

To: Policy and Resources Committee

From: Deputy Chief Executive Officer (DCEO) - Matthew Warren

Presenting officer: Deputy Chief Executive Officer - Matthew Warren

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Date: 28 April 2022

Firefighters Pension Scheme - Update

1. Purpose

- 1.1 The purpose of this report is to provide the Policy and Resources Committee with the latest position relating to immediate detriment and the Firefighters Pension Scheme (FPS) and advise a change to the recommended position.

2. Recommendation

- 2.1 The Committee is asked to note the latest position with regards to immediate detriment which is to suspend the processing of immediate detriment claims until the appropriate (legislated) safeguards are in place.

3. Risk Assessment

- 3.1 Economic – the potential liability associated with paying pensions ahead of the actual remedy being known could result in a financial liability for the Authority.
- 3.2 Legal – Home Office guidance relating to the FPS has changed therefore it is felt that it cannot be relied upon. Acting in advance of any appropriate legislated safeguards would now place the Authority at unnecessary legal risk.

4. Background

- 4.1 Following the 2018 Court of Appeal judgment in Sargeant, an interim order was made by the Employment Tribunal on 18 December 2019 which provided members of the FPS (who had brought claims) entitlement to be treated as if they had remained in the FPS 1992, as long as they were in the scheme at 31 March 2012 and 31 March 2015.
- 4.2 In January 2020, the Government position with regard to the judgment was that all entitlements, including immediate ones, should proceed under the

2015 scheme rules. This included those that were due to taper into the 2015 scheme and those due to retire.

- 4.3 In August 2020, the Home Office issued a note to FRAs with regard to immediate detriment. The note is labelled as informal guidance and highlighted that the issues raised within it are still subject to ongoing litigation and the UK Government consultation. The note was issued at the request of the Fire Brigades Union (FBU).
- 4.4 Whilst the note does provide a useful update from the previous Government position, communicated in January 2020, a number of questions remain for each FRA that were detailed in the LGA Immediate Detriment note issued in October 2020:
 - what the position is for FRAs if members make decisions without all the correct information, such as pension tax relief,
 - how auditors might treat such payments under legacy terms and on what basis an FRA can rely on the guidance to satisfy auditor,
 - what risk the member accepts by having benefits paid out before the consultation has concluded, although the note does state that **all** cases will need to be revisited once the remedy is finalised.
- 4.5 Legal advice was sought by the LGA. The legal opinion, which is subject to legal privilege, didn't provide the necessary reassurance needed for this authority to proceed with all cases.
- 4.6 Further to this advice, the LGA and FBU worked to agree a position that would allow FRAs to process immediate detriment cases; a memorandum of understanding (MOU), was agreed in October 2021. At this time, based on advice from the Service, the Fire Authority approved a process to begin paying immediate detriment cases.
- 4.7 Shortly after this decision was taken, the Government withdrew the guidance note that was being relied upon within the MOU. This left the Authority and individuals potentially vulnerable to additional costs and tax charges as a result of Government through Treasury not having the appropriate legislated safeguards in place. Given this position, the Authority Treasurer, as Scheme Manager, took the decision to suspend all immediate detriment payments whilst further guidance was sought.
- 4.8 Whilst we are aware of ongoing discussions between the LGA and FBU Officials, no revised agreement has been formally agreed. Furthermore the Home Office has now issued very clear advice that immediate detriment claims should not be processed until legislation is in place, which will be no later than 1 October 2023. The letter from the National Fire Chiefs Council lead is attached at Appendix 1, which clearly outlines the current position.

Source Documents

Firefighters'/Police Pension Schemes

McCloud/Sargeant Ruling – Guidance on treatment of 'Immediate Detriment' Cases

LGA Immediate Detriment Information Note: October 2020

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