

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

AUDIT AND RISK COMMITTEE

28 NOVEMBER 2022

1. **REQUEST FOR A DECISION ON ACTION TO BE TAKEN IN RESPECT OF IMMEDIATE DETRIMENT ('REVERSE DETRIMENT') CASES UNDER THE MCCLOUD/SARGEANT RULING**

Report of the Chief Fire Officer.

2. **PURPOSE OF REPORT**

- 2.1 This report is submitted to request that the Committee, in their role as Scheme Manager, confirm to the Scheme Administrator the action to be taken with regard to members who may benefit from being given access to the 2015 Firefighters' Scheme from 1st April 2015 ('reverse discrimination' cases).

3. **RECOMMENDATION**

- 3.1 That the Scheme Administrator offers retiring members the choice, with immediate effect, of having the remedy period 1st April 2015 to 31st March 2022 treated as either legacy scheme or 2015 scheme membership.

4. **BACKGROUND**

- 4.1 On 6th June 2022, the Audit and Risk Committee approved the payment of Immediate Detriment pensions in advance of October 2023, when it is anticipated that all legal arrangements will be in place.
- 4.2 There are additional members currently denied access to the 2015 Firefighters' scheme during the remedy period. The affected members were fully protected in their legacy pension scheme due to their length of service but it may have been

financially beneficial for them to have been offered the option to be moved to the 2015 Firefighters' scheme in April 2015. This option was denied them due to their age and is known as 'reverse discrimination'.

- 4.3 Given the Audit and Risk Committee decision on 6th June 2022 was taken to avoid discrimination claims against the Authority, it is proposed that 'reverse discrimination' cases are processed in line with Category 1 Immediate Detriment Cases i.e. at the point of retirement.

5. **EQUALITY IMPACT ASSESSMENT**

- 5.1 The legal duty on the Service in relation to an Equality Impact Assessment is to give due consideration to the impact of any policy decision as it affects those with protected characteristics. This due consideration is in the form of advantages and disadvantages for affected Scheme Members.
- 5.2 In relation to this report, the protected characteristic of age is engaged for Scheme Members and has been since the 'Sergeant' Court of Appeal decision. If the Committee decide to process 'reverse discrimination' cases, the disadvantage to affected Scheme Members is reduced.

6. **LEGAL IMPLICATIONS**

- 6.1 The recommendation at section 3 of this report mitigates the risk of discriminatory treatment on the grounds of or linked to age for the relevant cohort of retiring members. The recommendation is in line with legal advice and employment legislation.

7. **FINANCIAL IMPLICATIONS**

- 7.1 Due to the limited number of cases affected by the proposal in this report, it is anticipated that any costs incurred would be met from the existing funding already identified for cases associated with Immediate Detriment.

Ref. AU/A&R/2022/Nov/91611221

BACKGROUND PAPERS

Request for a Decision on Action to be Taken in Respect of Immediate Detriment cases under the McCloud/Sargeant Ruling – Audit and Risk Committee Report - 6th June 2022.

The contact name for this report is Mike Griffiths, telephone number 0121 380 6919.

PHIL LOACH
CHIEF FIRE OFFICER

Ref. AU/A&R/2022/Nov/91611221

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