pensionable service please see the [Age discrimination remedy data collection - Guidance for administrators and FRAAs](#).
3. Determine the appropriate pensionable pay and any Additional Pension Benefits (APBs) due for each year of remediable service. Any entitlement to a two-pension award should also be determined at this point. For further information on pensionable pay and two pensions please see the [Age discrimination remedy data collection - Guidance for administrators and FRAAs](#).
4. Determine the total gross contributions which were paid by the member during each year of remediable service
5. Determine the FPS 1992 or FPS 2006 employee contribution rates applicable to each year of remediable service as per the tables in the following links:  
[FPS 1992 contribution rates 2015/16 - 2021/22](#)  
[FPS 2006 \(standard\) contribution rates 2015/16 - 2021/22](#)  
[FPS 2006 \(special\) contribution rates 2015/16 - 2021/22](#)
6. Determine to what extent the member would have qualified for a contributions holiday during the remedy period. For further information on contribution holidays please see the [Age discrimination remedy data collection - Guidance for administrators and FRAAs](#)
7. If the member is applying on health grounds, determine if they would have qualified for ill-health retirement under the FPS 1992. See [FPS Bulletin 28](#) for more information on assessing current/ new or retrospective ill-health applications.
8. Obtain details of any transfers into the FPS 2015 scheme.



9. Obtain details of any contract in place to pay contributions for additional pension in the FPS 2015.
10. Obtain details of any divorce pension debit or scheme pays deductions in place.

#### **Step 4 Determine any change in Annual Allowance (AA)**

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

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

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

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

#### **Mandatory scheme pays (MSP)**

6. Section 237B of the Finance Act 2004 allows MSP where:
  - i. the tax charge is over £2,000, and
  - ii. the individual is subject the standard annual allowance (currently £40k)
  - iii. this relates to a single scheme and to the immediately preceding tax year.

7. If the conditions are met, then the scheme administrator becomes jointly and severally liable (with the member) for the annual allowance charge and must pay this to HMRC within a given timescale. They must also make a consequential adjustment to the member's pension savings or their benefits under the pension scheme.
8. MSP can only apply to the immediately preceding tax year, so MSP cannot be used to pay breaches of annual allowance in previous years within the remedy period.
9. For periods within the statutory time limits, where an individual has already used MSP, pension debits for previous years can be adjusted to accommodate any revisions to the annual allowance charge owed.

### Voluntary Scheme Pays (VSP)

10. Where in certain circumstances an individual cannot use MSP to pay a relevant HMRC tax charge, they may be able to use VSP, so called because the scheme can agree to voluntarily pay the tax charge and deduct from the member via the debit.
11. As a voluntary arrangement there are no conditions attached to it other than the scheme agreeing they can pay it.
12. However, under VSP the member is individually and solely liable and the charge must be paid within the normal HMRC rules for paying tax (31 January following the year of tax charge).
13. In May 2017, following legal advice a [technical note](#) was issued to confirm that FRAs were able to utilise VSP to pay tax charges on a member's behalf, and guidance was subsequently issued with [FPS Bulletin 4](#) including election forms for the member and scheme manager.
14. FRAs may now wish to re-visit the decisions they made about allowing VSP, to amend the conditions they apply to payments under VSP.
15. For more information on calculating the scheme pays debit see the [Tax charge debits \(scheme pays\) page](#) on the FPS Regulations and Guidance website

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

16. If the Annual Allowance was breached under the FPS 2015 benefits but is not breached or the breach is less under FPS 1992 or FPS 2006 benefits calculate any new amount of reduced pension deduction under mandatory scheme pays or voluntary scheme pays using the relevant scheme factors.
17. For more information on calculating the scheme pays debit see the [Tax charge debits \(scheme pays\) page](#) on the FPS Regulations and Guidance website.

18. If applicable, calculate the amount of compensation equal to the excess scheme pays deductions made as a result of 16 above since the member took their benefits.

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

1. Calculate FPS 1992 or FPS 2006 pension and any lump sum as if the member had continued in that scheme until the date they retired.
2. These calculations should be performed using the original commutation decision made by the member. Note that the effect of the Bill provision is understood to effectively return the member back to immediately prior their benefits coming into payment so they could, if they wish, revisit the commutation decision made at the time and should be informed accordingly as set out below.
3. If the member has applied to have their ill health decision and/or benefits revisited under the IDF then the FRA should reassess the qualification for ill health under the FPS 1992, including obtaining an IQMP determination if this is not already available, and if appropriate calculate the amount of benefits payable under that scheme.
4. If the FPS 1992 or FPS 2006 benefits are higher than those currently in payment, calculate the amount of arrears of pension and lump sum due.
5. Calculate interest on the arrears of benefits payable to the member at a rate of 3% per annum simple. Note this interest will be subject to tax at 20%, and the FRA will need to deduct that on paying it to the scheme member. Interest on pension arrears must be calculated for each month or part month at 3% simple (without compounding), for the period between the date of the original monthly pension payment and the date of the arrears payment.

### **Step 6 Calculate the lump sum unauthorised payment charge and compensation**

The process set out below was based on the proposal for remedy, as set out in the draft Bill, i.e. to compensate for the unauthorised payment charges on late lump sums. Since the publication of the framework, HMRC published a [policy document](#) and [Finance \(No.2\) Bill](#) which both indicated a move towards making payments of late lump sums authorised.

[The Finance Act 2022 received Royal Assent on 24 February 2022 and came into force on 6 April 2022. Sections 9 and 11 will have consequential impact on the 2015 Remedy for the FPS:](#)

[Section 9: Annual allowance deadlines. Deadlines for electing for scheme pays and associated payment and reporting deadlines will be extended for certain members who are informed of a change in pension input amount for a past pension input period.](#)

Section 11: Powers to change tax rules related to the McCloud remedy. The Act provides HM Treasury (HMT) with wide powers to make regulations to address tax impacts that arise as a result of implementing the McCloud remedy. Different regulations may apply to different public service pension schemes. The regulations may have retrospective effect.

Any measures will require secondary HMT legislation to implement, which is not anticipated to be consulted on until later in 2022. It is also expected that secondary scheme legislation will be needed to enact the amendments i.e. the tax rules will not be able to operate in isolation.

We ~~are currently seeking~~ have sought clarification on the extent and timing of the changes and therefore strongly recommend that FRA's do not make or commit to make any late lump sum payments while such clarification is being obtained. They should though continue to make the calculations for those lump sum payments and provide them to the member.

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

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

1. For each year of remediable service calculate the gross employee contributions due under the FPS 1992 using the appropriate pensionable pay and contribution rates. The effect of any contribution holidays should be ignored as any overpayment will be compensated for later in the process.
2. Compare the result with the actual gross contributions paid under the FPS 2015.

3. If the amount paid is less than amount due the member will owe an amount equal to the difference which they may elect to be deducted from any arrears of lump sum. If no lump sum is payable, the member will need to pay any contributions owed from their own resources and to be given a reasonable time to pay based on their individual circumstances.
4. Category 1 members can pay arrears through their pay or as a deduction from their pension commencement lump sum (PCLS).
5. Where an employee has contributed to the FPS 2015 but now owes additional contributions as a result of being treated as if they are in the FPS 1992, there appears to be two different ways FRAs are approaching category 1 cases:
  - i. Working out the net additional contributions due and deducting this from the employee (either through payroll or from the employee's<sup>2</sup> lump sum)
  - ii. Reimbursing the 2015 employee contributions (either as a refund or compensatory payment) and then deducting the gross 1992 employee contributions due.
- 4-6. The intention of the IDF is that FRAs apply a 'netting-off' approach, as refunding the contributions would constitute an unauthorised payment. This is consistent with the principles of the Bill (now the Public Service Pensions and Judicial Offices Act 2022).

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

1. It is important to be aware that this part of the process does not impact whatsoever on the amount of contributions paid into the scheme and does not constitute either a refund of contributions or a reconciliation of tax as if the contributions had not been made. It is designed to compensate the member for contributions which were overpaid and will remain so.
2. **The amount calculated in 8A and 8B below is payable as compensation for overpaid contributions NOT as a refund of contributions.**

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

3. For each year of remediable service calculate the gross employee contributions due under the FPS 2006 using the appropriate pensionable pay and contribution rates.
4. Compare the result with the actual gross contributions paid under the FPS 2015.
5. If the FPS 2015 contributions are greater than the FPS 2006 contributions, calculate a best estimate of the net amount of contributions overpaid. This

should be done using the marginal rate for the member at the time the contributions were deducted.

6. Calculate the gross compensation necessary to achieve the net figure in 5 above when applying the current marginal rate. If both rates are 20% the gross compensation will be the same as the gross contributions. If not, the gross compensation will need to be adjusted to result in the correct net outcome – see example below.
7. The amount deducted from the compensation should be withheld until the tax position of compensation is clarified by legislation. If this does not happen before the tax becomes due, the FRA should contact the member to agree that it should be paid to HMRC on their behalf to avoid any tax liability falling on the member.

### Examples of compensation calculation

#### Example 1

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

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

#### Example 2

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

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

#### Example 3

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

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

### Step 8B – Contributions holiday for an FPS 1992 member

8. Under the terms of the FPS 1992 the maximum pensionable service that a member can accrue is 30 years' service, while the earliest point at which they can retire is at age 50. This means that some scheme members – mainly those who joined before age 20 – must continue to pay employee contributions beyond the point of accruing maximum pensionable service but before they are able to retire.

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

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

1. The member should be notified of the results of the calculations and their options within 62 days (unless a revised medical opinion is required) of the date of application, in particular:
  - i. A statement of the benefits available under the FPS 1992 or FPS 2006, to include any dependents benefits available.
  - ii. The amount of arrears of pension and lump sum if the FPS 1992 or FPS 2006 benefits are higher than those currently in payment (Cat 2 only).
  - iii. Their right to revisit their original commutation decision, noting that such a revisit will delay the process as new calculations will be required (Cat 2 only).
  - iv. The amount of any unauthorised payment charge due to exceeding the maximum tax-free lump sum.

- v. An estimate of any new, or increase or decrease in any existing, breach of the Annual Allowance together with any scheme pays deduction.
  - vi. The amount of underpaid gross contributions which will be deducted from the arrears of lump sum (or PCLS for Cat 1 members).
  - vii. The amounts of any compensation for late payment of lump sum unauthorised payment charges, overpaid contributions, or excess scheme pays deductions.
  - viii. The amount of interest on the appropriate elements of the above amounts.
2. The member should also be provided with:
- i. The option to elect for benefits under the IDF and the Compensation Record (set out at Annex 3 of the MoU).
  - ii. A mandate for deducting unauthorised payment charges from the lump sum arrears.
  - iii. The option to deduct any underpaid gross contributions from the arrears of lump sum or PCLS. If the member does not elect for this, they must be informed that they will be required to pay the gross amount of contributions to the FRA directly.
  - iv. The option to confirm no change to the original commutation decision. If the member wishes to change their commutation decision, they should be notified that further calculations will be required which will delay the payment of arrears.

### **Step 10 – Payment of sums due**

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

#### **Step 10A – Business as usual (Cat 1)**

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

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

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

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

3. Arrears of pension and lump sum should be paid to the member within 28 days of their election.



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

## Governance

1. FRAs will need to ensure that the details of calculations, how they applied before remedy, and the underpinned benefits on the reformed basis are properly recorded to enable any rectification needed or answer questions once the legislation comes into force.
2. Local Pension Boards (LPBs) may want to consider what assurances they can seek that additional processes are in place to check decision making.
3. LPBs will also want to assure themselves that TPR requirements are being complied with. Particularly to ensure:
  - i. The policies in place to support the [six key processes](#) TPR use to measure performance are updated to ensure they take account of immediate detriment decision making and payments.
  - ii. How [breaches of law](#) will be recorded and reported to TPR.
  - iii. How immediate detriment data will be measured as part of the TPR [data scoring requirements](#), without automated systems, and methods to record the data.

## FAQs

**Q1: Why does the IDF apply to retrospective retirements when the Home Office guidance indicates that these should be excluded from scope?**

A1: The three High Court test cases that were brought by the FBU all related to retrospective retirements (see 4.2 of the MoU), as could future claims. Therefore the Framework needed to make provision for members who have already retired to have their benefits remedied. This is consistent with the application of section 61 of the Equality Act 2010 which means that individuals have the right to be treated as though they have been in service in their legacy scheme since 1 April 2015, if that is what they want and they inform the scheme of this.

It should be noted that the information provided by the Home Office is informal guidance only and as per clause 2.2 of the MoU, it is “separate from, and is not subject to or dependent on, any guidance issued in relation to “Immediate Detriment” before the Remediating Legislation comes into force”.

**Q2: Where the IDF is adopted, does it apply to all eligible scheme members regardless of trade union membership?**

A2: The Framework discussions initially arose from the High Court cases brought by the FBU. Where an FRA adopts the Framework it can be applied to all affected people regardless of any union membership, subject of course to an affected individual also undertaking the responsibilities applicable to them such as signing the Record of Compensation at Annex 3 of the MoU.

**Q3. How was the interest rate of 3% simple on sums due to members arrived at?**

A3. Our understanding is that a range between base rates and inflation is under consideration by government as the basis for interest in the remediating legislation. According to the Office for National Statistics, RPI increased by around 3% pa since 2015 but obviously base rates were lower, so there is a possibility that the interest will be over that required by legislation.

While there is inevitably some uncertainty, importantly FRAs adopting the Framework will reduce the period for which interest is due when making payments, as well as reducing the risk of future legal action against them and the significant cost associated with that.

**Q4. Does the withdrawal of the Home Office informal guidance on 29 November 2021 affect the application of the Framework?**

A4: If you are taking decisions on immediate detriment cases following the withdrawal of the guidance, you should speak to your Nominated Contact.

**Q5. Is there any clarification on what is treated as “legitimate expenditure” for the AME top-up grant process?**

A5: Legal advice has not been sought on what would be considered legitimate expenditure for the AME top-up grant process. The Home Office has been clear that it is for FRAs to determine what are legitimate pension costs based on their interpretation and application of the scheme regulations and associated finance

guidance<sup>2</sup>. All costs will be captured under the AME top-up grant if they are considered legitimate pension expenditure. Our understanding remains that this includes arrears of pension and lump sum where they are paid under section 61 of the Equality Act 2010, which allows individuals to be treated as having remained in their legacy scheme and having a benefit paid under those regulations.

**Q6. Does the MoU cover Cat 1 cases retiring after 31 March 2022 as they will not be able to take full benefit from legacy scheme?**

A6: As detailed above, transitional members will be able to draw all benefits accrued up to 31 March 2022 from the relevant legacy scheme. Benefits built up from 1 April 2022 can be paid under the FPS 2015 if the member is aged 55 or over, otherwise they will become deferred. Note that members who were fully protected and remained in their final salary scheme until 31 March 2022 do not meet condition ii, and are therefore not in scope of the IDF.

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<sup>2</sup> [Guidance for FRAs on new financial arrangements for firefighter pensions with effect from April 2006](#)

## ANNEX 1 payments

Issue	Category 1 cases	Category 2 cases	Payment type	<u>Technical/ practical issue and proposed resolution (if any)</u>	<u>Potential risk and liability to FRA</u>
Shortfall in retirement lump sum and past pension payments	Retirement lump sum and benefits paid on retirement through Legacy scheme (so that no shortfall arises).	Pay as lump sums (comprising pension lump sum and arrears lump sum likely made in two payments) through the 1992 scheme (as arrears). Pension arrears will be subject to PAYE, but if any additional income tax is payable by the member that would not have been payable if the member had never been treated as a member of the 2015 Scheme, the FRA will compensate the member for that tax liability.	Scheme benefit payable from the pension fund account under Section 61 Equality Act	<p><u>Member may have a different tax code in force than when employed due to other income. Arrears of pension may push member into a higher tax bracket. Member may receive compensation from FRA and then also seek to recover from HMRC through self-assessment (would only be able to apply for in-scope years).</u></p> <p><u>FRA to provide breakdown of arrears relating to respective years, if requested. Member to evidence that they have paid more tax than otherwise would have been the case.</u></p>	<p><u>Cat 1: Payment of pension should provide least financial risk as no tax issues are involved. Likewise payment of lump sum.</u></p> <p><u>Cat 2: Payment of pension arrears could pose risk to FRA's that any income tax compensated for may not be recoverable.</u></p> <p><u>Likewise, payment of lump sum arrears is complicated by UPC if relevant date is more than 12 months ago.</u></p> <p><u>Potential liability is 55% of lump sum arrears.</u></p>

Interest on shortfall in retirement lump sum and past pension payments	No interest due because correct lump sum and pension benefits will be paid on retirement.	Interest paid at 3% p.a. simple, from the date lump sum / benefits should have been paid.	Non scheme benefit. Compensation for loss payable under section 92 of the Local Government Act 2000 and Article 7(7) of The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012.	<u>Inconsistency in application</u>  <u>As member benefits will have to be revisited under final remedy, interest to be corrected on a consistent basis at that time.</u>	<u>Significant financial risk to FRA of not being able to recover amounts paid as compensation. –</u>  <u>Potential liability is amount of interest paid</u>
Employee contributions: 1992 Scheme	Member pays shortfall (since 2015) through pay or as a deduction from retirement lump sum.	Member pays any shortfall (since 2015) as a deduction from retirement lump sum. If no lump sum is payable, the member will need to pay any contributions owed from their own resources and to be given a reasonable time to pay based on their individual circumstances.	<u>Net additional contributions due from the employee are to be credited to the pension account. There are no payments to be made from the pension account as employee contributions to FPS 2015 are to be treated as if they had been made to the FPS 1992.</u> <u>N/A</u>		<u>FRA may become liable to compensate the member for any tax charge imposed by HMRC.</u>  <u>Potential liability is 20% (minimum) of total contributions paid to FPS 2015.</u>  <u>Potential tax risk to member of contributions being deemed as not attracting tax relief.</u>

Employee contributions: 2006 Scheme	Compensation for excess contributions to be paid on retirement. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.	FRA to pay compensation for excess contributions. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.	Non scheme benefit. Compensation for loss payable under section 92 of the Local Government Act 2000 and Article 7(7) of The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012.		<p><u>Significant financial risk to FRA of not being able to recover amounts paid as compensation.</u></p> <p><u>FRA may become liable to compensate the member for any tax charge imposed by HMRC.</u></p> <p><u>Additionally, potential tax risk to member of contributions being deemed as not attracting tax relief.</u></p>
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</p>	Compensation for any tax relief foregone will be paid to the individual when the remedying legislation is in force. So, for now, individuals will pay the gross amount of contributions due.	N/A – will be dealt with when legislation is available		<p><u>FRA liable to compensate member for any adverse tax consequences.</u></p> <p><u>Potential risk to member if PAYE position is altered.</u></p>

	facilitate payment through PAYE.				
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.	N/A		<u>N/A</u>

Interest payable on adjusted employee contributions – compensatory amount (2006 Scheme)	Interest to be paid to the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation).	Interest to be paid to the individual once the remedying legislation is in force (and at the rate specified in directions made under that legislation).	N/A – will be dealt with when legislation is available		<u>N/A</u>
Contribution holidays: excess employee contributions	Compensation for excess contributions to be paid on retirement. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.	FRA to pay compensation for excess contributions. Amount paid will be FRA's best estimate of an amount equivalent to the net contributions paid by the member.	Non scheme benefit. Compensation for loss payable under section 92 of the Local Government Act 2000 and Article 7(7) of The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012.		<p><u>Significant financial risk to FRA of not being able to recover amounts paid as compensation.</u></p> <p><u>FRA may become liable to compensate the member for any tax charge imposed by HMRC.</u></p> <p><u>Additionally, potential tax risk to member of contributions being deemed as not attracting tax relief.</u></p>
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	Deal with as and when arises.	N/A		<u>N/A</u>



	solution arrives.				
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 charge that is demanded (or any excess over the lesser charge that would have applied).</p>	<p>Non scheme benefit.</p> <p>Compensation for loss payable under section 92 of the Local Government Act 2000 and Article 7(7) of The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012. Only relates to compensation for AA charges that would not have arisen save for the discrimination.</p>		<p><u>Significant financial risk to FRA of not being able to recover amounts paid as compensation.</u></p> <p><u>Potential liability is amount of compensation paid.</u></p> <p><u>Risk to member that any overpaid AA charges for out-of-scope years will not be compensated until legislation in place.</u></p>

	charge that is demanded (or any excess over the lesser charge that would have applied).				
Scheme pays (MSP/VSP)	Member pays tax through VSP for statutory taxyears for which it becomes due.	Member pays tax through VSP for statutory taxyears for which it becomes due.	N/A		<p><u>Risk to member of interest charged for late payment of AA charges.</u></p> <p><u>FRA may become liable to compensate the member for any interest charged.</u></p> <p><u>Risk mitigated by The Registered Pension Schemes (Miscellaneous Amendments) Regulations 2022.</u></p>
Converting scheme pays debits	FRA to recalculate the pension debit as if taken at time of original scheme pays election using actuarial factors applicable at time.	FRA to recalculate the pension debit as if taken at time of original scheme pays election using actuarial factors applicable at time.	N/A	<p><u>If a breach didn't originally exist but there is now a breach on a legacy basis, use factors in force at time that breach would have occurred and member's age at that point.</u></p>	N/A
Converting pension sharing debits	Deal with on a case-by-case basis as issues arise.	Deal with on a case-by-case basis as issues arise.	N/A	<p><u>Members may have a part or full share awarded against FPS 2015 benefits and these will no longer exist. Benefits are actuarially calculated</u></p>	<p><u>Members may have a part or full share awarded against FPS 2015 benefits and these will no longer exist. Benefits are actuarially calculated and taken into account by</u></p>

				<p><u>and taken into account by court as part of wider settlement. Additional costs incurred by members if need to reopen divorce proceedings</u></p> <p><u>Only an issue where share is specified to be deducted from FPS 2015. Ex-spouse should receive the benefit of higher CETV. Refer member back to solicitor with revised CETV to determine redress, as FRAs do not have legal powers to amend terms of court order. The costs of that would be a loss flowing from the discrimination so part of consequential loss in the ET proceedings.</u></p>	<p><u>court as part of wider settlement. Additional costs incurred by members if need to reopen divorce proceedings</u></p> <p><u>Only an issue where share is specified to be deducted from FPS 2015. Ex-spouse should receive the benefit of higher CETV. Refer member back to solicitor with revised CETV to determine redress, as FRAs do not have legal powers to amend terms of court order. The costs of that would be a loss flowing from the discrimination so part of consequential loss in the ET proceedings.</u></p>
Dependents	Deal with on a case-by-case basis as issues arise (and in accordance with the timeframes set out in Annex 2	Deal with on a case-by-case basis as issues arise (and in accordance with the timeframes set out in Annex 2 where reasonably practicable).	Scheme benefit payable from the pension fund account under Section 61 Equality Act		<u>N/A</u>

	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).	N/A	<u>All members will now have tapered.</u>	<u>N/A</u>
Unauthorised payments	N/A	The FRA will compensate the member for unauthorised payment charges which the member has had to pay and which he or she would not have had to pay if the member had not transferred to the 2015 Scheme.	Non scheme benefit. Compensation for loss payable under section 92 of the Local Government Act 2000 and Article 7(7) of The Localism Act 2011 (Commencement No. 6 and Transitional, Savings and Transitory Provisions) Order 2012.		<u>Significant financial risk to FRA of not being able to recover amounts paid as compensation.</u>  <u>Potential liability is 55% of lump sum arrears.</u>  <u>Await legislation to implement powers provided by FA 2022.</u>