

AVON FIRE AUTHORITY

MEETING:	Avon Fire Authority
MEETING DATE:	Wednesday 14 December 2022
REPORT OF:	Chief Fire Officer/Chief Executive
SUBJECT:	Immediate Detriment Update

1. **SUMMARY**

Immediate Detriment (ID) has previously been discussed with the Avon Fire Authority. The latest position, as of the Fire Authority meeting on 05 October 2022, is that ID processing for impacted staff wanting to retire before October 2023 (Government remedy) remains paused, but with a provision for individual representations to be made, and considered, in certain circumstances.

This report considers the position for those in the ID category who have already retired ('retirees') without ID applied. A processing mechanism for these individuals has been proposed in a Fire Brigades Union (FBU) and Local Government Association (LGA) Framework which is included in the **Appendix**.

The recommendation is that the Authority continues to defer a decision to adopt this Framework but applies the same 'case by case' provision to impacted staff who have retired without ID.

2. **RECOMMENDATIONS**

Avon Fire Authority is asked to:

- a) Note the current position with the FBU and LGA Framework.
- b) Consider the potential implications and costs of adopting the Framework for those in the ID category who have already retired.
- c) Continue to defer a decision on adopting the Framework pending any changes (legislative or otherwise) which would reduce the financial impact on local budgets.
- d) Agree that, in the interim, representations from impacted individuals who have already retired (without ID applied) can be made to, and determined by, the Chief Fire Officer/Chief Executive Officer (CFO/CEO) and Director of Corporate Services.

3. BACKGROUND

- 3.1. As previously reported to the Authority, the Government is taking steps to address the age discrimination which occurred due to the method of transition from the 1992 firefighter pension scheme to the new scheme in 2015.
- 3.2. The Government continues to indicate that the timescale for resolution is in, or before, October 2023. The delay is due to the primary and secondary legislation required, the need to change aspects of pension administration and develop software to process the remedy electronically, and to ensure the provision of detailed information to scheme members about options. Consultation has started on the secondary legislation with HM Treasury issuing a consultation on 24 November 2022. The latter is being reviewed by the relevant bodies and tax specialists to provide a summary and advice to Scheme Managers.
- 3.3. In some situations (called Immediate Detriment or ID) there is a financial impact on individuals while they await the Government remedy.
- 3.4. The October 2022 report to the Authority focused on impacted/ID staff who could retire before October 2023.
- 3.5. This report focuses on impacted staff who have already retired (retirees) but are not yet receiving their full pension benefits under ID. There are approximately 36 previous members of staff in this position. These individuals may have retired before the Authority initially decided to apply ID and/or may have had complexities which previously couldn't be resolved manually.
- 3.6. While these retirees will be in receipt of a pension and, in most cases, will have decided to retire based on income without ID applied, they will be receiving a lower pension until the Government resolution. That situation can feel unjust and impact on family income. Previous reports to the Authority have given an illustration of the difference in pension for a firefighter retiring at 50 (with 30 years' service) with, and without, ID applied.
- 3.7. The Government have confirmed that, upon remedy, retrospective payments will be made to impacted individuals and, for those who have already retired, this will include interest. It is the LGA's understanding that an interest rate in a range between base rates and inflation is under consideration by Government and this was originally estimated to be around 3% per annum. There is possibility that the final interest rate payable will increase depending on the final methodology the Government use and in view of current interest and inflation rates.
- 3.8. In October 2021 a Framework was developed and agreed by the LGA and FBU to provide, if adopted, a process for impacted scheme members (retiring and retired) to receive their full benefits prior to all remedying legislation being force. The Framework included a mechanism to remedy the lump sum and pension payments and address compensatory matters, such as interest for retirees.

- 3.9. The Framework was also presented to avoid additional legal claims being lodged against Authorities and reduce the period for which interest is payable. Further information on the Framework, its purpose and content can be accessed in the background papers.
- 3.10. Adoption of the Framework was considered by the Authority in December 2021. Members agreed to defer a decision on formally adopting the Framework until further legal advice and clarification on funding but to revisit this decision in 2022 and signpost an intention to adopt it as fully as is practically and financially possible.
- 3.11. Since then, the Framework has been updated to reflect the withdrawal of the Home Office guidance, and funding, for ID processing and the concerns raised by HM Treasury regarding the tax complexities. From previous reports, Members will be aware of the issues which have been raised by HM Treasury and the consequent costs which could fall to local budgets. For transparency, the updated Framework is provided in the **Appendix**; the recent amendments have been marked up in track changes.
- 3.12. The LGA continues to explore with the FBU, and respective legal representatives, what, if any, amendments could be agreed to the Framework to minimise risk to the Authority and scheme members and thereby, further assist with its adoption. This work remains in progress and no timeframe has been provided for completion.
- 3.13. There are also separate national court proceedings on the pension scheme transitional protections in respect to injury to feelings compensation. However, the employment tribunal hearing due to take place 14-28 October 2022 was vacated following agreement in principle as to issues of non-financial loss, and to provide further time to negotiate a full settlement. The cost of this compensation will be fully met by the Government, and further information is awaited on who it applies to and how and when it will be paid.
- 3.14. ID is a complex and dynamic matter and the full detail of the situation and matters considered by the Authority at their 15 December 2021, 30 March 2022, 22 June 2022 and 05 October 2022 meetings are available on the Avon Fire Authority website. It is recommended that Members revisit these reports, and appendices:

[Browse meetings - Avon Fire Authority - Modern Council \(moderngov.co.uk\)](https://www.moderngov.co.uk)

4. FINANCIAL IMPLICATIONS

- 4.1 As previously reported, until the required legislation is in place, there is no legal mechanism to pay ID pension cases without potential financial risk to both firefighters (retired and retiring) and the Fire Authority.

- 4.2 There has been no change to the Home Office position on funding and therefore adopting the Framework for retirees potentially creates an additional pressure for local budgets in future financial years. The basis for the potential costs have been outlined in previous papers to the Authority. However, it remains uncertain whether, to what extent and when these costs would be applied by Government.
- 4.3 When the legislation is passed, ID cases will also need to be re-assessed as there is likely to be a difference between the assumptions being made about what the legislation may contain, with what it does contain once enacted.
- 4.4 As was the case for forthcoming retirees, while the LGA 'ready reckoner' has been used to run cost estimates, it is not currently possible to undertake a fully accurate or robust assessment of the likely financial implications of processing retirees under ID. For retirees who have complex situations, case specific knowledge, confirmation of member choices and technical input on tax would be needed to fully determine the costs and some members would potentially need to re-open divorce settlement agreements. Therefore, the costings in this paper are further caveated.
- 4.5 The potential funding identified remains the pension reserve of £577k. As previously reported, while the Authority have not needed to use the pension reserve in recent years, £230k of this reserve has already been allocated to cover additional ill health retirement costs. Therefore, using the reserve for ID has potential direct, and indirect, implications for the local revenue budget.

A. Cost liability based on the LGA ready reckoner*:		Total
Revenue:		
Potential cost of processing impacted retirees under the Framework (noting caveats)	Non-recurrent expenditure	£323,000
B. Proposed funding:		
Baseline Budgets		N/A
Reserves		£577, 000
Other – please specify		
Total funding available:		£577,000
Balance		£254,000

5. KEY CONSIDERATIONS

- 5.1 The potential costs of adopting the Framework to process impacted retirees under ID, have been outlined in section 4 of this report together with the funding options and implications.

- 5.2 If not adopted, there remains a risk of considerable legal fees if claims are brought against the Authority for not processing ID cases. The FBU's position is that it will pursue legal action if ID issues cannot be resolved in a timely manner including using the Framework.
- 5.3 While the Authority has not yet received a claim, the possibility exists that claim(s) will be received, and it is more likely to occur if ID processing is not taking place in any form. Claims are being raised against some other Fire Authorities and, while it would be difficult to provide an estimate, legal costs can be significant. The risk of claims from forthcoming retirement cases may also increase if, in contrast, existing retirees are all being processed under ID.
- 5.4 This pension matter remains of significant importance to individuals impacted and their families and is becoming more so in view of the rising cost of inflation and the cost of living.
- 5.5 With reference to the exceptional 'case by case' mechanism agreed by the Authority in October 2022 for forthcoming retirements, at the time of writing, three representations had been made to the Chief Fire Officer and Director of Corporate Services. One has been approved for processing based on financial hardship, the other two were not approved with information on their next options provided. It is recommended that, if the Framework is not adopted, the Authority extends this mechanism to impacted retirees.

6. RISKS

- 6.1 The Firefighter Pension Scheme risk register informs the overarching Corporate Risk Register at CR15 Pensions and, when applicable, CR04 People, Resources, Capacity, Capability and Succession Planning. The risk rating of CR15 is currently high due to the ID issue which impacts on compliance, funding, employee relations and increased risk of litigation.
- 6.2 The Corporate Risk Register is regularly reviewed and scrutinised by the Service Leadership Team, Service Leadership Board and the Audit, Governance and Ethics Committee with scrutiny applied to ensure the controls and planned mitigations are sufficient to reasonably manage the level of risk.

7. LEGAL/POLICY IMPLICATIONS

- 7.1 The legal implications, and risks, in respect of processing, and not processing, ID cases have previously been provided to Members and can be accessed through the background papers.
- 7.2 It is also noted that the Framework does not currently contain a provision to only apply it in part. Therefore, there may be an increased risk of litigation from forthcoming retirees if the Framework is applied only to those who have already retired.

- 7.3 In November 2021 the FBU indicated that scheme members whose cases are not processed in line with the Framework may be assisted in submitting complaints to The Pensions Ombudsman (TPO), where compensation would be sought for distress and inconvenience caused by late or non-payment.
- 7.4 Members are reminded of that, in July 2022, TPO confirmed their approach in respect of age discrimination cases as follows. Their position has informed the recommendation of a case-by-case provision.

'Presently TPO's general starting position, is that it would not investigate complaints or disputes relating to remedying age discrimination in public sector schemes, but it will carefully look at the facts of each case before making any decision. Examples of where TPO may investigate include, allegations of maladministration, like, failure to explain what is going on and/or engage properly with the member; or investigate where a member is suffering severe financial hardship or other serious injustice and the scheme is not putting in place any interim arrangements to address the injustice within a reasonable period. Any complaint or dispute will be subject to TPO's usual jurisdictional checks, for example, whether court proceedings have started which are the same as the complaint.'

- 7.5 If the recommendation to provide case-by-case consideration is agreed, if any retirees are dissatisfied with the AFA position, the process and/or the outcome of their representations, they can complain under the scheme's Internal Dispute Resolution Procedure (IDRP) and, if still unresolved, contact TPO.

8. BACKGROUND PAPERS

- Fire Authority Papers - 30 June and 15 December 2021; 30 March; 22 June 2022 and October 2022.

[Browse meetings - Avon Fire Authority - Modern Council \(moderngov.co.uk\)](https://www.moderngov.co.uk)

9. APPENDICES

1. Immediate Detriment Framework (IDF) Guidance for Fire and Rescue Authorities in their role as scheme managers. Note this appendix has been provided with the tracked changes made following the Home Office and HM Treasury statements.

10. REPORT CONTACT

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