



HIWFRA Standards and Governance Committee

Purpose: Approval

Date: **16 NOVEMBER 2021**

Title: **McCLOUD AGE DISCRIMINATION REMEDY - IMMEDIATE DETRIMENT FRAMEWORK**

Report of Chief Financial Officer

SUMMARY

1. This report provides an update on the Immediate Detriment Framework (IDF) by way of a Memorandum of Understanding (MoU) issued jointly by the Local Government Association (LGA) and the Fire Brigade Union (FBU) on 8 October 2021.
2. The report recommends that the HIWFRA adopt the Immediate Detriment Framework as set out in this report and that this is approved by the HIWFRA Standards and Governance Committee.

BACKGROUND

3. Following the 2018 Court of Appeal judgement in Sargeant, an interim order was made by the Employment Tribunal on 18 December 2019 which provided that members who had brought claims (claimants) are entitled to be treated as if they remained in the 1992 Fire Pension Scheme, as long as they were in the scheme on 31 March 2012 and 31 March 2015.
4. On 21 August 2020 the Home Office issued a note of guidance on treatment of "Immediate Detriment" cases, that guidance was updated on 10 June 2021.
5. Immediate Detriment is the term used to refer to firefighters who will retire from the scheme before secondary legislation is in place to bring the age discrimination remedies outlined in Chapter 2 of the HM Treasury consultation response dated 4 February 2021.
6. There are two main categories of Immediate Detriment members
 - (a) Retrospective Remedy (those who have already retired)
 - (b) Prospective Remedy (those who will retire before the legislation is amended to bring in the Deferred Choice Underpin (DCU) remedy i.e. those who will retire before the long-term solution is in place)

7. On 12 February 2021 the Employment Appeal Tribunal (EAT) gave its judgement on the appeal based on the schedule 22 of the Equality Act. The EAT ruled against the Fire and Rescue Authorities (FRAs) essentially meaning that Immediate Detriment could be offered to all members and not just claimants of the original case.
8. In early 2021, HIWFRA adopted use of the Immediate Detriment guidance issued by the LGA and assessed individuals on a case-by-case basis using a matrix. HIWFRA agreed to offer Immediate Detriment to those members whose pension case was clear and straightforward and had not yet retired.
9. Up to October 2021, HIWFRA have processed 11 retirements for either tapered or unprotected members that were offered Immediate Detriment, 9 of whom elected for Immediate Detriment remedy to be applied to their retirement benefits.

MEMORANDUM OF UNDERSTANDING

10. On 8 October 2021, the LGA and the FBU issued a Joint Statement and published an MoU. Its purpose is to provide a framework under which members in scope can receive benefits prior to all remedying legislation being in force, therefore avoiding significant additional numbers of Immediate Detriment legal claims as a result of the Sargeant age discrimination case.
11. The IDF makes reference to two different types of members
 - (a) Category 1 (Cat 1) – Members who have not yet had their benefits brought into payment
 - (b) Category 2 (Cat 2) – Members who have retired and are already receiving their benefits
12. It is for each FRA as the relevant Scheme Manager within the Fire Pension Scheme to decide whether or not to adopt the IDF. FRAs are being encouraged to adopt the IDF particularly due to the breadth and complexity of members covered. The IDF will also provide a consistent approach across FRAs that choose to adopt it.
13. FRAs will need to consider their decision and consider the risks in terms of potential legal claims being brought by individuals should the FRA decide not to adopt the IDF.
14. Where a member receives remedy and or compensation under the IDF, under the terms of the MoU, the FBU will not provide any financial or other support to the member to bring legal action relating to such remedy and or compensation. They can, of course, back action where there is a dispute about whether the IDF has been applied correctly.
15. Under the terms of the MoU both the member and the FRA will need to sign a 'Record of Agreed Compensation', which will record the benefits to be provided

the member under the IDF. In addition, the Record also states that the benefits provided are in full and final settlement of the relevant issues noted in the Record, and the member agrees not to issue proceedings in respect of them, other than if there is a failure to abide by the agreement.

CONCLUSIONS

16. The earlier work carried out on some Immediate Detriment cases has informed HPS about the necessary work involved with the manual calculations, meaning that any extension of IDF should be manageable.
17. The bulk data that is required for Fire Pensions remedy is in the process of being collated by the IBC Pensions Administration team and will be available very shortly. This will alleviate some of the time pressures that are currently in place due to the complexity and volume of data that is required.
18. HIWFRA has proven that it wants to provide remedy to members by already offering Immediate Detriment to prospective retirements. It has worked closely with Hampshire Pension Services to put in place processes and spreadsheets to aid with the complex manual calculations that are required to provide the necessary information to members.
19. It is considered that adoption of the IDF offers the best outcome and lowest risk for the Authority and affected members, and it is therefore recommended that this option is approved.

PROPOSED IMMEDIATE DETRIMENT FRAMEWORK PROCESS

20. On the basis that IDF is adopted a proposed process has been developed.
21. The member, whether Cat 1 or Cat 2, will be required to complete an application form and to submit it via email to the FRA. The application will be checked to see if it meets the criteria of the IDF. Within 14 calendar days, the member will receive an acknowledgment and confirmation if their application has been accepted or not under the IDF.
22. Within 62 calendar days of the application, the member will receive their options with regard to Immediate Detriment, i.e. one set of benefits under the legacy scheme and one set of benefits under the reformed scheme. They will also receive information about the difference in employee contributions along with details of any Annual Allowance issues. The information pack will contain the Record of Agreed Compensation form.
23. Where the member will be required to pay amounts due, where possible these will be deducted from any lump sum due. If this is not possible, then a payment plan will be set up with the member. Where there are tax charges due e.g. due to Annual Allowance, then the member will be informed about their options to elect for Scheme Pays.

24. Where the member is due a refund, this will be paid to the member in the form of compensation at the time of paying the benefits.
25. Where the member is a Cat 1 member, their retirement will be processed in line with the normal timescales and only once they have signed and returned their Record of Agreed Compensation form, completed their retirement declaration form and they have handed in their notice to their line manager and the leaver form is received by Hampshire Pension Services.
26. Where the member is a Cat 2 member, their retirement benefits will be adjusted, and any arrears due paid to them within 28 days of their signed Record of Agreed Compensation form and their additional election form being received by Hampshire Pension Services.

RISKS

27. Effective communication with members will be critical to a successful outcome. It will be important to ensure that Hampshire Pension Services are not overwhelmed by an influx of applications from members at the same time given the timeframe for case management. Accordingly, HIWFRA will need to work closely with both Hampshire Pension Services and the FBU to ensure that an effective communication plan can be achieved.
28. Should there be an influx of applications, then it may not be possible for Hampshire Pension Services to meet the strict timescales as designated with the IDF. HIWFRA will therefore need to keep an open dialogue with the FBU including the number of cases and possible issues to maintain good relationships and to avoid future claims for non-compliance of the IDF being brought against HIWFRA.
29. HIWFRA will work closely with Hampshire Pension Services to keep on top of cases and potential issues. Hampshire Pension Services also provide the pension administration for other organisations, who each will have their own decisions on Immediate Detriment and overall it could mean that resources within Hampshire Pension Services are significantly pressured with either timescales or the number of cases.
30. It is likely that additional resources may be required, where this is the case then HIWFRA will need to liaise with Hampshire Pension Service and where appropriate, pay for these as they arise. Requirements for additional resources will be brought to Executive Group for approval.

CONSULTATION

31. This report has been shared with HIWFRA Hampshire Firefighters Pension Board for input and information.

RECOMMENDATION

32. That the adoption of the Immediate Detriment Framework as set out in this report is approved by the HIWFRA Standards and Governance Committee.

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