

Freedom of Information request reference number: 6303.1 (response part 2 of 2)

Date of response: 07 June 2022

Request:

The memorandum of understanding between the Local Government Association (LGA) and Fire Brigades Union (FBU), which sought to address "immediate detriment", has not been adopted by the London Fire Brigade (LFB)—despite the LFB being one of the respondents in the High Court claim that led to the agreement.

I would like to request the following information

:

- Copies of all minuted meetings where this issue has been discussed. This information should include, but not be limited to, meetings of the Commissioners Board, Senior Management Team and the LGA.*
- Copies of any correspondence between the LFC, LFB and Government, specifically, but not limited to the Home Office and Her Majesty's Treasury relating to the McCloud/Sargeant judgements, the processing of immediate detriment cases and the application of the remedy ordered by the Court.*
- Details of instructions and correspondence between the LFC and the pension administrator regarding the processing of immediate detriment cases and the application of the remedy ordered by the Court.*
- Details of any guidance, advice or equality impact statements that have been made by Counsel or within People Services regarding the continued discrimination against a protected characteristic.*

Response:

In our first response issued on 29 March 2022 (https://www.london-fire.gov.uk/media/6420/63031_foi-response.pdf), I let you know that:

"We also hold a copy of another report which we will be able to release under the FOI act: Report no. LFC-0606 – 'Firefighters' Pension Scheme- LFC Treatment of Immediate Detriment cases', which includes the 'Standard Equality Impact Assessment Form'. In addition, our Finance team are collating any correspondence with other agencies.

I will look to provide you with a follow up response with report LFC-0606 and the correspondence as soon as possible."

Our Finance team have provided me with copies of LFB correspondence with the Home Office relating to Immediate Detriment. I have attached a copy of this correspondence to this response on pages 03-14 of 32. Please note, personal data has been removed from the correspondence under section 40 of the FOIA – Personal Information.

Our Finance team also hold a copy of an LPP (Local Pensions Partnership) document detailing resourcing requirements and associated costs for the implementation of Immediate Detriment for the LFB. I consider this information to be commercially sensitive and, therefore, exempt from release under Section 43 of the FOIA – Commercial Interests. Section 43 requires that we consider whether there is a public interest in disclosing the withheld materials, but we are

of the view that the public interest is best served by the Authority being able to secure the best terms and prices for its contracts, which means keeping the financial details of such agreements confidential.

Our Governance team have provided us with a copy of report number LFC-0606 – 'Firefighters' Pension Scheme- LFC Treatment of Immediate Detriment cases'.

I have attached this report, and its appendices (which includes the equality impact statement) to this response on pages 15-32 of 32.

The report was considered by Directors and the Commissioner at the internal Commissioner's Board. At the Board concern was expressed regarding the Home Office (HO) funding position given the potential high costs and therefore the financial and budgetary implications for the LFC and accordingly it was agreed that for the matter to proceed it would be necessary to obtain confirmation of the HO funding being made available. The LFC has and continues to be actively engaged in discussions with the Home Office in order to resolve matters.

We have dealt with your request under the Freedom of Information Act 2000. For more information about this process please see the guidance we publish about making a request on our website: <https://www.london-fire.gov.uk/about-us/transparency/request-information-from-us/>



LONDON FIRE BRIGADE

London Fire Brigade Headquarters
3rd Floor, 169 Union Street London SE1 0LL
T 020 8555 1200 x 30000 F 020 7960 3600

E [REDACTED]
www.london-fire.gov.uk

Andy Roe

London Fire Commissioner

The London Fire Commissioner is the
fire and rescue authority for London

[REDACTED]
Interim Director
Fire, Events and Central Management Directorate
Home Office

Date: 14 February 2022

2 Marsham Street
London
SW1P 4DF

Ref:

Dear [REDACTED]

Re: Firefighters Pensions Scheme – Immediate Detriment

I write further to my letters of 15 and 29 October 2021, and specifically in respect of the HMT's note on processing immediate detriment claims released on 29 November 2021.

As you are aware since at least July 2020 the Government has accepted that immediate detriment claims should be processed and such processing should be commenced prior to the introduction of any legislation. That has been the consistent position and hence why in early October 2020 negotiations were completed in respect of the Framework Agreement, between the Local Government Association (LGA) and the Fire Brigades Union (FBU). I was therefore quite surprised to receive the latest Guidance, which seems to represent a reversal of the Government's previous settled position.

As I explained in my letter of 29 October 2021, I am under increasing pressure to take steps to process the immediate detriment cases and this remains the case. I am, therefore, writing to seek clarity on what exactly the funding implications are given this change in position, since the potential number of London Fire Brigade employees and retired employees affected by the position is considerably higher than elsewhere, and accordingly so too are the financial implications.

In an email exchange of 9 November 2021, between Home Office [REDACTED] and LFB [REDACTED], [REDACTED] stated that the Home Office would not commit to providing any additional funding for processing the immediate detriment claims outside the usual AME grant process. It is somewhat ambiguous as to what, in practice, that means; namely whether the immediate detriment claims will be funded by the Home Office under the existing provisions of the Firefighters' Pension Scheme (England) Regulations 2014/2848 as part of the current AME grant process, or whether it will insist that such payments can only be made after the revised regulations have come into force sometime in 2023, or whether some other payment route will be provided. The revised guidance also leaves the position unclear.

Furthermore, the covering email to the guidance note states:

I also want to take this opportunity to provide some further clarity in relation to the funding position. As the Government does not advise that immediate detriment cases should be processed in advance of the legislation coming into force, we will not be in a position to provide any additional funding for those

costs which are paid outside of the pension account. These costs include payments that are not considered to be legitimate expenditure under the pension scheme regulations and any associated administration costs including any charges from your pension administrator. These will need to be funded locally by your fire and rescue authority from local budgets.

It would be helpful to understand the term 'legitimate expenditure' and what other payments may fall into this definition.

At the present time we estimate that the total immediate costs of processing pensions under the Firefighters Pension Schemes following the McCloud/Sargeant Judgment will be as follows: £82m in respect of the likely acceleration of Firefighters accessing a pension (under the 2015 scheme benefits) whereby it was previously expected that these liabilities would occur in future years and an additional £16m in respect of enacting immediate detriment and the associated administration costs of this in the region of up to £2M. The amounts have been calculated using data that shows there are 550 active Firefighters that are impacted upon and an additional 300 who are retired and already claiming a pension. It has been assumed within our grant submission of August 2021 that of the 550 active Firefighters, 80% of those will crystallise in 2021/22 with the remaining 20% crystallising in 2022/23. Furthermore, the total financial liability has been calculated using the average pensionable pay figure across the Brigade. The split of active and retired firefighter numbers will change over time as more firefighters may choose to retire without a resolution. However, for the avoidance of doubt the figures quoted here correspond to previous submissions. We can confirm that our August 2021 submission did not include the £16m immediate detriment costs nor a figure for the anticipated £2m administration costs. As such, please confirm that the Home Office has forwarded the LFB's August 2021 AME grant submissions to HMT and provide some assurance that this grant will be paid in July 2022, together with the balance of any immediate detriment administration costs set out above. I appreciate that LFB has received a one-off Home Office grant of £425k for additional pension administration costs relating to the McCloud/Sargeant remedy.

In addition to the above I also seek further information on the Home Office's position on s.61 of the Equality Act 2010, following its position to withdraw its guidance to process immediate detriment claims. Thus, your latest guidance note states that it is not certain that section 61 will now allow previous pension contributions to be treated as though they have been paid into the legacy schemes. The guidance does not however set out the basis for that contention nor does it address the effect of EU law, namely once there was a finding of discrimination, there was a retrospective rewriting of the pension schemes to remove any discrimination and the victims of the discrimination had to be levelled up until some other non-discriminatory arrangements were introduced, as set out in the Judgment of the Employment Appeal Tribunal in *London Fire Commissioner v Ms R Sargeant & Others UKEAT 0137 17*. I would be grateful if the Home Office could please set out, or disclose what advice it has been provided with, that section 61 (and EU law) cannot be optimised in this manner. In its guidance note the Home Office stated that it was up to the individual Scheme Managers to decide whether or not to process cases, but the Home Office's position was that pipeline cases should not be processed until legislation is in place. Please can you explain the reasons for your position on S61?

Further, the guidance states that the current rules are ambiguous. It would be helpful if the Home Office could set out on what basis it makes this contention. Likewise, the guidance states that further issues may arise. Again, the guidance does not state what these likely issues are going to be and so can the Home Office please set out in detail what likely further issues are going to arise, which it is currently aware of. I am going to be in considerable difficulties in waiting for legislation to be enacted before we start paying out on the immediate detriment cases. Realistically, we are very likely to face class action court claims, similar to the High Court claim issued against the LFC last year and as such we will need to be in a position to put forward viable lines of defence if we do not proceed to make payments. The Home Office advice that we wait until legislation has been enacted is unlikely to provide a defence in itself, particularly given that the Home Office has advised that ultimately it is for Scheme Managers themselves to determine. The guidance has left us and most other Fire and Rescue Authorities in a catch-22 position.

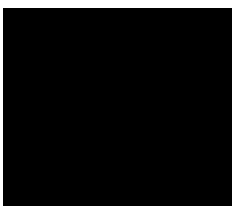
In summary, therefore, I would welcome answers to the following questions:

- (i) Does the Home Office accept the LFC's August 2021 AME grant submission, which includes the accelerated pension number (550) of those retiring under the FPS 2015; If so, please confirm that the Home Office has forwarded the LFB's August 2021 grant submissions to HMT and provide some assurance that this grant will be paid in July 2022;
- (ii) Please confirm whether the immediate detriment payments and administration costs (£18m) will be funded by the Home Office under the existing provisions of the Firefighters' Pension Scheme (England) Regulations 2014/2848 (the FPS 2015) as part of the current AME grant process, or whether such payments can only be made after the revised regulations have come into force sometime in 2023, or whether some other payment route will be provide;
- (iii) What does the Home Office consider to be 'legitimate expenditure' when determining the payments due under the AME grant processes;
- (iv) If we accept the said guidance and do not process any immediate detriment claims then can you please set out what assistance (financial and legally) we can expect from the Home Office;
- (v) In respect of any immediate detriment claims to be processed post the said guidance is it the Home Office's understanding and intention to accept that it is at the FRAs' sole discretion as to whether or not s.61 does apply to the immediate detriment claims? In other words notwithstanding the guidance whether the Home Office will seek to challenge post facto any of the schemes' legal assessments of section 61?
- (vi) In respect of the Home Office's own assessment of section 61 would you please set out and disclose what advice it has been provided and why it is said that the current rules are ambiguous?
- (vii) The said guidance states that further issues may arise. Would you please set out what exactly these further issues are and when they are likely to apply?

I fully appreciate the difficulties that the Home Office finds itself in but nonetheless the funding commitments for the immediate detriment claims present the London Fire Brigade with significant problems and as such I look forward to receiving your urgent response on the above matters.

As always, I again would like to reiterate my support for resolving the challenges ahead, and the officers here at the LFB are always on hand to assist, if needed.

Yours sincerely



Andy Roe
London Fire Commissioner

██████████
Home Office
2 Marsham Street
London
SW1P 4DF

The London Fire Commissioner is the
fire and rescue authority for London

Date: 29 October 2021

Dear ██████████

Firefighter Pensions Scheme – Immediate Detriment

I am writing further to my letter of 15 October 2021, regarding meeting the costs of the additional pensions burdens and following the recent publication of the Framework for dealing with Immediate Detriment cases. This framework was agreed between the Local Government Association (LGA) and the Fire Brigades Union (FBU) and my officers are working through this.

Whilst I appreciate that this has been a long-standing issue, in my role as the London Fire Commissioner and corporate sole, I am under increasing pressure to take steps to make Immediate Detriment payments as are other FRAs.

The risk of not doing so is the negative impact it will have on industrial relations and the threat of further litigation, which would likely involve the Home Office. As you know the total cost of these payments is likely to be around £100m for the London Fire Brigade with a substantial part being paid this financial year.

While other FRAs may also be presented with financial difficulties in paying Immediate Detriment cases, the number of London Fire Brigade employees, and therefore the cost, is likely to be unique to London. This figure does not include the additional administration costs that will be incurred to make these payments. With this in mind, I am proposing to take the decision to make Immediate Detriment payments subject to:

- i) A commitment by the Home Office to fund Immediate Detriment cases
- ii) The Home Office making payments to meet Immediate Detriment cases in the relevant financial year

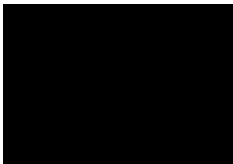
This decision is moving through our internal governance process and will be presented to the Deputy Mayor's Fire and Resilience Board on 9 November 2021 on this basis and, if approved, will be in the public domain shortly thereafter.

This will include an explanation of the financial position and the Home Office involvement. I would therefore, welcome a response from you as to when we might expect assurance from the Home Office addressing the two key commitments I have listed above. This will ensure that we can move at an appropriate pace in processing applications and making these payments.

I am pleased that you will be meeting with [REDACTED], Director for Corporate Services at LFB on 4 November 2021 to discuss this further.

Again, I would like to reiterate my support in resolving the challenges ahead and if you feel officers at LFB can help in any way, please do let me know.

Yours sincerely

A large black rectangular redaction box covering the signature area.

Andy Roe
London Fire Commissioner



LONDON FIRE BRIGADE

London Fire Brigade Headquarters
3rd Floor, 169 Union Street London SE1 0LL
T 020 8555 1200 x 30000 F 020 7960 3600

E [REDACTED]
www.london-fire.gov.uk

Andy Roe
London Fire Commissioner

The London Fire Commissioner is the
fire and rescue authority for London

[REDACTED]
Director of Fire, Events and Central Management (FECM)
Public Safety Group
Home Office
2 Marsham Street
London SW1P 4DF
By email only

Date: 15 October 2021

Dear [REDACTED]

Firefighter Pensions Scheme – Immediate Detriment

I am writing to you as I am sure you will be aware, the Local Government Association (LGA) and the Fire Brigades Union (FBU) have now published a Framework Agreement for managing Immediate Detriment cases.

This Framework is needed in order to provide affected Firefighters Pension Scheme (FPS) members with a remedy for the discrimination found in the McCloud/Sargeant claims in advance of the remedying legislation coming into force, expected in the autumn of 2023. Fire and Rescue Authorities (FRAs) are being encouraged to adopt the Framework.

Whilst the Framework addresses a number of outstanding issues that needed to be resolved to support Immediate Detriment payments, it does not address the key issue of the funding of these pension costs.

The use of the Framework to make Immediate Detriment payments means that a substantial number of pensions will be paid earlier than under extant legislation. As the London Fire Commissioner (LFC) and corporation sole, I can confirm that we currently have 548 active members affected by Immediate Detriment as well as a further 300+ retired members.

Therefore, for the LFC, the cost of meeting these additional pension burdens is likely to be around £100m with a substantial part of that being paid this financial year. This figure does not include the significant additional administration costs that will be incurred to make these payments.

I appreciate that the Home Office has recently contacted FRAs for estimates of the total expected spend on Immediate Detriment cases in the current financial year (2021/22) and that these are to be provided by 19 October. Whilst I welcome the request from the Home Office for this information, I would like to emphasise the need to seek assurance that the Home Office will meet the costs of the Immediate Detriment payments.

In addition, I must also seek assurance that the Home Office will put in place an appropriate mechanism to ensure that reimbursements are made on a timely basis to ensure that we do not suffer any detrimental cashflow issues.

I would appreciate your early attention to this matter to minimise delay as the LFC in being able to commence payments under the Framework. Such delay risks further costly litigation and prejudices industrial relations.

Please let me know if you would like to discuss this in more detail, and I will make available the appropriate officers to set out the financial and other challenges presented by Immediate Detriment.

Your urgent attention to this request and a substantive response would be appreciated as soon as is possible.

Yours sincerely



Andy Roe
London Fire Commissioner



Home Office

Public Safety Group
Home Office
2 Marsham Street
London SW1P 4DF

Tel: 0300 104 2710
www.homeoffice.gov.uk

Andy Roe
London Fire Commissioner
London Fire Brigade Headquarters
169 Union Street London
SE1 0LL

(sent by email)

28 May 2021

Dear Andy,

RE: Firefighters' Pension Schemes - Age Discrimination Remedy and Immediate Detriment

Thank you for offering your support in handling the issue of Immediate Detriment cases involving members of the Firefighters' Pensions Scheme.

I would like to assure you that the Home Office understands the profound importance of the McCloud/Sargeant remedy for those affected and we are committed to continuing to work with the sector to ensure that cases involving Immediate Detriment are processed quickly and appropriately.

I can confirm that we remain committed to updating the existing informal Home Office guidance on pipeline Immediate Detriment cases. We are currently working with HM Treasury to finalise changes and update the guidance. As you note, this is a very complex issue and so it is important that any updated guidance is as accurate as it can be. The guidance will not offer resolution to all the remaining issues – there remain outstanding technical issues that need to be resolved across the public sector pension schemes. However, it should be a constructive step forward. We greatly appreciate your patience and support in the meantime.

The informal HO guidance provides government advice but the overall responsibility for interpreting and applying the pension scheme regulations still remains with each Fire and Rescue Authority as the relevant scheme manager.

As you know, the HO guidance should not be applied to cases where a pension is already in payment. Retrospective cases are more complex to address, especially due to complexities in rectifying the member's tax position. Our view, as set out in FAQs (Link: <https://www.fpsregs.org/images/Age-discrimination/Home-Office-public-service-pension-schemes-consultation-response-Fire-FAQs-4-February-2021.pdf>) alongside the consultation response in February 2021, is that legislation may be needed for retrospective cases to be properly processed.

We appreciate the impact of the recent FBU legal proceedings and are committed to resolving outstanding issues as a priority.

I can also confirm that the Home Office responded to Bevan Brittan on 7 May confirming our willingness to meet with the LGA in June to discuss Immediate Detriment and wider funding issues in relation to the McCloud/ Sargeant remedy.

Yours sincerely,

[REDACTED]
Director for Fire
Public Safety Group

Tel: + [REDACTED]
Email: [REDACTED]@homeoffice.gov.uk

██████████
Home Office
2 Marsham Street
London
SW1P 4DF

The London Fire Commissioner is the
fire and rescue authority for London

Date 07 May 2021
Our Ref LFC/ID

Dear ██████████

Firefighters' Pension Schemes - Age Discrimination Remedy and Immediate Detriment

I am writing in relation to the Firefighters' Pension Schemes and specifically the issue of Immediate Detriment. I recognise the complexities and challenges around this issue and appreciate the added pressure this may be placing on the Home Office and would therefore, like to offer London Fire Brigade's support to you and your team in overcoming these difficulties.

The Home Office provided informal guidance to Fire and Rescue Authorities (FRAs) (and the Police) on 21 August 2020 on how to deal with Immediate Detriment cases and I am not aware of any further guidance being issued since. As I am sure you can appreciate, this is directly affecting members of my staff who are retiring, and I am keen to support a resolution that allows for the correct payment of these cases. Therefore, we will continue to manage the gap between members' expectations following the Home Office interim guidance, and what we can do as a FRA under existing regulations. In order to clarify the issues that remain outstanding and until final guidance becomes available, I would welcome any further guidance that might be provided by the Home Office, even additional interim guidance.

I also understand that Bevan Brittan solicitors (acting on behalf of all 45 FRAs, including myself as the London Fire Commissioner) have made attempts to engage with the Home Office over the past six months (most recently by a letter dated 28 April 2021) in the hope that the issues and concerns we (and the other FRAs) are facing can be addressed, which could possibly enable the immediate detriment cases to be resolved. We are not aware of any recent communication between Bevan Brittan and the Home Office.

My understanding is that overall, most FRAs nationally want to make Immediate Detriment payments in line with the Court instructions but are unable to do so due to unresolved issues on areas such as the recovery of outstanding employee contributions/refunds, tax implications, the treatment of purchased added pension in the new scheme (additional pension) and the potential payment of interest. I understand that it is addressing these issues that may be affecting the timing of Home Office provision of additional guidance to FRAs.

I am concerned that any delay in relation to resolving outstanding issues is leading to frustration amongst not only affected staff and their Unions but also with my colleagues in the other 44 FRAs in

England. You will be aware that the Fire Brigades Union (FBU), started legal proceedings against two FRAs on 3 March 2021 on behalf of an initial three test claimants. These were issued in the High Court and served to ensure FRAs are required to pay Immediate Detriment cases to its members. The London Fire Commissioner is one of these FRAs. We will make every effort to ensure that the additional pressure this places on FRAs does not increase the risk of decisions being made in error or lead to inconsistent treatment across FRAs, which could potentially cause further distress to affected staff.

Again, I would like to reiterate my support in resolving the challenges ahead and if you feel officers at LFB can help in any way, please do let me know.

Yours sincerely



Andy Roe

London Fire Commissioner

Direct T 020 8555 1200 [REDACTED]

Direct F 020 7960 3600

E [REDACTED]



LONDON FIRE BRIGADE

Report title

Firefighters' Pension Scheme- LFC Treatment of Immediate Detriment cases

Report to	Date
Local Pension Board Extraordinary Meeting	16 July 2021
Corporate Services Board	20 July 2021
People Board	22 July 2021
Commissioner's Board	6 October 2021
Fire and Resilience Board	12 October 2021
London Fire Commissioner	

Report by	Report number
Assistant Director - Finance	LFC-0606

Protective marking: **NOT PROTECTIVELY MARKED** *Please note, the LFB General Counsel's Department confirmed this report should be released in full (without redactions) on 06 June 2022.*

Publication status: Published with redactions

If redacting, give reason: Commercially sensitive and legally privileged information

Executive Summary

This report outlines the position in relation to Immediate Detriment cases under the McCloud/Sargeant ruling which determined that the transitional arrangements under the 2015 Firefighters Pension Scheme was discriminatory on the grounds of age. The remedy to address the McCloud/Sargeant judgment will take a number of years to implement. In addition, in October 2021 the High Court is due to hear a summary judgment application in respect of legal cases brought by the Fire Brigades' Union (FBU) against the LFC and Nottinghamshire and City of Nottingham Fire and Rescue Service (Notts) for remedial payments to be made (Immediate Detriment payments). Taking into account the McCloud/Sargeant ruling and the impending High Court case, the Local Government Association has, on behalf of fire and rescue services (FRAs) nationally, been in discussions with the FBU to develop a Framework Agreement and memorandum of understanding (the 'Framework') to enable the payment of Immediate Detriment cases. The Framework is close to being finalised and is expected to be published in October 2021, prior to the High Court hearing. It is anticipated that the Framework will address a number of areas of uncertainty previously identified following the issuing of Home Office guidance and will allow FRAs to commence payments under Immediate Detriment.

This report considers the case for making payments under Immediate Detriment and the costs and risks in doing so.

Recommended decisions

For the Deputy Mayor

That the Deputy Mayor for Fire and Resilience authorises the London Fire Commissioner to

1. Commit expenditure of up to £2,500,000 for the estimated additional administration costs relating to the processing of Immediate Detriment payments for the Firefighters Pensions Scheme (FPS), for members who are about to retire or have recently retired; and
2. Commit expenditure of up to £75,000,000 for the estimated pensions payments, including commuted lump sums, payable to Fire Pension Scheme (FPS) members under Immediate Detriment ahead of these payments being reviewed and confirmed, and Home Office funding provided, under the new FPS regulations.

This decision will only be taken after further consultation with the Greater London Authority's finance and legal advisers and Corporate Investment Board.

For the London Fire Commissioner

That the London Fire Commissioner notes the content of the report and approves that upon the Framework being published, delegated authority is given to Assistant Director, Finance:

3. After consultation with General Counsel, to decide whether to accept the Framework, detailing how Immediate Detriment payments should be made, including to those members with forthcoming FPS retirements and those who have already retired.
4. To implement the Framework as necessary and to review, at intervals, its arrangements in consultation with the LGA and LPPA.
5. Upon the Framework being agreed, to instruct the LFC pensions administrators, Local Pensions Partnership Administration (LPPA), to start processing Immediate Detriment cases and to authorise expenditure of up to £2,500,000 to cover the resulting likely additional administration costs.
6. To manage the cashflow consequences to LFC under the Framework, in advance of the FPS remedying legislation intended to be implemented by October 2023, to remedy the McCloud/Sargeant case, estimated at £75,000,000.

Introduction and Background

1. In 2015, changes were made to a number of public sector pensions, including the Firefighters Pension Scheme (FPS), and resulted in the implementation of the FPS 2015. The FPS 2015, in line with other public sector pension schemes, included transitional protections which meant that, based on the member's age, some members of the legacy schemes (FPS 1992 and FPS 2006) remained in those schemes (full protection); some did not join FPS 2015 straight away (tapered protection); and some moved across to FPS 2015 immediately. (no protection). Following a number of legal challenges known as McCloud/Sargeant, in 2018 the Court of Appeal determined that the transitional protection arrangements provided to members were unlawful as they were discriminatory in relation to age.

2. Following the Court of Appeal ruling, significant work has been taken to understand the implications of the judgment to identify actions necessary to implement the remedy. These are summarised below:
 - In December 2019, an interim order was made by the Employment Tribunal which provided that members who had brought claims (claimants) are entitled to be treated as if they remained in the FPS 1992, as long as they were in the scheme at 31 March 2012 and 31 March 2015.
 - The Government set out proposals on the remedy to address the unlawful transitional protection arrangements and consulted on their proposals between July and October 2020.
3. The remedy will include allowing FPS members to have the option to determine on retirement whether to have their pension benefits calculated under their current scheme (FPS 2015) or their legacy scheme (FPS 1992 in most cases, but for some members this is FPS 2006). The choice of scheme relates to the remedy period from 1 April 2015 to 31 March 2022, i.e. from the implementation of the FPS 2015 until all members are transferred into the FPS 2015 on 1 April 2022. A further report will be prepared for the LFC on the implementation of the remedy in due course, once the new pensions regulations are in place, intended on or around October 2023.
4. The remedy process includes the following key dates;
 - 1 April 2022 – all FPS members move to the FPS 2015.
 - 30 September 2023 – final deadline for regulations to be in place and pensions administration systems updated to process all pension cases.
 - 31 March 2025 – final deadline for scheme members to receive remediable statement (within 18 months of 1 October 2023).
5. In view of the timescales set out above, further challenges have been raised to address the McCloud/Sargeant decision in a more timely manner, and this is now being pursued through what is referred to as Immediate Detriment. Immediate Detriment is the term used to refer to members of the FPS who retire before the law/ scheme rules are changed to remove the age discrimination found in the McCloud/Sargeant ruling and who may experience a detriment if they are not given the choice of accessing benefits accrued under the legacy schemes at the time of retirement. Immediate Detriment is also used to describe those members who have already retired and could have received more beneficial pension benefits if they had been permitted to remain in their legacy scheme (rather than transferring to the FPS 2015) thereby enabling them to access those benefits at the time of their original retirement.
6. Making payments under Immediate Detriment has the benefit of allowing members to access the key benefit from the remedy without undue delay, however it presents significant challenges to FRAs, as payment would have to be made ahead of changes to FPS regulations. In summary, the implications of this are that:
 - a. The pensions administration system which automatically calculates benefits will not be amended until regulations are in place, and so Immediate Detriment cases will require manual calculations for each individual affected member.

- b. A number of pensions related issues in particular tax issues, and the implications for tax relief, annual and lifetime allowance, and additional contributions may not be addressed until the new regulations are in place.
 - c. Any payment made ahead of the regulations, and changes to pensions administration system will lead to additional costs payable to the LPPA and has the risk of errors in relation to manual calculations. Immediate Detriment cases will also have to be re-visited following the implementation of the regulations, with errors being addressed thereafter.
7. The Local Government Association (LGA) is expected to publish a Framework Agreement in the next month to support making payments under Immediate Detriment. This report therefore considers the case supporting making payments under Immediate Detriment, the costs of doing this, and the risks associated with it.

The case for Immediate Detriment

8. As set out in paragraph 4 above, the remedy is to be managed to a timetable which would see pension scheme members waiting for the period up to 31 March 2025 before receiving a remedial statement, and would therefore result in firefighters retiring now, as well as those already retired, waiting up to three and a half years before being able to access pension benefits for the remedy period, under their chosen scheme. This could lead to undue delay and hardship.
9. There are a number of factors that support the case for Immediate Detriment, in particular, the increased expectation on FRAs to implement this. However, it is also important to highlight the background events which undoubtedly have an impact on the case for Immediate Detriment.

The Home Office Guidance and the LGA Framework

10. In an effort to seek to resolve Immediate Detriment cases prior to the new regulations coming into force, the Home Office issued informal guidance in August 2020. However there remained many areas of uncertainty still to be addressed before any pensions could be paid based on legacy schemes. Further informal Home Office guidance was issued in June 2021, but some questions, for example in relation to tax, remained unanswered. Whilst the guidance notes provided some further clarity, significant areas of uncertainty were left unaddressed and cases were categorised into simple cases and those more complex cases, the latter of which would probably have to await the implementation of the new regulations. Further, both Home Office guidance documents recommended only the processing of cases where the member had not yet retired.
11. To help address these challenges, and to have a consistent approach to how FRAs process Immediate Detriment cases, there is a Framework Agreement currently being discussed between the LGA and the Fire Brigades Union (FBU), which is expected to be published in the next month.
12. It is anticipated that the Framework will address enough of the areas of uncertainty to allow the LFC to consider and approve making pension payments under Immediate Detriment.

The Schedule 22 Defence in the Employment Appeals Tribunal

13. The Employment Appeals Tribunal (EAT) in February 2021, found that FRAs could not rely on Schedule 22 of the Equality Act 2010; the argument put forward by the FRAs, relying on Schedule 22, was that they were not responsible for the legislation which was found by the Court of Appeal to be discriminatory on grounds of age, but were bound to follow it because it was the law. The EAT held that under sections 61 and 62 of the Equality Act 2010, a non-discrimination rule exists; that employers are prohibited from violating discriminatory provisions; and that scheme managers have the power to introduce non-discriminatory changes to a pension scheme. Further, under EU law, once there is a finding of discrimination, there is to be a retrospective rewriting of the pension schemes to remove any discrimination and the victims of the discrimination had to be levelled up until some other non-discriminatory arrangements were introduced.

The High Court Claims

14. Shortly after the EAT Judgment was handed down, a case was issued in the High Court by the FBU against LFC (one claimant) and Nottingham FRA (Notts) (two claimants), collectively known as the 'High Court claims', seeking to compel the LFC (and Notts) to make Immediate Detriment payments to members who had already retired.
15. The High Court claims were defended and in response to the defence, the FBU made an application for summary judgment on the basis that they do not consider the defence to have any reasonable prospects of success. The FBU's summary judgment application in the High Court claims is due to be heard during the third week of October 2021. However, prior to that date it is expected that these claims could be resolved through the publishing of the Framework Agreement.

The Public Service Pensions and Judicial Offices Bill

16. In July 2021, the Public Service Pensions and Judicial Offices Bill ('the Bill') was laid before Parliament setting out how the Government will remove the discrimination identified by the Court of Appeal in the Sargeant/McCloud case. The Bill includes reference to Immediate Detriment, and addresses some of the implications on the implementation of the remedy of earlier payments under Immediate Detriment.
17. The Bill received its Second Reading in the House of Lords on 7 September 2021 and will now move to the Committee Stage (first sitting on 11 October 2021). James Younger, Viscount Younger of Leckie, confirmed at the Second Reading that the Government:
 - is aiming for the Bill to receive Royal Assent in early 2022
 - will be depositing policy statements in the House Library in the coming weeks
 - expects that some technical amendments will be required during the Bill's passage through Parliament.

Potential Immediate Detriment cases within the LFC

18. Officers have worked with the LFC's pensions administrators, LPPA, to identify the number of scheme members that may be eligible to submit a claim under Immediate Detriment. It is estimated that 548 active members of the FPS may be eligible to retire under Immediate Detriment.

19. The current Home Office guidance relates only to active members of pension schemes, however it is expected that the Framework will also include retired members. This is to help address the issues arising in the High Court claims. Extending Immediate Detriment to retired members is estimated to lead to a further 1,249 cases for members that retired during the remedy period.
20. In considering whether to make payments under the Framework, it is noteworthy that all Immediate Detriment cases processed using the Framework will need to be revisited once the full detail of the Government's approach to remedy is finalised, and legislation is in place. This could result in both over-payments and under-payments to members which would have to be recovered or paid out.
21. The guidance from the Home Office and the guidance from the LGA (and inevitably the Framework) make it clear that the responsibility and risk of processing Immediate Detriment cases remains with the Scheme Manager, the LFC.

The costs of processing Immediate Detriment cases

22. Officers have had a number of discussions with the LFC's pension administrators, LPPA, on the practical challenges and potential costs of processing Immediate Detriment cases for LFC, if the decision is taken to accept the Framework and to process Immediate Detriment cases.
23. The LPPA has provided its proposals on processing Immediate Detriment cases on behalf of LFC, which set out the scope, timeline, and costs for LPPA to handle Immediate Detriment cases. It includes assumptions that LPPA has made in terms of the resourcing requirements and associated costs. The proposal currently only addresses the estimated 548 active members that have been identified who may be in scope for Immediate Detriment payments and may choose to retire between now and October 2023. The exact date that these individuals are likely to retire is unknown, however a potential spike is expected around the end of the financial year, up to March 2022.
24. Records show that the LFC also has a total of 1,249 staff that retired in the remedy period. If, as expected, the Framework is to include retired members, the LPPA's proposals will need to be reviewed for any further Immediate Detriment claims. Although out of the 1,249 retirees it is considered likely that only around 308 retired members would be directly affected by Immediate Detriment, all claims would have to be reviewed and calculations prepared and so there would still be resource implications if the other retired members claimed that Immediate Detriment applied to them. This would result in significant extra costs and resourcing implications given the numbers involved, and discussions are ongoing with LPPA to understand these implications.
25. The LPPA has reviewed the expected workload implications of Immediate Detriment, considering the number of potential cases identified above. The LPPA costs are based on the limited information currently available on the content of the Framework. The final detail of the Framework may lead to further challenges and risks in processing Immediate Detriment cases, with subsequent resourcing implications for both the LPPA and LFC dependent on the requirements set out in the Framework and the expectations it raises for members, the FBU and the LGA for processing Immediate Detriment payments.
26. Each Immediate Detriment case will have to be manually calculated and requires resources over and above the typical working time for standard 'business as usual' retirements (i.e. non-Immediate Detriment). Immediate Detriment pension benefits cannot be calculated from pension administration software, and this will not be changed until the regulations to implement

the remedy are in place. The LPPA has estimated that the Immediate Detriment calculations will take in the region of an additional 10 hours over processing a current normal retirement case. This means that the LPPA will need to recruit and train additional staff specifically for Immediate Detriment cases. The LPPA anticipates that it will require between 6-10 additional staff (FTE) in order to handle Immediate Detriment cases across all their FRA clients, with additional project support, systems and reporting requirements.

27. For business as usual pension administration work, the LPPA operates on a cost recovery basis under a shared service agreement with the LFC through the London Pensions Fund Authority (LPFA). This means that the LPPA can only recover the costs incurred and are therefore not permitted to make a profit. However, officers have been informed that the Immediate Detriment work is considered a 'value added business' project and so will be charged to all FRA clients on a commercial basis incorporating a profit margin. Officers are continuing discussions with the LPPA on the potential costs and updates will be provided as necessary.
28. Based on the current working assumptions, and staffing required to address the anticipated cases, the LPPA is to charge the LFC on a 'per case' basis. This fee is based on factors such as estimated staffing and case processing time and for each Immediate Detriment retirement case, it is anticipated to cost £1,280 per case plus VAT. The fee includes on-boarding costs for each new member of staff covering recruitment, training, equipment, and system licences. Costs also include project support and any additional reporting requirements. The costs are based on processing Immediate Detriment cases for all the LPPA FRA clients, with these total costs, estimated at £1,700,000, then apportioned to each FRA on the basis of the number of cases to be processed.
29. The LFC has 548 staff identified by the LPPA who may be in scope and may choose to retire between now and October 2023. This number of cases at a rate of £1,280 per case leads to estimated additional pension administration costs of £701,000 for active staff. This cost is the LFC proportion of the £1,700,00 estimated total LPPA cost above.
30. As outlined above, it is now anticipated that the Framework will also cover retired members, of which the LFC has 1,249 that have been identified as having retired in the remedy period. The discussions with the LPPA have only just commenced in relation to retired members, however if cases are charged at the same rate as active members this would see estimated costs, at £1,280 per case, of £1,599,000.
31. The LPPA also requires part of the costs of Immediate Detriment to be met upfront, to help manage the cashflow requirements, as the LPPA will be recruiting and training staff, and so incurring costs, ahead of processing the first Immediate Detriment claims. This up-front fee is £143,000 and is based on costs expected to cover the setting up of the project team, and processing early cases. This has been agreed in a decision by the (now former) Director of Corporate Services.
32. The discussions with LPPA are continuing to better understand the costs, timescales and additional resources involved and the impact of the proposed Framework on the expectations of members, the FBU and LGA of the processing of Immediate Detriment cases. The costs will also be regularly reviewed and revised as necessary as experience of processing cases develops.
33. In addition to the additional costs incurred by LPPA, it is expected that additional resources will also be required by the LFC, in particular to provide additional staffing to review seven years payroll and pension records and present these to the LPPA to prepare the Immediate Detriment

calculations. It is difficult to be precise on these costs ahead of the Framework being published, and therefore understanding the detailed requirements, however initial estimates are for costs at £50,000 for active members, and a further £100,000 for retired members, with a further £50,000 added as a contingency for the project.

34. It is therefore recommended that approval is provided to incur additional administration costs of up to £2,500,000, as summarised in the table below, to implement Immediate Detriment for active and retired members. These costs will be regularly reviewed throughout the project.

Table 1 – Administration Costs

	Cost £000
LPPA Charges	
Active Members (at £1,280/case)	701
Retired Members (at £1,280/case)	1,599
LFC Admin	
Active Members	50
Retired Members	100
Contingency	50
Estimated Total Costs	2,500

35. It is expected that this additional administration cost will have to be met by the LFC, and therefore increase the risk on the LFC financial position. Whilst these additional costs have been raised in the discussions with the LGA, it is now expected that these additional pensions administration costs will fall on FRAs at least in the short to medium term.
36. The Home Office has provided grant to LFC of £425,000 to support meeting the administration costs of implementing the remedy, including costs of changes to pensions administration systems and additional administration resources. However it is not yet clear what these costs will be or whether any balance would remain on the funding to help meet the Immediate Detriment costs. The use of this reserve should be reviewed as further details develop on the costs of both Immediate Detriment and the remedy.
37. It is understood from the LGA that costs incurred as a result of remedying the McCloud/Sargeant cases should be recoverable under the 'new burdens' principle. Discussions on this will continue with the Fire Sector.
38. In addition to the administration costs, there will also be further financial implications from Immediate Detriment in scheme members retiring earlier than would otherwise be the case. As mentioned above, a key reason for Immediate Detriment is to reduce the delay in scheme members being able to access pension benefits under the legacy scheme. This means that pensions, and commuted lump sums, will come into payment much earlier than previously forecast. The costs of pensions are paid by the LFC but met from grant funding from the Home Office, however the estimates that support grant funding for 2021/22 were prepared before the approval of Immediate Detriment and do not therefore reflect its impact. Based on the number of active members eligible, 549, and People Services estimates of the members that may actually now retire in 2021/22, there is potentially an additional pension cost (including lump sums) of £75,000,000.

39. It is therefore further recommended that approval is provided to make additional pensions payments of £75,000,000 for Immediate Detriment cases ahead of the pension regulations being implemented, and Home Office funding being brought forward to meet this earlier demand.

New Burdens Application

40. Officers understand that discussions between the LGA and Home Office are continuing on the funding issue, but that they are becoming increasingly closer to issuing a formal application to recover FRA costs associated with the Transitional Pensions claims (to include the costs of Immediate Detriment and other remedy costs).

Risks in Immediate Detriment

41. The decision to make payments under Immediate Detriment does have a number of risks, many of which have been identified earlier in the report, but these are summarised below.
42. The most significant risk in not making Immediate Detriment payment is the risk of further court claims. Potentially every scheme member eligible for Immediate Detriment, i.e. the 549 active members and up to 1,249 retired members could each bring a legal case against the LFC, which would have associated costs. It is considered that this risk of further claims outweighs the risks in implementing Immediate Detriment.
43. All Immediate Detriment payments have to be calculated manually and there is therefore a risk that errors may be made in these cases, and have to be subsequently corrected, at further cost.
44. The cost estimates are based on the current understanding of requirements, and there is a risk that these may increase when the Framework is published.
45. The LPPA and/or LFC may not be able to recruit sufficient additional resources to meet the additional demands presented.
46. There is a risk that members will all submit their claims at a similar time and overwhelm the administration process and lead to delays in processing members claims, and failure to meet deadlines to be set out in the Framework.
47. There is a risk that any additional Home Office grant for the additional pension costs will be delayed and therefore the LFC has to manage the substantial cashflow impact.
48. There is a risk that the additional administration costs of Immediate Detriment fall on FRAs and cause additional budget pressure for the LFC.
49. There is also the possibility that the new burdens application will not recover all monies expended, leaving the LFC out of pocket.

Remedy proceedings in the Employment Tribunal

50. The wider implications of remedying the McCloud/Sargeant cases is outside the scope of this report, however, it should be noted that a remedy hearing in the Employment Tribunal remains outstanding. The costs of remedy are not yet known, but the claimants (and possibly non-claimants) will be entitled to an injury to feelings award and possibly other consequential losses. Injury to feelings awards are made on the Vento scale and it is thought that if awarded they would be at the lower end of the lower Vento scale which is £900 - £9,100. There are 968 LFC

claimants which if for example were given the lowest award from the band of £900, would lead to expenditure of some £871,000. Clearly, if the awards were higher, or if non-claimants could claim, this would be significantly higher. There are also legal costs associated with the defence of all of the legal claims, which is being calculated on a cost sharing basis across the FRAs. As with the Immediate Detriment cases, it is anticipated that all costs will be recoverable under the new burdens application.

Local Pension Board (LPB)

51. The issue of Immediate Detriment was raised at the LPB meeting on 11 June 2021, in particular with the June 2021 Home Office guidance, which had recently been published at the time. The Board was keen to discuss the implications and provide their views on the issues for LFC. LPB members and officers advised that they had not had a chance to review the guidance, so the Board requested an extraordinary meeting to discuss the issue.
52. The LPB had an extraordinary meeting on 16 July 2021 to discuss the issues on the treatment of Immediate Detriment cases for LFC staff. In summary, the Board agreed that communications to staff was of key importance, on both Immediate Detriment and the age discrimination remedy, to keep them updated on a factual basis. The Board agreed that communications provided centrally by the LGA was considered necessary so that all scheme members are provided with the same information to understand and make decisions on. However, LGA communications on Immediate Detriment has been limited.
53. Officers were asked to work with the LPPA to provide a further breakdown of the 548 LFC staff identified by the LPPA, who may be in scope and may choose to retire between now and October 2023, and in particular to identify those that are 'straightforward/simple' cases that could be more easily processed as Immediate Detriment cases. However, the development of the Framework discussions may have superseded this request.

Objectives and Expected Outcomes

54. That the London Fire Commissioner notes this report and as the Scheme Manager of the LFC Firefighters' Pension Schemes (FPS) provides a decision on the treatment of Immediate Detriment payments for LFC staff in the FPS.

Impacts

Equality Impact

55. The London Fire Commissioner and decision takers are required to have due regard to the Public Sector Equality Duty (s149 of the Equality Act 2010) when taking decisions. This in broad terms involves understanding the potential impact of policy and decisions on different people, taking this into account and then evidencing how decisions were reached.
56. The Public Sector Equality Duty requires us, in the exercise of all its functions, to have due regard to the need to:
 - a. Eliminate discrimination, harassment and victimisation and other prohibited conduct.
 - b. Advance equality of opportunity between people who share a relevant protected characteristic and persons who do not share it.
 - c. Foster good relations between people who share a relevant protected characteristic and persons who do not share it.

57. Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:
- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic where those disadvantages are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
58. Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
- (a) tackle prejudice, and
 - (b) promote understanding.

The protected characteristics are:

- Age,
- Disability,
- Gender reassignment,
- Pregnancy and maternity,
- Marriage and civil partnership (but only in respect of the requirements to have due regard to the need to eliminate discrimination),
- Race (ethnic or national origins, colour or nationality),
- Religion or belief (including lack of belief),
- Sex (Gender),
- Sexual orientation.

59. The Equality Impact Assessment (EIA), at Appendix 1, for this report was prepared on 15/07/2021 and reviewed on 30 September 2021. The impact assessment found positive impacts identified in providing remedy for eligible staff effected by Immediate Detriment from the age discrimination as found in the McCloud/Sargeant ruling.

Procurement and Sustainability

60. This report by itself does not introduce any new procurement or sustainability impacts but if such developments do arise, they will be progressed in accordance with existing protocols.

Strategic Drivers

61. This report provides an update on Immediate Detriment. The report sets out the developing position on making payments to eligible FPS members to address the unlawful transitional protection, ahead of the remedy. The report positions the LFC to consider implementation given the expected publication of a Framework Agreement by the LGA in October 2021.

Workforce Impact

62. Staff side are represented on the Local Pension Board and so have had an opportunity to comment on this report at an extraordinary LPB meeting on 16 June 2021. The LPB discussed the drivers to implement Immediate detriment and the challenges in doing so. It was outlined that the Home Guidance still had a number of areas the required addressing, but LPB wanted to understand the cases that could be identified as 'simple/straightforward'. The importance of national communication was recognised and this would be raised with the LGA.

Finance comments

63. The report seeks approval to make Immediate detriment payments to eligible FPS member, ahead of the implementation of the remedy in the McCloud/Sargeant ruling.

64. The payment of Immediate Detriment claims will be proposed manually and will incur costs up to £2,500,000 to process members about to and already retired. This cost is based on a case rate of £1,280. This cost is to be reviewed as experience in processing claims develops. The cost in 2021/22 is being included in the financial position reporting, and is expected to be contained within the overall forecast underspend for the year. The potential costs in 2022/23 will be considered further when the Framework is published and if necessary considered as part of the budget process for 2022/23.

65. Immediate Detriment will have further financial implications as eligible FPS members will be retiring earlier and at higher cost than previously forecast. It is estimated that this will bring forward £75,000,000 in pensions costs. The LFC pensions costs are met, net of contributions collected, by Home Office funding, however funding in 2021/22 was determined ahead of decisions on Immediate Detriment, and so will have cashflow implications until further decision are taken on the level of Home Office funding.

66. There also identifies further costs, including possible compensation, that are not addressed as part of this report. These will be considered, and funding identified, as part of a future report.

67. The LFC has received £425,000 in Home Office grant to support meeting the costs of the McCloud/Sargeant remedy.

Legal comments

68. Under section 9 of the Policing and Crime Act 2017, the London Fire Commissioner (the "Commissioner") is established as a corporation sole with the Mayor appointing the occupant of that office. Section 1 of the Fire and Rescue Services Act 2004 states that the Commissioner is the fire and rescue authority for Greater London.

69. The FPS is a statutory scheme and there is currently no legislation making provision for the processing of the immediate detriment cases. However, section 61 of the Equality Act 2010 (the non-discrimination rule), provides FRAs with the power to give effect to the Employment Tribunal Order dated 18 December 2019, to treat employees as if they remained a member of the 1992 or 2006 FPS (legacy schemes) during the remedy period (April 2015-March 2022). The Home Office guidance makes it clear that the responsibility and risk for processing the Immediate Detriment cases remains with the Scheme Manager. External legal advice has been obtained on this matter, the contents of which is reflected within the body of this report.

70. It is understood that the Framework and associated Memorandum of Understanding will be an agreement between the LGA and the FBU. However, the LGA has a Steering Committee which includes representatives from FRAs nationally and it is anticipated that aspects of the Framework will also have been discussed with central government departments. The Framework is likely to

reflect the provisions set out in the Public Service Pensions and Judicial Offices Bill 2021, which forms the basis of the remedying legislation. As such, the Framework should place the LFC in a good position to embed the remedying legislation once implemented. There are however likely to be aspects of the Framework which may change with the remedying legislation, for example rates of interest payable to members for overpaid pension contributions, which could mean that members are either worse off or better off by opting to have an Immediate Detriment payment in advance of the remedying legislation. When making a choice as to whether to invoke an Immediate Detriment payment and confirming which FPS to receive pension benefits under for the remedy period, it will need to be understood by members that this choice will be irrevocable and members will need to sign a waiver to this effect. Officers will therefore need to ensure that members have adequate information available for them to make these decisions. It will also need to be part of the immediate detriment payment arrangement with members that figures may need to be adjusted post legislation, and difficulties may arise in recovering overpayments.

71. It is apparent that the Framework discussions have not included pensions administrators as a stakeholder. Officers will need to ensure that if a decision is taken to adopt the Framework, that provisions therein do not conflict with any contractual obligations or other agreed arrangements with the LPPA.
72. There are currently live proceedings in the High Court seeking retrospective action on immediate detriment cases for retirees. However, it is envisaged that the Framework will seek to address the issues raised in those claims, enabling a resolution without the need for the summary judgment application to be heard.
73. By direction dated 1 April 2018, the Mayor set out those matters, for which the Commissioner would require the prior approval of either the Mayor or the Deputy Mayor for Fire and Resilience (the "Deputy Mayor"). Paragraph (b) of Part 2 of the said direction requires the Commissioner to seek the prior approval of the Deputy Mayor before "[a] commitment to expenditure (capital or revenue) of £150,000 or above as identified in accordance with normal accounting practices". The Deputy Mayor's approval is accordingly required for the London Fire Commissioner to incur the expenditure set out in the recommendations to this report.

List of Appendices

Appendix	Title	Protective Marking
1	Equality Impact Assessment	

Consultation

Name/role	Method consulted
Tania Legore – General Counsel's Department	Draft report
Dominic Johnson – People Services	Draft report
Tiffany Oarton - Equality Manager	Draft report
Jennifer Porter – Sustainable Development	Draft report

Standard Equality Impact Assessment Form

Question 1: Which Group, Department, or Project Board is responsible for carrying out the Standard Equality Impact Assessment?

Name	Finance
------	----------------

Question 2: Lead assessor's contact details

Name	Rory Murphy	Tel No	31353
Job title	Finance and Administration Manager	Extension	
Department	Finance	Email	Rory.murphy@london-fire.gov.uk

Question 3: Title of document / policy (please include the policy number) / proposed change (project or initiative)

Firefighters' Pension Scheme - LFC Treatment of Immediate Detriment cases

Question 4: Define the work, is it?

New	Yes	Complete redesign	
Small change		Other (please describe)	

Question 5: Briefly outline the aim and the purpose of the work that is being screened for Adverse Equality Impact.

Aim	This report outlines the position in relation to Immediate Detriment cases under the McCloud/Sargeant ruling and seeks a Commissioner's Decision on the treatment of Immediate Detriment for LFC staff.
Purpose	This report outlines the position in relation to Immediate Detriment cases under the McCloud/Sargeant ruling. The LGA is expected to publish a Framework Agreement in October 2021 to add to the Home Office updated informal guidance to Fire and Rescue Authorities (FRAs) on Immediate Detriment payments for the Firefighters' Pension Scheme (FPS). The Framework is expected to address a number of areas of uncertainty that remained following previous guidance and therefore paved the way for the LFC to take a decision on implementing Immediate Detriment

Question 6: Has a EIA been conducted previously? (please tick)			
Yes		No	X
If yes, please attach a copy. If no state the reasons why not.	New report.		

Question 7: Who is it intended to benefit?					
Staff	X	Public / service users			
Other (please state)	Firefighter Pension Scheme members.				

Equality Impact Assessment Matrix

The table below identifies if you are required to complete a full Equality Impact Assessment.

Protected characteristic	Positive Impact	No Impact	Adverse Impact
	No full EIA required	No full EIA required	Full EIA required – Action plan required

Question 8: Identifying the impacts	
Consider any potential impacts on the Protected Characteristic Groups, etc, and the relevance of policy / change to each group as described as: PI = Positive Impact, NI = No Impact or AI = Adverse Impact	
Protected Characteristic	Level of Impact (PI = Positive Impact, NI = No Impact or AI = Adverse Impact)
Age (younger, older or particular age group)	PI –The remedy in the McCloud/Sargeant case is to address the unlawful

	transitional protection in the FPS 2015. This was unlawful due to age discrimination. Immediate Detriment in seeking to bring forward the application of the remedy will have a positive impact on those most affected by the unlawful protection.
Disability (physical, sensory, mental health, long term illness, hidden)	NI
Gender reassignment (someone in transition from one gender to another)	NI
Marriage / Civil Partnership (married as well as same-sex couples)	NI
Pregnancy and Maternity	NI
Race	
Religion or Belief	NI
Sex	
Sexual Orientation	NI
Are there any other groups this work may affect? i.e. People living in areas of disadvantage, homeless people, people on low income / poverty?	
Question 9: Has your assessment been able to demonstrate the following?	
Positive impact	The Firefighters' Pension Scheme is a statutory scheme and there is currently no legislation making provision for the processing of the immediate detriment cases arising from the age discrimination remedy. However, section 61 of the Equality Act 2010 (the non-discrimination rule), provides FRAs with the power to give effect to the Employment Tribunal Order dated 18 December 2019, to treat employees as if they remained a member of the 1992 FPS (legacy scheme) during the remedy period (April 2015-March 2022). The Home Office guidance makes it clear that the responsibility and risk for processing the immediate detriment cases remains with the Scheme Manager. This report seeks LFC decision on the Immediate Detriment cases, and to process this in line with the Framework Agreement.
No impact	
Adverse impact	

Question 10: Meeting the Public Duty for Equality Impact Assessment if applicable	
Please provide a rationale to support the results of the Standard Impact Assessment, in that due consideration has been given to:	
<ol style="list-style-type: none"> 1. Eliminate unlawful discrimination, harassment and victimisation 2. Advance equality of opportunity between different groups, and 3. Foster good relations between different groups 	
Advance equality of opportunity	
Foster good relations	
What data has been used to inform the Impact Assessment? (E.g. GLA Datastore, Census Data, Staff Monitoring Data, Staff Survey Data, Local Borough Population Demographics.	
Data Source	How it has been used
Home Office guidance, LGA guidance, legal opinion	To provide information on the treatment of Immediate Detriment pension cases.

Question 11: Have you consulted with staff, LFB support groups, trade unions, public / service users, and / or others to help assess for Impacts? (please tick)			
Yes	X	No	

If yes, who was involved and how were they involved? If not, why not?	
Who?	The report will go to the LFC's Local Pension Board (LPB) where the employee staff side are represented.
How?	An extraordinary LPB Meeting has been arranged to discuss the issues and will be reported to CB and FRB for decision.

Full Equality Impact Assessment Form

The full Equality Impact Assessment picks up from the Standard Equality Impact Assessment process.

You have by this stage identified Adverse Impact for a protected characteristic group/s.

You now need to move onto a full Equality Impact Assessment.

A full assessment is a more detailed examination of what you have found and the mitigation plan to address the Adverse Impact.

The overview for this work will look like this:

Adverse Impact Detail	Outline of Mitigation Plan
<p>Describe what you have found in detail in relation to:</p> <ul style="list-style-type: none"> • Community Groups • Workforce 	<ul style="list-style-type: none"> • What are you going to do about it? • Who are you going to involve to help advise and involve in decision making about the adverse impact? • How are you going to involve and engage with people, staff, etc on decision? • What are your timescales to do this? • What stages (if more than one) are involved? • How will you feedback to those you have consulted with?



For guidance and support, please contact Cultural Change, Strategy and Risk, or the Equality Support Groups (ES