



# Firefighter Pension Scheme Age Discrimination Remedy - Compensation Guidance for Scheme Managers

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## Introduction

1. This document sets out the process by which a scheme manager of the Firefighters' Pension Scheme will exercise the power in [section 23\(1\)](#) of the [Public Service Pensions and Judicial Offices Act 2022](#) (PSPJOA 2022) – The Act - to pay compensation in respect of compensatable financial losses incurred by members, or in the case of deceased members, their personal representatives, that are not rectified by a member's immediate or deferred choice and the provisions of [The Firefighters' Pensions \(Remediable Service\) Regulations 2023](#) ("2023 Regulations").
2. This document is intended to provide clarity and be used as a guidance tool for scheme managers about the compensation scheme rules, process and decision making.
3. On 10 March 2022 the [PSPJOA 2022](#) gained Royal Assent. This put in place a legal framework to rectify the unlawful discrimination identified by the Sargeant/ judgment, in which the Court of Appeal found that the transitional protections provided when reformed public service pension schemes were introduced in 2015 were discriminatory. These transitional protections allowed older pension scheme members to continue building pension benefits in legacy public service pension schemes, whereas younger pension scheme members, without protection, were moved into the reformed schemes.
4. Powers are given to scheme managers to pay compensation in respect of compensatable losses by the Act and Treasury Direction.
5. This document seeks to provide guidance on how the principles of [The Public Service Pensions \(Exercise of Powers, Compensation and Information\) Directions 2022](#) – The Directions - are translated to provide a compensation scheme for scheme members of the Firefighters' Pension Scheme(s), and to support scheme manager level decisions where there is discretion to do so.
6. Scheme managers are strongly encouraged to follow this guidance to help ensure consistency both locally and nationally. If there is a departure from this national guidance, the scheme manager should assess any implications of doing so and is encouraged to satisfy both themselves and the Local Pension Board (LPB) that an alternative approach is appropriate. Scheme managers are encouraged to document and report any decisions made, including the reasons behind the decision to the LPB, this is to ensure that an adequate audit trail is available.

## Legislation

### The Act

7. [Section 23](#) of the [PSPJOA 2022](#) provides a permissive power for scheme managers to pay compensation in respect of compensatable losses incurred by members because of the discrimination, or because of putting members in the same pension position they would have been in but for the discrimination.
8. According to the [PSPJOA 2022](#) losses are compensatable if they meet the description set out in the [Public Service Pensions \(Exercise of Powers, Compensation and Information\) Directions 2022](#) and one of the following applies:

- i. The loss is attributable to the breach of the non-discrimination rule that arose from the application of an exception to [Section 18\(1\)](#) of the [Public Service Pensions Act 2014](#) (i.e. the transitional protections which were found to be unlawfully discriminatory through the [Sargeant judgment](#)) [\[\(23\(4\)\)\]](#)
  - ii. The loss is attributable to the application of any provision of, or made under, [Chapter 1](#) of the [PSPJOA 2022](#) (i.e. the application of the remedy as required by the Act) or [Scheme Regulations](#) which implement the remedy set out by the act. [\[\(23\(5\)\)\]](#)
  - iii. A [Part 4 tax loss](#) (a specific tax loss where HMRC's statutory time limits do not allow for correction of the amount of tax paid). [\[\(23\(6\)\)\]](#)
9. Compensation should **not** be paid where a member has already received compensation for the loss in question (e.g. pursuant to a court order), or a member has owed an amount to the scheme that has been reduced by an amount in respect of the compensatable loss.
10. [Section 24](#) of the [PSPJOA 2022](#) allows for scheme regulations to make provisions in respect of compensatable tax losses incurred by members. Instead of the member being paid direct compensation in these circumstances, the scheme manager pays compensation indirectly in the form of reducing or cancelling a scheme pays debit.

## The Directions

11. [Treasury Directions \(8 to 11\)](#) provide principles and detail about the scenarios in which scheme managers may pay compensation using [section 23](#). There is no discretion in the [PSPJOA 2022](#) for scheme managers to compensate for Sargeant-related losses outside the scope provided in the Treasury Directions.
12. There are five relevant Directions for compensation, which are:
1. [Direction 8](#) - Sets out the power to pay compensation and sets out ten principles.
  2. [Direction 9](#) - Describes a compensatable loss as being either a direct financial loss or a specified part 4 tax loss. The Directions refer to specific tax loss scenarios, but no specific scenarios of compensatable direct financial losses are provided.
  3. [Section 10](#) - Indirect compensation.
  4. [Direction 11](#) – Indirect compensatable losses.
  5. [Direction 18](#) – Sets out the process to apply for a compensation claim.

## HM Treasury Principles

13. The powers set out by [section 23](#) of the [PSPJOA 2022](#) give scheme managers the power to compensate members in accordance with the principles in the Directions.
14. To class a claim as eligible for an award of compensation, the scheme manager should satisfy themselves that the claim meets the principles set out in [Direction 8](#) of the [Treasury Directions](#). These principles are:

- a) Have regard to the purpose of the compensation: -
- If the loss is attributable to the discrimination identified by the Sargeant judgement, compensation should only be paid to put the member into the position they would have been in had the discrimination not occurred.
  - If the loss is attributable to the remedy itself or a tax loss, compensation should only be paid as is necessary to compensate the member reasonably in respect of the loss. For the purpose of determining a tax loss, [direction 18\(2\)](#) sets out that a calculation must be obtained by HMRC.
- b) Comply with the principle of regularity: -
- The scheme manager must have regard to any applicable legislation and wider legal principles.
- c) Comply with the principle of propriety: -
- The scheme manager must have regard to maintaining high standards of public conduct, ensuring robust governance, and ensuring compliance with any applicable financial controls or reporting obligations.
- d) Comply with the principle of value for money: -
- The scheme manager must have regard to whether, in comparison to a reasonable alternative option or doing nothing, any payment of amounts by way of compensation delivers value for the Exchequer and taxpayers as a whole.
  - Have regard to the particular circumstances of the member (or 'person' as referred to by HMT Directions - if different i.e. nominated person, estate).
- e) Have regard to whether there is sufficient evidence available to establish: -
- whether any of conditions set out in paragraph 8 are met,
  - whether the loss is of a nature described in the Treasury Directions (see below), and
  - the quantum of the compensatable loss.
- f) Have regard to whether such a claim would be awarded if brought in litigation and if so the likely amount to be awarded.
- g) In determining the amount to be awarded, whether and to what extent the member has, or should have, taken reasonable steps to mitigate the loss.
- h) Ensure any payment of compensation is reasonable and proportionate to the loss incurred by the member (or their personal representative).
- i) Not make a payment that gives an unreasonable financial advantage compared to what would have happened had the discrimination not occurred.

## Scope of the compensation scheme

15. [Direction 9](#) sets out that a compensatable loss is where there is a direct financial loss or a specified [Part 4](#) tax loss:

*“9.— (1) For the purposes of section 23(3)(b) of PSPJOA 2022, a loss incurred by a member, or by a member’s personal representatives, is compensatable if and to the extent that it falls within one of the descriptions in paragraph (2) to (4).*

*(2) A loss falls within this paragraph where the condition contained in section 23(4) of PSPJOA 2022 is met and the loss is— (a) a direct financial loss, or (b) a specified Part 4 tax loss.*

*(3) A loss falls within this paragraph where the condition contained in section 23(5) of PSPJOA 2022 is met and the loss is— (a) a direct financial loss which is directly related to the member’s remediable service in an employment or office which is mixed service, or (b) a specified Part 4 tax loss.*

*(4) A loss falls within this paragraph where the condition contained in section 23(6) of PSPJOA 2022 is met, and where the loss is a Part 4 tax loss which falls within the description in paragraph (5). “*

## Direct financial loss

16. The compensation scheme should compensate pension scheme members (or their beneficiaries) for direct financial losses they have suffered because of either the discriminatory transitional protections, or any provisions in the [PSPJOA 2022](#) or [The Firefighters’ Pensions \(Remediable Service\) Regulations 2023](#).

## Part 4 Tax Loss

17. The compensation scheme should also compensate members for any relevant [part 4](#) tax losses.
18. Paragraph 9 of [section 23](#) sets out that a part 4 tax loss is a reference to incurring a charge or not being entitled to tax relief or less tax relief under [Part 4 of the Finance Act 2004](#).
19. In accordance with [direction 8\(6\)](#) of the Treasury Directions the scheme manager may only pay the amount determined to be compensatable by virtue of [section 23\(1\)](#) of [PSPJOA 2022](#) in respect of a Part 4 tax loss to the extent that the compensatable loss relates to;
- a) a tax charge which the member originally paid directly to HMRC in money, or
  - b) tax relief.
20. For the purpose of determining a tax loss, in line with [direction 18\(2\)](#) a calculation must be obtained from HMRC.

21. Where an Immediate Choice member has incurred a compensatable loss that is a Part 4 tax loss, the member is not entitled to receive a compensation payment under [Section 23](#) of the [PSPJOA 2022](#) in respect of the relevant loss.
22. Instead, the member will have their Firefighters' Pension Scheme benefits increased to reflect the relevant loss.

## Eligibility

23. An application under this scheme may only be made by—
- An eligible remedy member; See [Age Discrimination Remedy – Eligibility factsheet](#)
  - A personal representative of a deceased eligible remedy member; or
  - A designated person (who has ordinary or lasting power of attorney), where the eligible remedy member is not deceased.
24. An eligible remedy member is someone who meets the criteria for remedy as set out in [section 1](#) of the [PSPJOA 2022](#):
- a. Condition 1 – is that the service is during the period 1 April 2015 to 31 March 2022.
  - b. Condition 2 – is that the service is pensionable under a [Chapter 1](#) Legacy Scheme or would have been pensionable under the Legacy Scheme if the discrimination had not occurred.
  - c. Condition 3 – is that the person was on or before 31 March 2012, in service in any employment or office that is pensionable service under a [Chapter 1](#) Legacy Scheme.
  - d. Condition 4 – is that there is no disqualifying gap in service falling with the period. This condition requires that the individual should not have a gap in service of five years or more i.e., between 31 March 2012 or, if earlier, the date they left service, and the date of re-joining.

## Compensation Categories

25. Within both a financial loss and a Part 4 tax losses, there are different categories of how the claim should be dealt with.
- i. **Automatic** These do not require the member to make a claim, eligible members will be compensated automatically.  
  
Where a member is eligible, these Claims should be routinely awarded compensation. We expect these cases to be of higher volume and reportable as members who qualify for a compensation refund should easily be identified.
  - ii. **Anticipated claims – with evidence.** It is expected that these claims are more likely to be for something specific which is clearly identifiable and will be expected to be paid where the member has provided suitable evidence of a financial loss that satisfies the scheme manager that such a loss should be compensated for.

While this is not an exhaustive list, these are likely to be one or more of the following categories: -

- Need for accountancy/actuarial services.
- Need for independent financial advice.
- Need for legal services (excluding those associated with litigation).
- Direct financial loss.
- Part 4 Tax Loss.

This does not include a payment for information or services that in the opinion of the [decision maker](#) the applicant could have reasonably obtained from the scheme manager of the Firefighters' Pension Scheme without charge.

**Within these claims, it is expected that there will be some claims that could be valid but will be harder to evidence.**

- iii. **Not payable** – These are claims that are not supported by the powers of the [PSPJOA 2022](#) or the directions.

26. More detailed examples of each of these categories are set out in the [appendix](#).

## Arrangements for payment

27. The scheme manager must pay the amount determined to be compensatable as soon as reasonably practicable:

- a) after the written notice of determination has been issued, or
- b) where the scheme manager requires the applicant to provide further information to facilitate the payment, after receipt of that information.

28. Where the compensatable loss is in respect of an Immediate Choice Member, the scheme manager will consult with the Scheme Actuary to determine how the amount of benefit payable is to be increased in accordance with [Paragraphs 10\(2\) to \(4\) of direction 10](#).

## Compensation Process

### Process steps

29. The principles that must apply to the process to apply for compensation are set out in paragraphs 1 to 6 of [direction 18](#), which can be broadly described as:

- i. [Para 1] – Scheme manager to set out the form and manner of the compensation process.
- ii. [Para 2] - An application for Tax loss should include, either a calculation obtained by HMRC or a signed declaration by the member/personal representative that information is accurate to the best of their knowledge and belief.
- iii. [Para 3] The scheme manager must determine the amount of financial loss.



- iv. [Para 4] An explanation of the relevant amounts must be provided.
  - v. [Para 5 & 6] Allows for an appeal.
30. The regulations do not set any specific requirements about the timing of accepting claims, other than the coming into force of the [PSPJOA 2022](#) and the Directions from 1 October 2023. However, to ensure the evidence provided with the claim is as accurate as possible, we would encourage claims to be submitted within six months after a member has made a [section 6](#) (immediate choice) or [section 10](#) (deferred choice) election, although later applications should be accepted.
31. As different aspects of the discrimination and the remedy will affect members at different points in time (i.e. rollback, return of contributions, Remedial Service Statement (RSS) receipt, HMRC Calculator), it is appropriate that members be able to submit separate claims for different direct financial losses during their lifecycle.

**Step 1: Claim form to be completed by applicant**

32. In accordance with [Treasury direction 18 \(1\)](#), compensation can only be awarded if an application (claim) is made in such form and manner as determined by the scheme manager. Where the initial evidence provided by the claimant is unclear or incomplete, the scheme manager should liaise with the claimant to secure further information, if available, to develop the case before deciding.

**Step 2: Acknowledge receipt of claim form – ten working days**

33. The scheme manager should acknowledge receipt of the [compensation claim form](#) within ten working days and notify the member of the latest point when they can expect to receive a decision about whether their claim has been accepted or not.

**Step 3: Review compensation claim and evidence, make decision and determine the amount – two months**

34. In accordance with [direction \(18\(2\)\)](#) any tax loss must be determined by HMRC, accompanied with a signed declaration by the member/personal representative that information provided is to the best of their knowledge complete and accurate.
35. In accordance with [direction 18 \(3\)](#) the scheme manager must determine the amount owed to the person following receipt of a claim.
36. This means that the scheme manager must indefinitely hold a record of the claim and the decision, such that no member can be compensated more than once for any specific loss.

**Step 4 - Notify applicant of outcome – ten working days**

37. In accordance with [direction 18 \(4\)](#), an explanation of the determination as to how much compensation is to be paid (if any) must be provided by the scheme manager.
38. This would also be expected to be used in reporting to Home Office and LPB.

**Step 5: Appeal process**

39. As set out in paragraphs 5 & 6 of [direction 18](#), the person submitting the claim must be able to appeal this determination by notice in writing and present a reasoned explanation of an alternative amount supported by relevant evidence.

Upon receipt of an appeal the scheme manager must decide whether to alter the determination and provide to the member:

- I. an altered determination or confirmation of whether the original determination still stands;
- II. a reasoned explanation of the decision; and
- III. a description of the Internal Dispute Resolution Process (IDPR) arrangements.

## Evidence

40. Where the claim relates to direct financial loss, the claim should be handled first by the scheme manager. Evidence in relation to eligibility for compensation should be gathered through a claim form.
41. When considering this guidance with regards to evidence, decision makers should have regard to the [Home Office consultation response, paragraph 6.172](#) that 'scheme managers need to be able to consider individual cases when making certain decisions, rather than a blanket set of rules applying'.
42. Evidence should include a detailed explanation of the financial loss incurred and the amount.
43. To validate the claim, scheme managers may need to instruct the services of an actuary or legal professional.
44. [Direction 8, 1h](#) requires a scheme manager to have regard to whether a person could have mitigated their loss:

"In determining the quantum of the compensation, have regard to whether, and to what extent, the member (or, if different, the person to whom the amounts by way of compensation are to be paid) has, or should have, taken reasonable steps to mitigate the loss."

An example of where a member could mitigate their loss is where a member fails to take reasonable steps such as funds a direct payment of annual allowance tax charge through a loan or sale of assets instead of using scheme pays.

A wider example of mitigating a financial loss is the [pension ombudsman](#) example to reduce financial loss:

*"If you have been made aware by your pension provider that they have been overpaying your benefits, you should also take any steps you can to reduce your financial loss. For example, if you had booked a holiday which you would not have booked if you knew that you were receiving the overpayments, and it is possible to cancel it, you should do so."*

45. [Direction 18\(2\)](#) confirms how to evidence a Part 4 tax loss:

*(2) Where the relevant amounts owed by the scheme to a person by virtue of section 23(1) or 24(1) of PSPJOA 2022 are in respect of a specified Part 4 tax loss mentioned in direction 9(6)(a) or (b) or 11(4)(a) or (b), the application mentioned in paragraph (1) must include the following—*

(a) a calculation obtained by the appropriate person from HMRC (by virtue of HMRC's compensation function by virtue of section 104 of PSPJOA 2022) of any compensation or any indirect compensation owed by the scheme to the person in relation to each out-of-scope tax year,

(b) a signed declaration by the appropriate person that the information provided to HMRC in order to obtain the calculation mentioned in paragraph (2)(a), and the calculation itself, is correct and complete to the best of their knowledge and belief, and

(c) a warning that, if false information is given, the appropriate person signing the declaration mentioned in paragraph (2)(b) may face civil action or prosecution, or both.

46. All claims will need to provide clear evidence of a direct financial loss (such as a receipt, invoice, or bank transaction) as well as justification as to how that loss is attributable to one or all of the conditions set out by [section 23](#) of the [PSPJOA 2022](#).

- The loss is attributable to the breach of the non-discrimination rule that arose from the application of an exception to [Section 18\(1\)](#) of the [Public Service Pensions Act 2014](#) (i.e. the transitional protections which were found to be unlawfully discriminatory through the [McCloud judgment](#)). [\[\(23\(4\)\)\]](#)
- The loss is attributable to the application of any provision of, or made under, Chapter 1 of the [PSPJOA 2022](#) (i.e. the application of the remedy as required by the Act) or [Scheme Regulations](#) which implement the remedy set out by the act. [\[\(23\(5\)\)\]](#)
- A [Part 4 tax loss](#) (a specific tax loss where HMRC's statutory time limits do not allow for correction of the amount of tax paid). [\[\(23\(6\)\)\]](#)

## Decision making

47. The scheme manager, is determined under [regulation 4](#) of the [Firefighters' Pension Regulations 2015](#).

48. The [PSPJOA 2022](#) and the directions require the scheme manager to make decisions about compensation claims, and to consider appeals.

49. On the matter of scheme manager discretion, in the [Home Office consultation response, paragraph 6.148](#) Home Office said:

*“On scheme managers having discretion, this is a consequence of the complexity and variety of individual circumstances. Scheme managers need to be able to consider individual cases when making certain decisions, rather than a blanket set of rules applying”*

50. To ensure the same person does not consider both a compensation claim and an appeal under the schemes Internal Dispute Resolution Process, it is recommended that the scheme manager use the power to delegate functions under [regulation 5](#) to an appropriate decision maker to make decisions for the scheme manager with regards to compensation claims. This person would be considered the decision maker for the compensation scheme.

51. When exercising the power to pay amounts by way of compensation, the decision maker must act in accordance with [direction 8](#) of the Treasury Directions.
52. A decision maker may request such further information from the applicant as they consider appropriate.
53. The relevant decision maker will always be a representative of the current scheme manager, who is the most recent employer of the member.
54. If a claim has been received and/or a decision is made on a member's compensation claim, the scheme manager must hold a record of the claim and the decision, such that no member can be compensated more than once for any specific loss.

## Record keeping

55. [Section 23 \(13\)](#) prevents double recovery, therefore a payment will not be made in the following circumstances for compensatable loss.
  - a) has previously made an application in respect of the same compensatable loss under this Scheme irrespective of whether or how that application was finally disposed of; or,
  - b) has received a payment for the same compensatable loss, outside of this Scheme, which is greater than the loss for which they are claiming.
56. To ensure that a scheme manager can comply with [Section 23 \(13\)](#), this requires robust record keeping procedures to record claims made, decisions and amounts paid.
57. Automatic claims for compensation refunds should be easy to identify and reportable, it is likely that Home Office will expect these cases to be reported on a regular basis.
58. Scheme managers will need to consider GDPR requirements and discuss with administrators who will be responsible for storing records.
59. Local Pension boards will want to consider how they expect to be updated on compensation claims made and awarded.
60. Scheme managers should refer to [Home Office funding guidance](#) on the expected reports and accounts they expect scheme Managers to submit in order to pay the compensation.

## Internal Dispute Resolution Process (IDRP)

61. An applicant who is dissatisfied with a decision may raise an appeal against that decision through the existing IDRP process.
62. It is recommended that scheme managers should consider whether their current IDRP processes are sufficient. Consideration should be given to the fact that, under the IDRP, the scheme manager may be asked to reconsider a decision which they previously made under this process. FRAs are encouraged to consider whether this seems fair and reasonable, if it is deemed not to be then FRAs should consider who is the most appropriate person to hear each stage of the IDRP.

63. An appeal under IDRPs should be made in writing and in such form as the scheme manager determines and be accompanied by the grounds on which the appeal under IDRPs is sought, including in accordance with [Direction 18\(5\)](#) a reasoned explanation of a proposed alternative amount and any supporting evidence.
64. An appeal under IDRPs should be received by the scheme manager within six months of the applicant having received the decision which is to be disputed.
65. An appeal under IDRPs will be considered by an appropriate person other than the person who made the decision about the compensation claim. The appropriate person will not be bound by any previous determination made in connection with the application.
66. The appropriate person should notify the applicant in writing of the determination of the appeal under IDRPs within two months, providing an explanation of their decision.
67. If an applicant is dissatisfied with a decision on an appeal under IDRPs they may make a complaint to the Pensions Ombudsman, and this right to complain should be explained to the member in the decision letter with the relevant contact details.

## Out of Scope

68. Compensation cannot be paid out where a member has already received compensation for the loss in question (e.g. pursuant to a court order), or a member has owed an amount to the scheme that has been reduced by an amount in respect of the compensatable loss.
69. [Treasury Directions 8 to 11](#) provide principles and detail about the scenarios in which scheme managers may pay compensation using [section 23](#). There is no discretion in the [PSPJOA 2022](#) for scheme managers to compensate for Sargeant-related losses outside the scope provided in the Treasury Directions.

## APPENDIX

### Examples of types of claims

70. All claims should be considered by the scheme manager on their own merits, examples of typical claims are listed below, but it should be noted this is **not** an exhaustive list.

### Automatic – Payable without the need for a claim

71. Claims that describe a scenario outlined below should be routinely awarded compensation without the need for a claim. We expect these cases to be of higher volume and reportable as we can easily identify members who qualify for a compensation refund.

72. In some scenarios members can choose not to receive the compensation payment immediately and instead keep on the record in anticipation of choosing 2015 benefits at retirement.

### Compensatable refunds

73. To remain an authorised payment, situations where a refund of contributions is necessary to rectify the discrimination are to be treated as compensation.

- a) FPS 2006/Special FPS 2006 transition members who are returned to FPS 2006/Special FPS 2006 legacy scheme will receive a refund of overpaid FPS 2015 contributions.
- b) Transitional members of FPS 2015 who paid added pension in FPS 2015 during the remedy period will receive a refund of FPS 2015 added pension contributions that they paid during the remedy period. This is covered in detail within the [Added Pension compensation scheme manager and administrator guidance](#).
- c) FPS 1992 legacy members who choose FPS 2015 benefits when they make their [Section 6](#) (Immediate Choice members) or [Section 10](#) election (Deferred Choice members) will receive a refund of FPS 1992 overpaid contributions.
- d) A protected or taper protected member who commenced a contract to pay legacy scheme added years contributions during the remedy period, but later chooses reformed scheme benefits at retirement will receive a refund of any added years contributions.
- e) Tax relief for non-active members.

All non-active contributions, excluding opted-out service reinstatement pre and post remedy.

## Anticipated claims – with evidence

74. Claims should be considered based on the facts of the case, and it is therefore difficult to provide a definitive list, however some claims can be anticipated over others, and these are likely to be accepted if evidence of financial loss can be provided.
75. All claims will need to provide clear evidence of a direct financial loss (such as a receipt, invoice, or bank transaction) as well as justification as to how that loss is attributable to the discrimination identified by the McCloud judgment or its remedy.
76. Anticipated claims would fall into the following categories:
- I. Accountancy and Actuarial Services.
  - II. Independent financial advice.
  - III. Legal services (excluding those associated with litigation).
  - IV. Financial Loss.
  - V. Part 4 Tax Loss.
77. This does not include a payment for information or services that, in the opinion of the [decision maker](#), the applicant could have reasonably obtained from the scheme manager of the Firefighters' Pension Scheme without charge, such as the following documents:
- I. Factual information.
  - II. RSS.
  - III. Pensions Savings Statement (PSS).
  - IV. Information request from scheme manager for use with HMRC calculator.

## Accountancy and Actuarial services

78. Where a member seeks reimbursement for engaging with a suitably qualified accountant or actuary to help them calculate a new or revised tax charge due to the remedy. Some members will see a change in benefits whichever Sargeant choice is made, and as such the inputs to that paid for advice will no longer be correct.
79. Where an unprotected or taper protected member seeks reimbursement for the employment of accountancy or actuarial services to support the completion of a revised tax assessment if completion of the assessment with support was necessary for the member to access their full remedy. We would not expect members to be left out of pocket in their efforts to access their full remedy entitlement.

## Independent Financial Advice

80. Whilst most members should not need independent financial advice to enable them to make an informed Sargeant choice, in cases where members did pay for advice both on their original benefit crystallisation event, and subsequently paid for advice for their Sargeant choice, we would not expect members to pay for both pieces of advice. Were it not for the discrimination and remedy, the member would have only paid for such advice once, and scheme managers should reimburse the member for the original advice to avoid the member paying twice.

81. In limited cases where the RSS for some small cohorts of members is particularly complex, members may need to take independent financial advice to compare options under the legacy and reformed scheme. such as the following:

- Members who have a contingent decision.
- Members who are entitled to ill-health benefits in the alternative scheme.
- Members who have Lifetime Allowance (LTA) protections.
- Members who will have a new or revised tax charge because of going back to the legacy scheme.
- Members who have a pension sharing order.
- Members who are affected by both Matthews and Sargeant remedies.

## Legal services

82. In most cases a member will not need to use legal services to rectify a divorce as the policy position automatically provides the pension credit member with the alternative higher amount. The member can choose as part of their remediable choice to take legacy or reformed benefits.

83. However, there may be a limited number of cases where the original divorce court order may need to be re-examined and the member must use legal services to understand how a divorce affects their pension benefits.

## Financial loss

84. Where an unprotected or taper protected member seeks reimbursement for a direct financial loss suffered due to the remedy.

85. This is most difficult to predict, as it will be related to the circumstances of individual members.

86. Examples of where a member has suffered a financial loss could be:

- I. A loss of tax relief on contributions had they been made during the remedy period. – Active members will be given tax relief through PAYE or self-assessment based on their circumstances at the time of making the contribution. If they would have received more tax relief if they had made the contribution during the remedy period, they could claim compensation for that amount, on the provision of relevant evidence.

## Part 4 Tax Losses

87. [Part 4](#) Tax losses will be paid on receipt of evidence of the loss.

88. In accordance with [direction 18 \(2\)](#), where the compensation is related to a tax loss, the application, must contain either confirmation that the calculation has been obtained from HMRC or a signed declaration that all information is given in the best of knowledge and belief.



89. Where the member is an Immediate Choice member, they will not be paid a compensatable loss, but instead, in accordance with [direction 10\(2\) to \(4\)](#), the scheme manager will need to consult with the Scheme Actuary to determine the amount of the increased benefit that is to be paid to reflect the compensatable loss.

### Less straightforward claims

90. Other claims maybe harder to anticipate or have aggravating factors that will require further evidence. These should be considered based on the facts of the case.

91. The following should be considered when assessing a claim:

- I. Independent financial advice to support routine Sargeant choices where a member seeks reimbursement for employment of an independent financial advisor to advise on their Sargeant choice, where there are no complexities such those listed for [limited RSS cases](#).

RSS' facilitating choice on retirement or retrospective choice will be accompanied by guidance. It is not expected that advice of an independent financial advisor to be needed for a member to make an informed Sargeant choice.

- II. Where an unprotected or taper protected member seeks reimbursement for a direct financial loss suffered to directly pay an annual allowance tax charge which they could have reasonably mitigated.

For instance, a member may have been left out of pocket after taking out a loan or selling an asset to fund the direct payment of an annual allowance tax charge, however they could have mitigated the loss by using the scheme pays facility to pay the charge.

### Not payable – These are claims that are not supported by the powers of the Act or Directions

92. Compensation for payments for professional advice or services that could have reasonably obtained from the scheme manager of the Firefighters' Pension Scheme without charge.

93. Compensation cannot be paid out where a member has already received compensation for the loss in question (e.g. pursuant to a court order), or a member has owed an amount to the scheme that has been reduced by an amount in respect of the compensatable loss.

94. Compensation can't be paid to immediate choice members for unauthorised payment tax charges that arise on:

- I. Interest payments due on arrears of lump sum and or arrears of annual pension, or,
- II. Additional lump sum payments paid above the Pension Commencement Lump Sum that if they were paid at the time would have normally attracted an unauthorised payment tax charge.

95. Any claim where the member's financial loss is an indirect or a hypothetical financial loss rather than a direct financial loss. Indirect financial losses could flow from a member's employment choices related to the discrimination or the remedy. For instance, the member claims they would have worked more or less hours or would have changed or not changed jobs, would have retired earlier or later and such decisions have had an indirect financial consequence rather than an out-of-pocket expense (i.e. lower salary, loss of protection status).
96. Compensation should not be paid to taper protected immediate choice members whose benefits reduce regardless of whether they elect for legacy or reformed scheme benefits. Doing so, would undermine the legislative purpose of remedy by putting the taper protected members in an advantageous position and perpetuate the discrimination.
97. Compensation will not be paid for legal services fees that are incurred by a member in the case of litigation.