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Sent by email to: Henry Elks, HM Treasury

Cc: The Home Office Police Workforce and Professionalism Unit

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Dear Mr Elks

Thank you for your reply of 23 March 2022 to my letter of 17 December 2021. This has been discussed at the Firefighters' Pensions (England) Scheme Advisory Board meeting at which it was suggested that the letter could be used to potentially seek further advice on specific points that were raised and taken into account for any possible revisions to the Framework agreed between the FBU and the LGA. However, I thought it would also be useful to revert to you on some of the statements made in your letter.

In particular, I wondered if I might ask again about your statement that Section 61 of the Equality Act 2010 cannot mitigate all of the consequences that arise from the legislation and that further legislation is required. This does seem to be at odds with the finding of the EAT in February 2021 which seemed to suggest that schemes would have a power under Section 62 to make the necessary alterations.

I note the comments around the difficulties regarding the tax system and would make the following points:

- In some places you refer to certain consequences which "could" arise and in other those that "would" arise. Does this mean that there is, in HMT's opinion, legal certainty in every instance where "would" has been used?
- I am not certain of the significance of the remark that the tax system requires certainty about the nature of the payments paid to and from pension schemes in the past since it is the rectification rather than the past payments which are the issue.

- You noted that processing the cases without the full remedy legislation including on tax could lead to disadvantageous outcomes, but it is not clear from this comment or indeed the remark about compensation how this operates to prevent partial rectification being carried out.
- One of your examples related to the issue on tax relief for members who paid contributions to the reformed scheme. I questioned whether there might be a work around in my original letter but the comments in your response appear to suggest that Section 61 could only be applied to assume members had never left the legacy scheme. Might not Sections 61 and 62 give more flexibility than this, such as scheme managers being able to make resolutions to reopen the schemes and make partial transfers. Thus, it would be worth exploring whether it might be possible to retain the member contributions in the reformed scheme and treat them as securing a cash equivalent type benefit with the legacy scheme topping this up to the level that would have applied without the discrimination. Indeed Sections 31 and 32 of the Public Service Pensions and Judicial Offices Act would seem to give an easy route to unravelling this purely notional split once the legislation is in force. This then would remove all of the problems raised in Section 1 and potentially Section 4 and Section 5 of your letter.
- Simultaneous membership of both schemes as noted above might also resolve the problems you refer to in Section 2 of your letter.
- Under Section 3 it is important to distinguish between processing immediate detriment cases who have not yet retired and those who have already retired. The impact of the Finance Act 2022, which we understand may allow measures to allow unauthorised payments to be treated as authorised payments with retrospective effect, should also be taken into account.

In the light of the above, I would welcome your thoughts on whether less tax adverse mechanisms for rectification might be available or brought forward.

Yours sincerely



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