

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

AUDIT AND RISK COMMITTEE

27 SEPTEMBER 2021

1. **IMMEDIATE DETRIMENT/CONTRIBUTION HOLIDAYS**

Report of the Chief Fire Officer.

RECOMMENDED

- 1.1 THAT in consideration of the Court of Appeal interim order entitling claimants to be treated as members of the FPS 1992 and the unresolved pensions issues, the scheme administrator does not apply the updated Home Office guidance issued on 10th June 2021 in its entirety to all future retirement case.
- 1.2 THAT the scheme administrator revises the treatment to any cases affected since the last Audit and Risk Committee on 19th July 2021.
- 1.3 THAT the 10th June 2021 Home Office guidance is not followed for cases where a member is eligible for a “contribution holiday” under the rules of the 1992 Scheme and relevant cases are to be treated in the same way as they were prior to the updated guidance issued on 10th June 2021

2. **PURPOSE OF REPORT**

- 2.1 This report is submitted to the Audit and Risk Committee in their role as Scheme Manager, to request a review of the recommendation and decision made at the 19th July 2021 Audit and Risk Committee meeting, in respect of immediate detriment/holiday contribution cases under the McCloud/Sargeant ruling.

3. **BACKGROUND**

- 3.1 On 7 December 2020 the Audit and Risk Committee, in its role as Scheme Manager for the Firefighter Pension

Schemes, took the decision to instruct the Scheme Administrator to act upon guidance issued by the Home Office in August 2020.

- 3.2 This guidance was updated on 10 June 2021 and included within the further information, was a paragraph advising Fire Authorities not to use the August 2020 guidance in cases where a member would have been eligible for a “contribution holiday” under the rules of the 1992 Scheme.
- 3.3 The August 2020 and June 2021 guidance is described as non-statutory and informal guidance from the Home Office. The Fire Authority is obliged to follow this informal guidance in most circumstances. However, in law, non-statutory guidance does not need to be followed if there is a good or rationale reason not to do so.
- 3.4 In the matter of “contribution holiday” by implementing the updated guidance, the administrator is providing different options to employees in different positions. Whilst this is not an instance of new discrimination it is deemed to be a continuation of the ongoing discrimination which the government seeks to cure within the remedy.
- 3.5 If we do not process these members who have had a contributions holiday in the same way as others that fall within the Immediate Detriment category, this will mean they are being treated differently and this may be viewed as continuing less favourable treatment.
- 3.6 In seeking further sector wide information other Fire Authorities/Pension Boards are processing contribution holiday scheme members as immediate detriment cases and not further delaying the outcome of remedy.
- 3.7 From a local employee perspective, it has been identified that employees who are pension scheme members are affected and are postponing their retirement which is incurring a financial pension detrimental impact also.
- 3.8 The review and further consideration of the evidence these circumstances present, as well as the statement of the Pensions Board on the 1 July, require a reconsideration of the recommendation made to the Audit and Risk Committee on the 19 July 2021.

- 3.9 Further reports will be presented to the Audit and Risk Committee relating to the pension's arrangements associated with Immediate Detriment cases under the McCloud/Sargeant Ruling as Government Guidance and/or other relevant information becomes available.

Decision required

- 3.10 The Committee are asked following due consideration of this report, to approve the Chief Fire Officer's recommendation of the continued application of the August 2020 guidance in relation to Immediate Detriment in respect of 'contributions holidays'.

4. **EQUALITY IMPACT ASSESSMENT**

- 4.1 In preparing this report an initial Equality Impact Assessment is not required and has not been carried out. The matters contained in this report will not lead to and/or do not relate to a policy change.

5. **LEGAL IMPLICATIONS**

- 5.1 The Employers' Side within the Employment Tribunal process relating to the Transitional Protections Claim made a decision, after being unsuccessful in the Employment tribunal claim, not to further appeal the outcome. This was for several reasons: one reason for this is the impact on the ongoing employee relations at a local and national level. The FBU has made clear that in their view the Employment Appeal Tribunal (EAT) decision means there should be no further delay to affected individuals and the remedy should not affect individuals, any delays may therefore attract further union backed claims. This will then form an additional unknown financial cost.
- 5.2 The EAT decision confirms that section 61 of the Equality Act 2010 prohibits FRAs from acting in a manner which discriminates on the grounds of age, this in effect means that the FRAs can override any discriminatory pension scheme rules. Section 62 of the Equality Act 2010 also confirms that FRAs have vested in them the power to make non-discrimination alterations to the Scheme.
- 5.3 In law, non-statutory guidance is to be followed unless there is

a good reason not to do so. For context, any decision not to follow the June Home Office guidance is capable of Judicial Review and this applies to any non-statutory guidance issued in England & Wales

- 5.4 If the decision recommended within this report is taken by the Committee, the Service will need to ensure that this decision is applied consistently to all relevant and eligible scheme members to ensure the risk of Judicial Review remains low.

6. **FINANCIAL IMPLICATIONS**

- 6.1 There are unknown financial implications at this point. The cost of remedy for the Fire Fighter Pension Scheme (England) (Transitional and Consequential Provisions) Regulations 2015 is not yet known in full at this point. However, delay in processing immediate detriment cases may increase the likelihood of a further claim for ongoing discrimination.

7. **ENVIRONMENTAL IMPLICATIONS**

- 7.1 There are no environmental implications arising from this report.

BACKGROUND PAPERS

Audit and Risk, 'request for a Decision on Action to be taken in respect of Immediate Detriment cases under the McCloud/Sargeant Ruling' Report, 7th December 2020.

Audit and Risk, Immediate Detriment report 19 July 2021
Home Office Guidance August 2020

Revised Home Office Guidance June 2021
Fire Fighter Pension Scheme (England) (Transitional and Consequential Provisions) Regulations 2015

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