

MERSEYSIDE FIRE AND RESCUE AUTHORITY			
MEETING OF THE:	FIRE AUTHORITY		
DATE:	11 NOVEMBER 2021	REPORT NO:	CFO/060/21
PRESENTING OFFICER	CHIEF FIRE OFFICER		
RESPONSIBLE OFFICER:	IAN CUMMINS	REPORT AUTHOR:	IAN CUMMINS
OFFICERS CONSULTED:	DCFO NICK SEARLE, NICK MERNOCK, MIKE REA		
TITLE OF REPORT:	FPS IMMEDIATE DETRIMENT FRAMEWORK		

APPENDICES:	APPENDIX A:	REPORT CFO/020/21
	APPENDIX B:	LGA AND FBU MEMORANDUM OF UNDERSTANDING AND IMMEDIATE DETRIMENT FRAMEWORK

Purpose of Report

1. To request that Members consider adopting the framework agreed by the Local Government Association (LGA) and Fire Brigade's Union (FBU) for processing eligible Fire Pension Scheme(s) "Immediate Detriment" cases, prior to legislation being passed to remedy age discrimination following the McCloud / Sargeant ruling.

Recommendation

2. That Members consider adopting the LGA and FBU Memorandum of Understanding and Immediate Detriment Framework for processing eligible Fire Pension Scheme (FPS) member applications for immediate access to their legacy pension benefits.

Introduction and Background

3. Report CFO/020/21, attached as Appendix A, was considered by the Authority at its meeting on 10th June, 2021. The report provides Members' with the background to the public pension changes introduced in 2014 and 2015 and the McCloud/Sargeant court case. The outcome of the case was that the Court of Appeal found that the transitional protection offered to some FPS members gave rise to unlawful age discrimination. The Government accepted this decision and proposed to rectify this by;
 - a. **Retrospective remedy** - 1st April 2015 to 31st March 2022 (the remedy period). The remedy requires that eligible pension members receive a choice of accessing their final salary (legacy) pension benefits or CARE benefits (reformed benefits) for the remedy period.

- b. **Future discrimination remedy** (1st April 2022 onwards) – all public pension members move to the reformed schemes introduced in 2014 and 2015.
4. In relation to the retrospective remedy an eligible pension member would not need to make a decision over which pension benefits to choose until they retire. In order for them to make the right choice they would receive two pension benefit statements (legacy scheme and reformed scheme). However, as the required legislation and regulation changes are not expected to be finalised until October 2023, the pension administrators would not be able to calculate accurately the dual pension statements until at least that date. Hence, retired eligible pension scheme members must wait until at least October 2023 before they are given the option over their pension benefits.
 5. As outlined in report CFO/020/21, following a request by the FBU to allow FPS eligible members **immediate access** to their old pension schemes, the Home Office (HO) issued an Immediate Detriment (ID) informal guidance note in August 2020 (updated in June 2021). This informal guidance note proposed a methodology for immediately processing eligible **retiring FPS members** pension benefits under the legacy pension scheme arrangements. However, the HO guidelines stipulated that this process was **not** available for retired eligible members or those with particular technical pension issues.
 6. Members' considered report CFO/020/21 and approved the adoption of the HO informal guidance. Therefore, MFRA eligible retiring firefighters could access their legacy benefits schemes once the required process had been put in place.
 7. Report CFO/020/21 referenced the work being done by the LGA and FBU at that time to develop a standard framework for implementing an immediate detriment process. However, no agreement had yet been reached with the FBU when Members considered the report.
 8. On the 8th October the LGA and FBU signed a Memorandum of Understanding (MoU) that established an Immediate Detriment Framework (IDF). The process would allow **eligible retired and retiring FPS members' immediate access to their legacy pension benefits** prior to remedying legislation being in place. The MoU also set out a mechanism for resolving some of the technical difficulties that previously prevented eligible members having the opportunity of immediate access to their legacy scheme, for example those with pension contribution holidays. The MoU and IDF identify a number of compensation payments that must be paid as part of the process, for example for retrospective interest payments on underpaid pensions. The MoU and IDF are attached to this report as Appendix B. It is important to note that the FBU made it clear that matters affecting eligible FPS members needed to be resolved sooner rather than later and it would, if necessary, support further legal cases.
 9. By including retired firefighters in the MoU and IDF the number of applicants who can request immediate access to their legacy schemes will be significantly higher than under the HO ID process. Furthermore, the need to determine compensation payments will also increase the administration work. The pension

software companies have stated they will not carry out the work to upgrade the computerised pension systems to calculate the required pension statements until the legislation and regulation changes are known (October 2023). Therefore, most of the pension calculations will be done manually by the pension administrator at a cost to the Authority.

10. The challenge has been further compounded by the inclusion of challenging deadlines within the MoU for processing applications. The Authority must as soon as reasonably practicable and in any event **within 62 days** after receiving an application send the Applicant:

- i. Category 1 (members approaching retirement)
 - a. a statement of the benefits that the Member would be entitled to receive if he or she retires under the rules of the Member's Legacy Scheme;
 - b. a statement of the benefits that the Member would be entitled to receive if he or she retires under the rules of the 2015 Scheme; and,
 - c. a form inviting the Applicant to choose to take benefits in accordance with the rules of the 2015 Scheme or the Member's Legacy Scheme.
- ii. Category 2 (retired members / eligible ill health retirements):
 - a. a statement of the benefits that the Member would have received if he or she had retired under the rules of the Member's Legacy Scheme, calculated as at the date of retirement or, in the case of a Member who left employment without an immediate pension, as at the date of leaving;
 - b. a statement of the benefits that the Member received or was prospectively entitled to receive under the rules of the 2015 Scheme, calculated as at the date of retirement or, in the case of a Member who left employment without an immediate pension, as at the date of leaving;
 - c. a statement of the arrears of pension and lump sum that the FRA will pay if the Applicant chooses to take benefits under the terms of the Member's Legacy Scheme;
 - d. a statement of the arrears of contributions that will have to be paid or that will be reimbursed (if any) if the Applicant chooses to take benefits under the terms of the Member's Legacy Scheme;
 - e. a statement of any tax adjustments that will have to be made if the Applicant chooses to take benefits under the terms of the Member's Legacy Scheme (including details of any "scheme pays" election that the Applicant might be able to make); and
 - f. a form inviting the Applicant to choose to take benefits in accordance with the rules of the 2015 Scheme or the Member's Legacy Scheme.

11. Furthermore, for category 2 members the FRA must:

- I. adjust the Applicant's pension debit if required to allow for any "scheme pays" election that the Applicant makes on account of any annual allowance charge that would have arisen if the Member had never been treated as a Member of the 2015 Scheme;

- II. begin to pay benefits in accordance with the Legacy Scheme rules with effect from the next pension payroll date which is at least one month after the receipt of the Applicant's election;
 - III. as soon as reasonably practicable and in any event within 28 days after receipt of the Applicant's election, pay to the Applicant the arrears of pension and lump sum, with interest calculated in accordance with the Framework to the date of payment, plus compensation for any excess contributions paid, after deducting:
 - a. any arrears of contributions calculated
 - b. any additional tax required to be paid under PAYE on arrears of pension that would have arisen if the Member had never been treated as a Member of the 2015 Scheme.
12. Assuming Members approve the adoption of the IDF and MoU, the Authority's pension administrator will work with the Service to meet the asks within the MoU and IDF, and agree a communication strategy to update all eligible members on the process. Initially priority will be given to category 1 members as these members require access to a pension on their retirement.
13. As per the MoU (para 5.4) the Authority would seek to encourage the documentation of the agreed compensation or remedy as outlined in Annex 3 of the IDF, and get both parties to sign the document.
14. Members must determine if they wish to adopt the LGA and FBU MoU and IDF. If the Authority reject the IDF and MoU it is likely that the FBU will consider further legal action against the Authority.

Equality and Diversity Implications

15. The McCloud / Sargeant case identified the pension changes introduced by the Government in April 2015 discriminated against individuals on the basis of age. The Government's proposed remedy removes that discrimination.

Staff Implications

16. CFO/020/21 introduced a process to allow eligible retiring firefighter the opportunity to have immediate access to their legacy pension benefits. This report would extend the process to include retired FPS members and some members previously excluded on technical grounds.

Legal Implications

17. CFO/020/21 enabled the Authority demonstrate it had regard to the Employment Appeal Tribunal's Judgement and Section 61 and 62 of the Equality Act in making a decision to implement the HO Immediate Detriment guidance for dealing with all eligible retiring FPS members requests to access to their legacy schemes immediately. By adopting the IDF and MoU agreed by the LGA and FBU the offer of accessing legacy scheme benefits immediately will now be extended to retired eligible FPS members.

18. The Authority is not under any legal obligation to implement the IDF and MoU, but any refusal to do so may lead to further legal proceedings by the FBU.

Financial Implications & Value for Money

19. In the last financial review report, CFO/046/21, Members approved the creation of a Pensions Reserve of £0.300m to cover the cost of administering retiring FPS members immediate access requests to their legacy pensions. As the IDF and MoU have now increased the number of FPS members who can ask for immediate access the cost of administration is likely to rise. In addition, all compensation payments must be funded from the Authority's budget and not the FPS Pension Fund. The Director of Finance and Procurement has estimated this may require an increase in the Pension Reserve of £0.300m, but the actual cost will only be known once claims have been processed. The Home Office is aware of these costs and is raising the issue with the Treasury, but no new funding can be assumed at this point.
20. The Director of Finance and Procurement will consider how the increase in the Pension Reserve will be funded within the next financial review report that will go to the Policy and Resources Committee on 16th December 2021.

Risk Management, Health & Safety, and Environmental Implications

21. The FBU have stated they may consider further legal action against any FRA who do not adopt the IDF and MoU. By adopting the LGA and FBU agreed framework it would avoid further FBU legal action.
22. By adopting the IDF and MoU the Authority will be using a "standardised" approach for processing immediate detriment cases, therefore any future corrections to pension benefits to reflect finalised legal and regulation changes would be determined at a national not local level.

Contribution to Our Vision: *To be the best Fire & Rescue Service in the UK.*

Our Purpose: *Here to serve, Here to protect, Here to keep you safe.*

23. By adopting a process to allow eligible FPS members immediate access to their legacy pension benefits contributes towards maintaining a harmonious work environment and therefore the delivery of the Service functions.

BACKGROUND PAPERS

CFO/020/21 "FIREFIGHTER PENSION SCHEMES - MCCLOUD/SERGEANT RULING - TREATMENT OF HO INFORMAL GUIDANCE ON TREATMENT OF 'IMMEDIATE DETRIMENT' CASES." Authority 10 June 2021.

GLOSSARY OF TERMS

FPS Firefighter Pension Scheme(s)

HO	Home Office
ID	Immediate Detriment
IDF	Immediate Detriment Framework
MoU	Memorandum of Understanding
FBU	Fire Brigades Union
LGA	Local Government Association
FRA	Fire and Rescue Authority