



**DORSET & WILTSHIRE
FIRE AND RESCUE
AUTHORITY**

Item 22/15

MEETING	Dorset & Wiltshire Fire and Rescue Authority
DATE OF MEETING	9 February 2022
SUBJECT OF THE REPORT	Update on Age Discrimination Remedy - Implementing the Immediate Detriment Framework.
STATUS OF REPORT	For open publication with Exempt Appendix which is not for publication – Local Government Association note – subject to legal privilege
PURPOSE OF REPORT	To note and approve
EXECUTIVE SUMMARY	<p>In 2015 many public service pension schemes, including the Firefighters Pension Scheme (FPS) were reformed. These reforms included ‘transitional protection’ for those closest to retirement.</p> <p>In 2018, the Court of Appeal ruled that the transitional protection element constituted unlawful age discrimination. To resolve the age discrimination a process of ‘remedy’ is required to ensure all scheme members are treated fairly by removing the discrimination.</p> <p>A Memorandum of Understanding – Immediate Detriment Framework has been jointly developed by the Local Government Association (LGA) and the Fire Brigades Union (FBU) to achieve the remedy in a consistent manner whilst awaiting the enactment of forthcoming pension legislation.</p>

	<p>An information note from HM Treasury (HMT) and HM Revenue & Customs (HMRC) was issued on 29 November 2021 advising that they had withdrawn their guidance and advised fire and rescue authorities to not make any immediate detriment payments until the appropriate legislation is in place.</p> <p>In response to this the LGA has sought legal advice on behalf of authorities. The advice, which is subject to legal profession privilege, has now been provided.</p>
<p>RISK ASSESSMENT</p>	<p>In not applying the framework, further legal action could be taken by the Fire Brigades Union and result in further litigation costs.</p> <p>Individual pension scheme members could also make a complaint/referral to the Pension Ombudsman.</p>
<p>COMMUNITY IMPACT ASSESSMENT</p>	<p>Not applicable</p>
<p>BUDGET IMPLICATIONS</p>	<p>Processing the cases of staff about to retire will bring forward some costs that would otherwise have been paid later in the remedy process. It should also mean that some costs to the Service are reduced, such as interest on overpaid pension contributions, as the period over which interest is calculated is reduced.</p> <p>Any payments that are made outside of the pension account would not be recompensed by the Government.</p>
<p>RECOMMENDATIONS</p>	<p>Members are asked to:</p> <ol style="list-style-type: none"> 1. Note the contents and appendix of this report. 2. Agree that the Service recommence processing the cases of staff about to retire (Category 1) in line with immediate detriment principles but avoid any payments that would trigger tax complications or incur unfunded costs for the Authority. 3. Agree that further decisions regarding the approach to be taken to immediate detriment, including the timing of when the cases of staff who have retired (Category 2) (staff who have retired) will be

	processed, are delegated to the Chief Fire Officer in consultation with the Treasurer and the Monitoring Officer.
BACKGROUND PAPERS	DWFRA Fire Authority Paper 21/58 - Age Discrimination Remedy - Implementing the Immediate Detriment Framework (IDF) – 15 December 2021
APPENDIX	Appendix A - Local Government Association note – subject to legal privilege – not for Publication under Paragraphs 1 and 3 of Part 2 Schedule 12A Local Government Act 1972.
REPORT ORIGINATOR AND CONTACT	Name: Jenny Long, Director of People Services Email: jenny.long@dwfire.org.uk Tel no: 01722 691000

1. Introduction

- 1.1 At the Authority meeting on 15 December 2021 Members received a report on the Age Discrimination Remedy – Implementing the Immediate Detriment Framework (IDF).
- 1.2 Section 4 of that report advised that on 29 November the Home Office issued a note regarding the processing of immediate detriment cases.
- 1.3 The note advised that further work carried out by HM Treasury (HMT) and HM Revenue & Customs (HMRC) when drafting the legislation to implement the remedy had highlighted significant gaps and uncertainties about the tax implications of following the Home Office guidance. It further advised *“Because of this, HMT’s current view is now that immediate detriment cases, including those yet to retire, cannot be processed before legislation is in place without considerable risk, uncertainty and administrative burdens for individuals, schemes and employers.”* As a result, the note recommended *“Therefore HMT and Home Office do not advise that schemes process pipeline immediate detriment cases before the legislation is in place.”*
- 1.4 In response to the HMT and HMRC note the Service paused processing any retirements in line with immediate detriment.
- 1.5 The LGA advised that it was seeking legal advice on behalf of fire and rescue authorities.

2. Legal advice sought by LGA

- 2.1 On 17 December 2021 an LGA note regarding the issues to consider when taking decisions on immediate detriment cases was sent to the nominated contact in each fire and rescue authority.
- 2.2 The LGA advised that information note should be shared on a ‘need to know’ basis for the purposes of taking decisions on immediate detriment cases as it was strictly confidential and subject to legal privilege.
- 2.3 In essence the LGA note acknowledges that the Immediate Detriment Framework guidance is still available to authorities should they consider it in their best interests considering the costs and outcomes of potential legal cases and potential industrial relations issues. However, it also acknowledges that if cases are processed before the remedying legislation is in place there are significant financial risks that should be considered.

- 2.4 HMT and HMRC have also been clear that should authorities process pensions in line with the IDF it will not recompense any payments that are outside of the pension account. In the main, the payments that sit outside the pension account relate to the taxation liabilities associated with the payment of additional lump sums for those who have already retired (Category 2 cases), reconciling pension contributions and various compensation payments that authorities will have to make. The payment of lump sums and annual pensions for current staff who have yet to retire (Category 1 cases) can legitimately be charged to the pension account.
- 2.5 The Authority therefore needs to strike a balance between the risk of potential legal action from the FBU as a result of not implementing the IDF and the financial risks associated with making payments without the remedying legislation being in place.

3. Processing Immediate Detriment cases

- 3.1 The Service had commenced processing pensions for staff about to retire (Category 1 cases) in line with immediate detriment. The Service paused this process in light of the publication of the HMT and HMRC information note.
- 3.2 The Service had not yet processed the cases of any retired staff (Category 2 cases) as these cases are more complex to resolve.
- 3.3 If the Service were to recommence processing pensions for those staff about to retire, in line with immediate detriment, then the members of staff would retire with their pension 'remedied' and with the correct lump sum and annual pension. There would be taxation implications for historic pension contributions and compensation payments to be dealt with but at this stage we would only process pensions where any taxation issues can be processed through payroll and therefore not presenting a financial risk to the Authority. No compensation payments will be made at this stage as they will not be funded by the Home Office. The individual would also need to sign an agreement similar to that set out in Annex 3 of the Memorandum of Understanding in which they would have to accept that any tax liabilities are their sole responsibility and that they understand that these liabilities would have to be revisited when the full pensions remedy legislation is in place.

4. The approach taken by other Fire Authorities

- 4.1 Whilst the information note was issued in December 2021, there does not appear to be one clear and consistent approach being adopted by fire and rescue authorities. Immediate detriment remains a dynamic issue, yet at the same time staff are retiring and will become increasingly frustrated that a remedy has not been set in place in a timely fashion.

5. Recommended approach

- 5.1 With that in mind it is recommended that Members agree that the Service recommence processing the cases of staff about to retire (Category 1) in line with immediate detriment principles but avoid any payments that fall to us and would trigger tax complications or incur unfunded costs.
- 5.2 It is also recommended that further decisions regarding the approach to be taken to immediate detriment, including the timing of when the cases of staff who have retired (Category 2) will be processed, are delegated to the Chief Fire Officer in consultation with the Treasurer and the Monitoring Officer.

6. Summary and key points

- 6.1 Immediate detriment remains a complex and dynamic area arising from the Government's reform of pension schemes in 2015 and a subsequent legal ruling that certain aspects of that were age discriminatory.
- 6.2 An Immediate Detriment Framework has been jointly developed by the LGA and FBU but HMT and HMRC have advised that authorities should not process any cases until appropriate legislation is in place.
- 6.3 The LGA note reflects these positions and advises that the Government will not recompense any payments that are outside of the pension account.
- 6.4 There is a mixed picture with regard to the approach that fire and rescue authorities are taking.
- 6.5 As the situation is dynamic it is recommended that further decisions regarding immediate detriment are delegated to the Chief Fire Officer in consultation with the Treasurer and the Monitoring Officer.

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