

AVON FIRE AUTHORITY

MEETING:	Policy and Resources Committee
MEETING DATE:	Thursday, 18 April 2024
REPORT OF:	Chief Fire Officer/Chief Executive
SUBJECT:	Immediate Detriment - Immediate Choice - Interest Issue

1. **SUMMARY**

- This paper concerns an issue which has arisen since the 'Update on Pension Administrator Implementation of the Immediate Detriment Regulations' report considered at the 13 December meeting.
- The issue relates to those staff who have already retired and are waiting to receive their Immediate Detriment (ID) remedy benefits in accordance with legislation passed on 1 October 2023.
- The Service must provide to those eligible retirees 'Immediate Choice Remediable Service Statements' (IC-RSSs) setting out new pension figures and arrears due; the template for those statements was published in December 2023.
- HM Treasury (HMT) has agreed a compensation arrangement for those retired members who qualify for the Immediate Detriment remedy, plus interest of 8% on arrears of pension/lump sum (which is not treated as compensation).
- The Local Government Association recommended on 25 January 2024 that Services should pause the rollout of IC-RSSs whilst clarification was sought on the taxation of interest payments, as there was a risk that figures in IC-RSSs may be over-stated.
- His Majesty's Revenue and Customs (HMRC) announced on 23 February that it intends to impose a tax charge for any interest rate payments above a 'commercial rate' (defined as Bank of England base rate + 1%).
- The Service is advised that after the current Parliament recess (from 15 April 2024 onwards) HMT are preparing to publish a Written Ministerial Statement to instruct scheme managers to 'exempt' interest payments from tax before changes can be made to tax legislation.

2. **RECOMMENDATIONS**

2.1 The Committee is asked to:

- a) Instruct the scheme administrators of the Firefighters Pension Scheme to continue to 'pause' the issuing of IC-RSSs to eligible retirees, until 30 June 2024, in the hope that HM Treasury and HMRC provide clarity/possible exemption on tax to be applied to interest payments and the GAD calculator will be ready to use for consistency in calculating figures.
- b) In the event that clarity is not forthcoming from HM Treasury and HMRC by 30 June 2024, authorise the pension scheme administrators to start issuing IC-RSSs with a view to processing remedy payments to eligible retirees without any calculation/payment of interest on arrears, so that aspect is calculated separately after the tax issue is clarified.
- c) Request that an update on this issue is reported to the Committee meeting on 25 July 2024.

3. BACKGROUND

- 3.1 This report focuses on impacted staff who have already retired (retirees) but are not yet receiving their full pension benefits under the ID remedy. There are approximately 36 previous members of staff in this position, in addition, all members that retired under ID are affected by the interest issue. Some of these individuals may have retired before the Authority initially decided to apply ID and/or may have had complexities which previously could not be resolved manually, such as contribution rate relief.
- 3.2 Legislation was passed on 1 October 2023¹ which put in place the mechanism and ability to rectify the pensions of all members of public service pension schemes with regards to age discrimination following the McCloud and Seargant cases. There is a statutory obligation on schemes to remedy ID pensions by 31 March 2025.
- 3.3 The Update provided to the December PRC meeting explained that there had been a delay in the rollout of software to calculate remedy figures, which was expected to be in place in early 2024. The Government Actuary's Department (GAD) calculator software incorporates the interest rate calculation, but not the split of interest which has since been imposed by HMRC.

4. FINANCIAL IMPLICATIONS

- 4.1 There are no additional financial implications, save for the added work which will be required by the Service's pension administrators to potentially work on cases twice if they need to calculate interest payments at a later date, when the tax position has been clarified.

¹ The Firefighters' Pensions (Remediable Service) Regulations 2023.

5. KEY CONSIDERATIONS

- 5.1 The timetabling of IC-RSSs was agreed by the Scheme Advisory Board, when it was suggested that priority cases, such as ill health pensioners, should be dealt with first with a deadline of 31 March 2024, with remaining beneficiary pensioners to receive IC-RSSs by 31 May 2024. The fire sector asked that the deadline for both cohorts be pushed back to June 2024.
- 5.2 HM Treasury (HMT) agreed a compensation arrangement for those retired members who qualify for Immediate Detriment payments, plus interest of 8% on arrears of pension/lump sum (which is not treated as compensation). However, there are a number of issues to be resolved, including the recently announced position of His Majesty's Revenue and Customs (HMRC) (on 23 February) that it intends to impose a tax charge for any interest rate payments above a 'commercial rate' (defined as Bank of England base rate + 1%).
- 5.3 The Local Government Association (LGA) recommended on 25 January 2024 that Services should 'pause' the rollout of IC-RSSs whilst clarification was sought on the taxation of interest payments and other issues, as there was a risk that figures in IC-RSSs may be over-stated.
- 5.4 The LGA have approached the Scheme Advisory Board with three potential solutions to the 'tax on interest' issue. Those three options are:

Option 1

- 5.5 Continue to pause the issuing of IC-RSSs until full clarity has been given on all outstanding process issues and the GAD calculator is ready. The drawbacks of this option are:
- (i) This pause could potentially be for months,
 - (ii) Some members are due significant sums of money in pension/lump sum arrears and could potentially be facing hardship, continuing with the pause could add to such hardship, and,
 - (iii) The Pension Ombudsman might not look too kindly on an indefinite pause and could instruct Fire and Rescue Authorities to process cases and pay additional compensation.

Option 2

- 5.6 Lift the pause to issuing IC-RSSs and instruct pension administrators to pay the arrears of pension/lump sum (including 8% interest) and put the pension right going forward). However, the drawbacks on this option are:
- (i) Without the GAD calculator being finalised, it is possible that administrators will take different approaches to calculating tax which could result in inconsistencies.

- (ii) Without clarity on the event reporting process from HMRC, administrators will not be able to mandate the tax on the members' behalf meaning that the member will have to deal with HMRC directly to pay the necessary tax via self-assessment. For most members this will be the first time that they have had to self-assess tax and it is possible that they will need advice from a specialist which will be costly and time consuming.
- (iii) Without clarity on whether interest should be calculated gross or net, it is possible that administrators will take different approaches to calculating tax which could result in inconsistencies and potential re-work once clarification has been provided.

Option 3

- 5.7 Lift the pause, instruct pension administrators to pay the arrears of pension/lump sum and put the pension right going forward, but exclude interest on such arrears for the time being. This is the approach recommended by the Scheme Advisory Board. This approach would allow calculations to be made by ignoring the interest element, however, it would create an additional burden as pension administrators would need to re-open every case and undertake separate interest calculations once clarification on tax has been provided.
- 5.8 In view of the drawbacks outlined above, the Service recommends to the Committee a hybrid approach, namely, to continue the pause in issuing IC-RSSs (Option 1) for 10 weeks until 30 June 2024 in the hope that after the Parliament recess (from 15 April 2024 onwards) HMT publish a Written Ministerial Statement to instruct scheme managers to 'exempt' interest payments from tax before changes can be made to tax legislation. The LGA have provided template letters which can be sent by the Service to both ill health and beneficiary cases advising them of this delay.
- 5.9 In the event that the tax position is not clarified by 30 June 2024, then the administrators should implement Option 3 by issuing IC-RSSs from 1 July 2024 onwards, excluding interest payments until the tax position is clarified. This will mean additional work for pension administrators, who will need to re-open and calculate interest in every case. An update will be provided to the Committee's next meeting on 25 July 2024.

6. RISKS

- 6.1 The Firefighter Pension Scheme risk register informs the overarching Corporate Risk Register at CR15 Pensions. The risk rating of 20 is currently amber due to the mitigations in place, including the recent transfer of administration of Firefighters' Pension Scheme to the West Yorkshire Pension Fund and the implementation of the Government's Actuary's Department (GAD) calculator.

7. LEGAL / POLICY IMPLICATIONS

- 7.1 The legal issues relating to the remedy for Immediate Detriment are set out in the body of this paper.

8. BACKGROUND PAPERS

Paper 8 entitled 'Update on Pension Administrator Implementation of Immediate Detriment Regulations' to PRC meeting on 13 December 2023, at the following link:

https://avonfireintranet.moderngov.co.uk/PRC_papers_13_December_2023

9. REPORT CONTACT

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