



To: The Fire Minister

CC: Chief Secretary to the Treasury and Economic Secretary to the Treasury

18 July 2024

Dear Dame Diana,

I am writing on behalf of the Firefighters' Pensions (England) Scheme Advisory Board (the SAB) to congratulate you on your appointment as Minister of State for Crime, Policing and Fire. We look forward to working with you and would like to seek your earliest possible assistance on some fire industry-specific roadblocks that are being encountered in the implementation of the McCloud/Sargeant Public Sector Pensions Remedy. These are explained further below as well as some background to the SAB itself.

The remit of the SAB comprises two elements:

- The purpose of the Board is to provide advice in response to a request from the Secretary of State on the desirability of making changes to this scheme and any connected scheme.
- To provide advice to scheme managers and local pension boards in relation to the effective and efficient administration and management of this scheme and any connected scheme.

The Government confirmed in a [written ministerial statement on 15th July 2019](#) that it accepted that the [Court of Appeal's judgment in Lord Chancellor v. McCloud \[2018\] EWCA Civ 2844, \[2019\] ICR 1489](#) ("McCloud") had implications for all schemes established under the Public Service Pensions Act (PSPA) 2013, since all of those schemes had provided transitional protection arrangements for older members. The Government confirmed that it would take steps to address the difference in treatment across all those schemes.

The Public Service Pensions and Judicial Offices Act 2022 ([PSPJOA](#)) applies to all the main Public Service Pension Schemes and received Royal Assent in March 2022. It provides the necessary powers to make consequential changes to Public Service Pension Schemes by 1 October 2023. Chapter 1 of the PSPJOA provides the framework for the remedy, including provision to make changes to Public Service Pension Scheme rules. Further amendments are required to those rules, including those of the Firefighters Pension Schemes, to implement the government's remedy.

HM Revenue and Customs (HMRC) have made, and are making, regulations which make changes to the tax framework because of the Public Service Pensions remedy. These regulations give pension scheme administrators details of additional tax changes they will need to consider as a result of remedy.

Given their remit, the SAB has been following the emerging issues from HM Treasury and HMRC regarding the gaps in legislation which are preventing the fire sector from providing an Immediate Choice Remediable Service Statement (IC-RSS) to all affected members, as required by the PSPJOA. IC-RSSs are needed to ensure that those affected members in receipt of pension can make an informed choice between their existing and remedied benefits within 18 months of 1 October 2023. We understand that the legislative gaps were only fully recognised as an issue by HM Treasury and HMRC in quarter 1 of this calendar year, some 4 to 6 months into the remedy implementation period.

Our colleagues at the Local Government Association (LGA), who provide the secretariat for the Board – as well as an advisory and support service for FRAs – inform us that this specific gap in legislation affects previously retired members who, at the point of original retirement, elected for a lump sum over the HMRC maximum allowance and subsequently paid an unauthorised tax charge. To put a quantum on this, approximately 1500 members of the fire scheme are affected. The reason that such unauthorised charges are an everyday feature of the Firefighters' Pension Scheme 1992 is a result of the interaction between the design of its benefits and subsequent changes in the pension tax regime. From 2011 when commutation factors used to exchange pension for a lump sum rose in line with falling interest rates, above the tax mandated figure of 20, such unauthorised payments have been commonplace for our scheme. It is our understanding that this is also the case for the Police Pension Scheme but not any other public sector pension scheme.

Unfortunately, this has so far been missed in the implementation of the remedy as it appears that the tax regulations were not amended to offset the new unauthorised payments arising from breaching the revised Pension Commencement Lump Sum (PCLS), against the original payments. This fails to put members back in the position they would have been had the discrimination not occurred – a fundamental principle of remedy – and retired with the full payment of their pension. This creates significantly complex and burdensome administrative processes.

It has been confirmed by HM Treasury and HMRC that further legislation will be needed for the offsetting provision which will allow the sector to remedy the members who fall into this scenario and that such legislation is not expected until 2025. Although the legislation is welcome it does not resolve our immediate problem and it does bring the final implementation date of 31 March 2025 into doubt. Furthermore, the industry had hoped to produce the IC-RSSs as soon as possible given the length of time since the original age discrimination was accepted to have occurred. Bearing in mind that we are now 10 months into the implementation phase, the SAB has significant

concerns about how those affected are being impacted by this issue, and notes that a Select Committee reviewed the adverse impact of delays for the police schemes in May.

I am aware that you will have many other claims on your time and attention and apologise for the technical nature of this letter. However, with over half the time to implement the McCloud/Sargeant remedy having already passed until we reach the deadline imposed on us by HM Treasury, it is vital that these issues are dealt with as a matter of urgency. After the hiatus caused by the election, our hope is that the new government can provide the fire sector with the authority and comfort it needs to act ahead of legislation coming into force. We therefore ask for you to explore with your pension policy colleagues other solutions which are at your disposal. For example, a formal assurance that affected cases could be processed ahead of amending legislation would be gratefully received.

I look forward to hearing from you and would be happy to provide you with any further information that you may require.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Joanne Livingstone', written in a cursive style.

Joanne Livingstone  
Chair of the Firefighters' (England) Pension Scheme Advisory Board