

Meeting of the Board 24 March 2022

## Abatement – TPO determination

### Introduction

1. A recent Pensions Ombudsman determination has been made in respect of abatement in the Firefighters' Pension Scheme 1992: [PO-25374](#).
2. This paper provides a summary of the determination, consequential impact on FRAs, and an update to the [draft abatement guidance](#) provided to the Board in December.

### Summary

3. An FRA identified a re-employed pensioner who should have been abated on reemployment but wasn't and, as a result, an overpayment of pension was identified, which the FRA sought to recover. The member challenged this as they believed that the FRA had a duty of care to alert them at the outset that their pension would be abated.
4. The complaint was partially upheld. The Ombudsman determined that the FRA didn't have an additional duty of care to the member other than the requirement to provide factually correct information.
5. The complaint was upheld to the extent that the FRA did not follow reasonable process when exercising their discretion under rule K4 of FPS 1992 and making its decision to abate the members pension, due to the fact of applying a 'blanket policy'.
6. The member was awarded a £500 payment for distress and inconvenience and the FRA was directed to review its decision.

### Legal opinion

7. The secretariat sought a view from the SAB's legal adviser on the application of blanket policies and any requirement for FRAs to amend their internal processes. A secondary question was also put forward on any retrospective application.
8. The response confirmed that the determination is supported by case law on exercising discretions, and the process that should be followed. The main issue being the FRA had a blanket policy which stipulated abatement would apply. This meant that there was no room for 'discussion' in terms of the circumstances in which abatement would not apply.

9. The Board's legal advisor confirmed that it would have been fine for the policy to state that only in exceptional circumstances would abatement not apply, but even then, the FRA would need to show on a case-by-case basis that consideration was given as to whether any exceptional circumstances existed.

## Action for FRAs

10. A dedicated [abatement refresher](#) 'coffee morning' session was held on 25 January 2022 to inform stakeholders of the determination.
11. FRAs were advised in [FPS Bulletin 54](#) to review all existing policies on abatement and make necessary changes to ensure that proper consideration is taken when agreeing whether abatement should apply. It was also recommended that FRAs formally document each decision to evidence that they have made an informed decision.
12. In addition, it was suggested that FRAs may now wish to revisit previous decisions and possibly 'correct' any prior procedural deficiencies by now considering whether any 'exceptional circumstances' (as outlined in the FRAs policy) apply. If there are and were 'exceptional circumstances' that existed, then the FRA would need to address those on a case-by-case basis.

## Abatement guidance

13. The agreed draft abatement guidance will be updated to reflect the Ombudsman's determination and clarify the expectation of FRAs' abatement policies and procedures.

## Board actions

14. The Board is asked to note the contents of this paper.