



LONDON FIRE BRIGADE

LFC-23-043x

Proposal for pensions Immediate Detriment payment for terminal illness cases only

Report to:

Investment and Finance Board	24 April 2023
Commissioner's Board	26 April 2023
Deputy Mayor's Fire and Resilience Board	12 May 2023

Report by:

Assistant Director Finance

Report classification:

For decision

For publication

I agree the recommended decision below.

Andy Roe

London Fire Commissioner

Date This decision was remotely signed on 22 May 2023

Executive Summary

The report seeks a decision on whether LFC should process pension Immediate Detriment (ID) payments for current members of staff, who have been diagnosed with a terminal illness, as an exception ahead of the planned implementation in October 2023 of the remedy legislation which seeks to address the discrimination identified by the Court of Appeal in the McCloud/Sargeant case.

For the London Fire Commissioner

Recommended decision

That the London Fire Commissioner notes the content of the report and as the Scheme Manager of the LFC's Firefighters' Pension Schemes approves the following:

1. That currently serving eligible LFC staff that are to be ill health retired a with terminal illness diagnosis be allowed the opportunity to apply for access to pensions benefits to address an Immediate Detriment (ID) and exercise the choice of taking all their pension benefits accrued during the remedy period under their legacy pension scheme rather than under the 2015 Firefighters Pension Scheme, if retiring before the planned implementation in October 2023 of the remedy legislation to address the discrimination identified by the Court of Appeal in the McCloud/Sargeant case.
2. To delegate authority to the Assistant Director of Finance to instruct the Local Pensions Partnership Administration (LPPA) to enter in a disclaimer with the LPPA and to start processing cases identified in paragraph (1) above as soon as reasonably practicable after receiving the member's choice and to incur any resulting additional administration costs.

1 Introduction and background

- 1.1 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. The government is currently consulting on retrospective remedy, with remedy regulations due to be implemented in October 2023.
- 1.2 Immediate Detriment is the term used to refer to members of the FPS who retire before the remedy regulations come into force 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.
- 1.3 In August 2020 and June 2021, the Home Office issued non-statutory guidance for processing immediate detriment cases. In response to this, and following a High Court Judgment in 2021, which was linked to immediate detriment, the Fire Brigades Union (FBU) and the Local Government

Association (LGA) formulated and agreed on a Framework to help address challenges, and to have a consistent approach to how fire and rescue authorities (FRAs) process Immediate Detriment cases.

- 1.4 In anticipation of the Framework being published in October 2021, a report to FRB [FP1281] was prepared seeking authority to implement the said Framework. However, in November 2021 the Home Office withdrew its informal non-statutory guidance on processing certain kinds of Immediate Detriment cases ahead of legislation, with immediate effect. This decision was based on HM Treasury guidance and the Home Office stated that, although the decisions remain for the Scheme Managers to make, it does not advise schemes to process any Immediate Detriment cases before legislation is in place. This was based on the risk and uncertainty of paying benefits before the remedying legislation and relevant tax provisions came into force. Following the withdrawal of this Home Office guidance no further action was taken on the processing of immediate detriment cases.
- 1.5 The remedying regulations are due to come into force on 1 October 2023 and this is when the pensions remedy will start to take effect. For the Remedy period (i.e. the period of discrimination 1 April 2015 to 31 March 2022), eligible members will, in order of priority be able to choose to receive legacy pension scheme benefits or benefits equivalent to those available under the reformed pension scheme.
- 1.6 Officers understand that Ill Health Retirements and death cases will be treated as the first priority for remedy.
- 1.7 However, in the interim, the LFC has at least one case where a serving member of staff is terminally ill and would like to be given the option of accessing their fully legacy scheme (Immediate Detriment) benefits. It is anticipated that there are only a small number of cases which will fall within the category of cases to be progressed for Immediate Detriment payment in advance of the legislation being implemented.
- 1.8 It is now proposed to process a very limited number of Immediate Detriment payments for members of the FPS 2015 diagnosed with a terminal illness and that are being ill health retired. This is considered the compassionate thing to do and is in line with the LFC behaviors. Whilst the pensions remedy is due to be implemented from October 2023 this is expected to take a significant period to be completed and would therefore allow earlier access to benefits in these exceptional cases. It is also understood to be consistent with the priority in the implementation of the pensions remedy to prioritise key groups of members including those that ill health retired.

2 Implications and challenges of making ID payments

- 2.1 Making payments under Immediate Detriment has the advantage of allowing members to access key pension benefits without undue delays, however it presents challenges to the LFC, as the payment would have to be made ahead of changes to FPS regulations and systems which will complement that legislation. In summary, the potential implications are as follows:
 - The member's decision for remedy is likely to be irrevocable – choice made now may not be best option for the individual because some reformed (FPS 2015) benefits are better than the legacy benefits depending on individual circumstances, for example the FPS 2015 FPS pays three times annual salary for death in service benefits compared against a multiplier of two for the 1992 FPS. The FPS 2015 also provides a higher surviving partner's pension.
 - A key consideration is the member's ability to access all relevant information, and obtain

appropriate financial advice, in order to be able to make an informed decision that not only works best at the current time but also for the family/dependants into the future. It is understood that choices made under Immediate Detriment are final. Member will be asked to sign a waiver form to confirm that they fully understand the choice which they are making.

- The member should obtain independent financial advice to help inform their choice. The cost of this will need to be met by the individual member.
- The pensions administration system which automatically calculates pension benefits will not be upgraded until regulations are in place, and so Immediate Detriment cases would require manual calculations for each individual affected member. There is therefore a risk that errors may be made in these cases, and have to be subsequently corrected, at further cost. These errors may also include overpayments, which will need to be recovered.
- 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 remedying regulations are in place.
- Any Immediate Detriment payments made ahead of the remedying regulations and changes to pensions administration system will lead to additional costs payable to the Local Pensions Partnership Administration (LPPA). Immediate Detriment cases will also have to be re-visited following the implementation of the remedying regulations.
- The LPPA has advised that it is unable to process complex Immediate Detriment cases such as members with pension sharing orders, and if there are known significant tax implications. The LPPA will also need to identify appropriate resource to prepare and review the complex manual calculations and agree a timetable for the pension dual statements.
- The guidance from the Home Office, as well as that from the LGA, makes it clear that the responsibility and risk of processing Immediate Detriment cases remains with the Scheme Manager, the LFC.
- 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.
- The risk of setting a precedent in making any Immediate Detriment payments before legislation is in place could lead to pressure to make Immediate Detriment payments for other staff, although the setting of clear criteria for the current proposal is expected to avoid this.

3 Next Steps

- 3.1** Officers have commenced discussions with the LPPA in order to allow the initial Immediate Detriment case to be processed and identify the checks to be completed and process followed to allow pensions estimates to be calculated. The LPPA requires the LFC to enter into a disclaimer to absolve them any liability for manually calculated the immediate detriment cases. This disclaimer also requires the LFC to have obtained a waiver from the member confirming that they fully understand the choice which they are making.
- 3.2** The ongoing discussions with the LPPA will include negotiations on the disclaimer form, but most importantly on timescales to allow options to be presented to the member at the earliest opportunity following LFC approval.

- 3.3** The discussions will also consider further the additional administration costs that will be incurred and be payable to the LPPA. The additional costs are expected to be at about £2,000 per case. The pension calculations from the LPPA will also clarify the pensions costs that will potential be incurred, with these expected to be reimbursed through Home Office pension funding processes. The further work with the LPPA will also identify any further financial risk that the LFC is exposed to which is expected to relate to the risk of error in the calculations.
- 3.4** Officers are also working to process the necessary ill health retirement that is also an important part of the pensions estimates to be prepared by the LPPA.

4 Financial Implications

- 4.1** There are likely to be additional costs in deciding to process Immediate Detriment cases before the remedying legislation. These are:
- Pension costs associated with the member accessing legacy scheme benefits.
 - Pension administration costs.
 - Financial risks.
- 4.2** It is anticipated that the costs associated with the administration of the remedy will be borne by FRAs whilst monies owed to members will be met by government.
- 4.3** There will be additional pension administration costs to manually calculate Immediate Detriment payments prior to the pension administration systems and remedying legislation being in place. Given the small number of cases it may be possible for the LPPA to cover the increased workload within existing resources through the use of overtime. Officers are working with the LPPA to identify the costs, data requirements and timescales if the decision to progress with these specific Immediate Detriment cases is taken. Initial estimates are that it could be up to £2,000 per case so leading to potential administration costs for the possible members who may be ill health retired with a terminal diagnosis between now and October 2023. This can be met from the Home Office grant provided to FRAs for additional administration costs arising from the Pensions Remedy, which totals £845k and with a substantial part of this already committed to meeting additional expenditure to amend the pension administration to manage the Remedy.
- 4.4** Given the absence of some technical information to support calculations and the largely manual processes for calculating benefits due, there is potential for error. Whilst the LPPA will use best efforts in any calculation and payment of benefits, the LFC may be required to meet any financial liabilities arising in these circumstances.
- 4.5** It is estimated that the overall cost of this decision is under £150,000 and therefore does not engage the Mayoral Directions in respect of prior authority from the Deputy Mayor for commitment to expenditure over £150,000 or above.

5 Consultation on Firefighters' Pension Scheme retrospective remedy

- 5.1** On 28 February 2023 the Home Office launched a consultation on the amendments to the pension scheme regulations to enact the second phase of Remedy in the McCloud/ Sargeant cases.
- 5.2** The consultation sets out the background to the second, retrospective, phase of the Remedy

and an explanation of legislative and policy changes required to implement it. This consultation ends on 23 May 2023 and officers will review and prepare a response as necessary.

6 Equality comments

- 6.1** The LFC and the Deputy Mayor for Fire and Resilience are required to have due regard to the Public Sector Equality Duty (section 149 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.
- 6.2** It is important to note that consideration of the Public Sector Equality Duty is not a one-off task. The duty must be fulfilled before taking a decision, at the time of taking a decision, and after the decision has been taken.
- 6.3** 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, and sexual orientation.
- 6.4** The Public Sector Equality Duty requires decision-takers in the exercise of all their functions, to have due regard to the need to:
- eliminate discrimination, harassment and victimisation and other prohibited conduct.
 - advance equality of opportunity between people who share a relevant protected characteristic and persons who do not share it.
 - foster good relations between people who share a relevant protected characteristic and persons who do not share it.
- 6.5** 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:
- remove or minimise disadvantages suffered by persons who share a relevant protected characteristic where those disadvantages are connected to that characteristic.
 - 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.
 - 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.
- 6.6** The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
- 6.7** 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:
- tackle prejudice
 - promote understanding.
- 6.8** An Equality Impact Assessment (EIA) was completed on 12 April 2023. The impact assessment found positive impacts identified for staff with disability in providing remedy for eligible staff who are impacted by terminal illness diagnoses as an exception ahead of the October 2023 pensions remedy date.

7 Workforce comments

7.1 This report discusses an issue that was raised with the LFC by the Fire Brigade's Union (FBU). Staff side are also represented on the Local Pension Board (LPB) and so will be made aware of this report at the next LPB meeting on 24 April 2023

8 Sustainability comments

8.1 There are no direct sustainability implications arising from this report.

9 Procurement comments

9.1 There are no direct procurement implications arising from this report.

10 Communications comments

10.1 The proposed recommendations should have a positive impact on a small number of LFC staff. However, the pensions Remedy taking effect from 1 October 2023 will impact on a number of staff and it will be important to have a communications strategy in place to keep staff fully informed.

11 Financial comments

11.1 The report is by the Assistant Director of Finance so there are no further comments.

12 Legal comments

12.1 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.

12.2 The FPS is a statutory scheme and the legislation making provision for the processing of the immediate detriment cases is due to be implemented with effect from October 2023. 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. Further, the entering into a disclaimer with the LPPA will absolve the LPPA from any risk in manually calculating member benefits. The risk of members claiming that they have made the wrong choice will be mitigated by the requirement for them to sign a waiver form before the immediate detriment claim is processed. External legal advice was previously obtained on this matter, the contents of which is reflected within the body of this report.

12.3 The costs, practicalities and risks associated with Immediate Detriment payments ahead of the Regulations are set out in the body of the report. This decision relates to a small number of individuals, and the specific reasons for doing so are addressed in the report. It is advised that this is a reasonable decision (in the Wednesbury sense) should the London Fire Commissioner be minded to take it.

12.4 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 not required for the London Fire Commissioner to incur the expenditure set out in the recommendations to this report since it is estimated that the cost of this decision will be under the threshold. The Directions also require that the Deputy Mayor for Fire shall be consulted as far as practicable in the circumstances before a decision on any of the following is taken; c) Any other decision that can be reasonably considered to be novel, contentious or repercussive in nature, irrespective of the monetary value of the decision involved (which may be nil). Since this is a decision to proceed with Immediate Detriment in respect of a specific group of people ahead of the Regulations this decision is considered to fall within the consultation requirement

List of appendices

Appendix	Title	Open or confidential*
1	EIA	open

Part two confidentiality

Only the facts or advice considered to be exempt from disclosure under the FOI Act should be in the separate Part Two form, together with the legal rationale for non-publication.

Is there a Part Two form: NO*

Equality Impact Assessment (EIA) Form

The **purpose** of an EIA is to give **as much information as possible** about potential equality impacts, to demonstrate we meet our **legal duties** under the Equality Act 2010.

Please read the EIA Guidance [on Hotwire](#) before completing this form.

Once you open the template please save it on your OneDrive or SharePoint site. Do not open the template, fill it in and then click Save as this will override the template on Hotwire.

1. What is the name of the policy, project, decision or activity?
Report - Proposal for pensions Immediate Detriment payment for terminal illness cases only

Overall Equality Impact of this policy, project, decision or activity (*see instructions at end of EIA to complete*):

High	Medium	Low	x
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2. Contact details	
Name of EIA author	Rory Murphy
Department and Team	Finance
Date of EIA	12/04/23

3. Aim and Purpose	
What is the aim and purpose of the policy, project, decision or activity?	The report seeks a decision on whether LFC should progress with addressing pension Immediate Detriment (ID) payment for staff diagnosed with terminal illness cases ahead of implementation of the full pensions remedy in October 2023.
Who is affected by this work (all staff, specific department, wider communities?)	Firefighter Pension Scheme members with terminal ill health cases being progressed.



LONDON FIRE BRIGADE

4. Equality considerations: the EIA must be based on evidence and information.

What consultation has taken place to support you to predict the equality impacts of this work?

This report discusses an issue that was raised with the LFC by the Fire Brigade's Union (FBU). Staff side are also represented on the Local Pension Board (LPB) and so will be made aware of this report at the next LPB meeting of 24 April 2023

5. Assessing Equality Impacts

Use this section to record the impact this policy, project, decision or activity might have on people who have characteristics which are protected by the Equality Act.

Protected Characteristic	Impact: positive, neutral or adverse	Reason for the impact	What information have you used to come to this conclusion?
Age (younger, older or particular age group)	Neutral	<p>The report seeks a decision on whether LFC should progress with addressing pension Immediate Detriment (ID) payment for staff diagnosed with terminal illness cases ahead of implementation of the full pensions remedy in October 2023.</p> <p>Although pensions normally relate to age and therefore the biggest impact of decision making is on older staff. However, the overall impact is likely to be neutral to this group as the report proposal for pensions Immediate Detriment payment is for terminal illness cases only.</p>	<p>The report seeks a decision on whether LFC should progress with addressing pension Immediate Detriment (ID) payment for staff diagnosed with terminal illness cases ahead of implementation of the full pensions remedy in October 2023.</p> <p>Although pensions normally relate to age and therefore the biggest impact of decision making is on older staff. However, the overall impact is likely to be neutral to this group as the report proposal for pensions Immediate Detriment payment is for terminal illness cases only.</p>
Disability (physical, sensory, mental health, learning disability, long term illness, hidden)	Positive	<p>The report seeks a decision on whether LFC should progress with addressing pension Immediate Detriment (ID) payment for staff diagnosed with terminal illness cases only ahead of implementation of the full pensions</p>	<p>The report seeks a decision on whether LFC should progress with addressing pension Immediate Detriment (ID) payment for staff diagnosed with terminal illness cases only ahead of implementation of the full pensions remedy in</p>

		remedy in October 2023. Therefore, there is a positive impact.	October 2023. Therefore, there is a positive impact.
Gender reassignment (someone proposing to/undergoing/ undergone a transition from one gender to another)	Neutral	There is not expected to be any impact from this report.	
Marriage / Civil Partnership (married as well as same-sex couples)	Neutral	There is not expected to be any impact from this report.	
Pregnancy and Maternity	Neutral	There is not expected to be any impact from this report.	
Race (including nationality, colour, national and/or ethnic origins)	Neutral	There is not expected to be any impact from this report.	
Religion or Belief (people of any religion, or no religion, or people who follow a particular belief (not political))	Neutral	There is not expected to be any impact from this report.	
Sex (men and women)	Neutral	There is not expected to be any impact from this report.	
Sexual Orientation (straight, bi, gay and lesbian people)	Neutral	There is not expected to be any impact from this report.	

6. Impacts outside the Equality Act 2010

What other groups might be affected by this policy, project, decision or activity?
Consider the impact on: carers, parents, non-binary people, people with learning difficulties, neurodiverse people, people with dyslexia, autism, care leavers, ex-offenders, people living in areas of disadvantage, homeless people, people on low income / in poverty.
There is not expected to be any impact from this report.

7. Legal duties under the Public Sector Equality Duty (s149 Equality Act 2010)	
How does this work help LFB to:	
Eliminate discrimination?	The report seeks a decision on whether LFC should progress with addressing pension Immediate Detriment (ID) payment for staff diagnosed with terminal illness cases only ahead of implementation of the full pensions remedy in October 2023. This decision will positively impact a limited number of staff who are likely to have the disability protected characteristic.
Advance equality of opportunity between different groups?	
Foster good relations between different groups?	

8. Mitigating and justifying impacts		
Where an adverse impact has been identified, what steps are being taken to mitigate it? If you're unable to mitigate it, is it justified ?		
Characteristic with potential adverse impact (e.g. age, disability)	Action being taken to mitigate or justify	Lead person responsible for action

Now complete the RAG rating at the top of page 1:

High: as a result of this EIA there is evidence of significant adverse impact. This activity should be stopped until further work is done to mitigate the impact.

Medium: as a result of this EIA there is potential adverse impact against one or more groups. The risk of impact may be removed or reduced by implementing the actions identified in box 8 above.

Low: as a result of this EIA there are no adverse impacts predicted. No further actions are recommended at this stage.

Document Control

Signed (lead for EIA / action plan)		Date	
Sign off by Inclusion Team		Date	
Stored by			
Links			
External publication	Are you happy for this EIA to be published externally?	Yes <input type="checkbox"/>	No <input type="checkbox"/> If No state why: