

MERSEYSIDE FIRE AND RESCUE AUTHORITY			
MEETING OF THE:	POLICY & RESOURCES		
DATE:	16 DECEMBER 2021	REPORT NO:	CFO/073/21
PRESENTING OFFICER	CHIEF FIRE OFFICER / IAN CUMMINS		
RESPONSIBLE OFFICER:	NICK SEARLE	REPORT AUTHOR:	IAN CUMMINS
OFFICERS CONSULTED:	STRATEGIC LEADERSHIP TEAM		
TITLE OF REPORT:	WITHDRAWAL OF HOME OFFICE IMMEDIATE DETRIMENT GUIDANCE		

APPENDICES:	APPENDIX A:	HO NOTE ON WITHDRAWAL OF ID GUIDANCE
	APPENDIX B:	FBU RESPONSE TO HO NOTE
	APPENDIX C	HO EMAIL ON WITHDRAWAL OF HO ID GUIDANCE

Purpose of Report

1. To inform members' that on 29th November 2021, and with immediate effect, the Home Office (HO) withdrew their informal guidance in relation to processing eligible FPS members immediate detriment cases ahead of the required legislation and pension regulation changes (expected in October 2023).
2. This report considers the impact of the HO advice on the Authority's decision to adopt the LGA and FBU Memorandum of Understanding and implement the associated immediate detriment framework (IDF). The IDF allowed the processing of eligible FPS members pension benefits under their legacy scheme in advance of the relevant legislation and regulation changes.

Recommendation

3. That following the note from the HO on the withdrawal of their ID guidance and the Government's advice to stop processing immediate detriment pension cases, Members;
4.
 - a. temporarily pause the IDF framework and therefore the processing of eligible FPS members pension benefits under their legacy scheme whilst the LGA await legal opinion, and
 - b. request that officers report back to the Authority on the outcome of any further guidance from the LGA / NFCC Pension Lead on this matter that will allow the reactivation of the IDF.

Introduction and Background

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5. The Government accepted the decision of the Court of Appeal that found the transitional protection offered to some members of the public pension schemes, following changes introduced in 2014 and 2015, had given rise to unlawful age discrimination.
 6. The Government 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.
 7. In order to calculate accurate pension statements for the retrospective remedy period the Government would need to approve new legislation and pension regulation changes, and these would not be available before October 2023.
 8. Without the relevant legislation (pension and tax related changes) pension administrators would not be able to calculate accurately the dual pension statements. Retired eligible pension scheme members must wait until at least October 2023 before they have an option over their pension benefits.
 9. Following a request by the FBU to the HO 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. Members considered report CFO/020/21 at the Authority meeting on 10th June 2021, and approved the adoption the HO ID process.
 10. On the 8th October 2021, the LGA and FBU signed a Memorandum of Understanding (MoU) that established an Immediate Detriment Framework (IDF) for processing eligible retired and retiring FPS members' cases. This would allow eligible retired and retiring FPS members immediate access to their legacy pension benefits prior to remedying legislation being in place. At the Authority meeting on 11th November 2021, Members' approved the adoption of the LGA/FBU IDF to process all eligible FPS member pension claims rather than the HO ID.
 11. On the 29th November 2021, and with immediate effect, the Home Office (HO) withdrew their guidance in relation to processing eligible FPS members' immediate detriment cases ahead of the required legislation and pension regulation changes. The HO communication included advice from the

Government, Her Majesty's Treasury (HMT) and HMRC, that FPS scheme administrators do **NOT** process any immediate access cases due to significant levels of uncertainty and risk over tax and other consequences, and the administrative burdens for individuals, schemes and employers.

12. The HO in their communication of the 29th November, reference the work done by HMT and HMRC on drafting the remedy in the Public Service Pensions and Judicial Offices Bill. This work has made it clear to HO that the “gaps and uncertainties” over the relevant tax legislation and scheme regulations within their informal ID guidance are considerably greater than previously thought. The significant levels of uncertainty would likely result in second or third adjustments to eligible pension benefits made in advance of the legislation and regulation changes. HMT and HMRC raised significant areas of uncertainty and risk around the treatment of tax on pension contributions over the remedy period that will only be resolved following the approval of the relevant legislation. HMT no longer viewed the current version of the HO guidance as accurately representing the situation and the HO therefore made the decision to withdraw this guidance. The HO note is attached to this report as **Appendix A**.
13. As the LGA/FBU IDF in reality reflects the same methodology for dealing with eligible FPS cases in advance of the legislation and regulation changes (but allows retired FPS members to be processed and the payment of some forms of compensation), the same uncertainties apply to the IDF.
14. The FBU have responded to the HO note, see attached **Appendix B**, and have stated that FRAs should continue to adopt and implement the IDF agreed by the LGA and FBU. They have reiterated that failure to implement and act on the IDF will if necessary result in further legal action by the FBU against the relevant FRAs.
15. The attached email from the HO, **Appendix 3**, states that while the decision remains with scheme managers (the FRA) to make, the Government does not advise schemes to process any immediate detriment cases before the legislation is in place, given the significant risk and uncertainty. The email also advises that the Government will not make available any funding for any administration costs and non-eligible Pension Fund expenditure (this may include compensation payments) associated with processing immediate detriment cases.
16. Officers would recommend that Members put on hold the processing of any immediate detriment cases pending further direction and guidance from the LGA Pensions Team and / or the NFCC Pension Lead. The LGA have indicated they would hope to issue further guidance as soon as practical. Once this guidance has been received, a report will be brought back to Members' for consideration and approval.

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17. 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

18. The implementation of the LGA/FBU IDF introduced a process to allow eligible retired and retiring firefighters the opportunity to have immediate access to their legacy pension benefits. This report is recommending the IDF be put on hold pending further guidance from the LGA following the HO withdrawal of their ID guidance and the Government advice not to process any ID cases before the relevant legislation is in place.

Legal Implications

19. 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. However, it is clear from the HO note issued on the 29th of November the level of significant uncertainties with the IDF process requires the Authority to seek further guidance on this matter.

Financial Implications & Value for Money

20. The administration and compensation costs associated with the IDF are expected to be significant, potentially +£500k or more. The Government have now made it clear they will not make any funding available for any FRA processing claims under the IDF. If the Authority continues with the IDF process, it will have to fund this cost from its own resources. The Quarter 2 financial review report, elsewhere on today's agenda, has identified the creation of a Pensions Reserve for £600k.
21. If the FBU commence legal action against FRAs who do not adopt the IDF then potentially the Authority may incur legal and court costs. Similar action in the past has resulted in FRAs agreeing to share such costs.

Risk Management, Health & Safety, and Environmental Implications

22. The FBU have stated they may consider further legal action against any FRA who do not adopt the IDF and MoU. By putting on hold the processing of immediate detriment cases the Authority may face legal action by the FBU.

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

23. By putting the IDF on hold some of the operational workforce coming up to retirement may have to access their benefits under the current pension arrangements and wait until the legislation has been approved to access their legacy scheme.

BACKGROUND PAPERS

CFO/020/21 “FIREFIGHTER PENSION SCHEMES - MCCLLOUD/SARGEANT RULING - TREATMENT OF HO INFORMAL GUIDANCE ON TREATMENT OF 'IMMEDIATE DETRIMENT' CASES.” Authority 10 June 2021.

CFO/060/21 “FPS IMMEDIATE DETRIMENT FRAMEWORK” Authority 11 November 2021.

GLOSSARY OF TERMS

FPS	Fire Pension Scheme
HO	Home Office
ID	Immediate Detriment
IDF	Immediate Detriment Framework
MOU	Memorandum of Understanding
LGA	Local Government Association
HMT	Her Majesty’s Treasury
HMRC	Her Majesty’s Customs and Revenue