

PENSION FUND COMMITTEE – 4 MARCH 2022

AGE DISCRIMINATION IN THE FIRE FIGHTERS PENSION SCHEMES

Report by the Director of Finance

RECOMMENDATION

- 1. The Committee is RECOMMENDED to note the decision of the Chief Fire Officer and Director of Finance under powers delegated by the Committee at their December Meeting.**

Introduction

2. As with all other Public Sector Pension Schemes, the changes the Government made to the Fire Fighters Pension Schemes in 2015 were found to be unlawful and discriminatory on age grounds. The Government is currently making the necessary changes in the underlying legislation to enable the discrimination to be remedied. The Fire Brigades Union have chosen not to wait for the remedying legislation and have brought a number of legal cases ensure that the position for those suffering immediate detriment (i.e. those firefighters already retired or due to retire before the remedying legislation in is place) is resolved now.
3. The Courts have supported the position of the Fire Brigades Union and the Local Government Association on behalf of Fire Authorities and the Union on behalf of scheme members developed the Immediate Detriment Framework which set out an approach to remedy as much of the current discrimination as possible in advance of the remedying legislation.
4. The Pension Fund Committee at their special meeting of 12 November 2021 agreed in principle to adopt the Immediate Detriment Framework, but to defer implementation until clarification had been received on the outstanding financial issues. At their meeting on 3 December 2021, the Committee clarified that the decision on when to implement payments under the Framework was delegation to the Chief Fire Officer and the Director of Finance once they had agreed on the implications of doing so.
5. On 29 November 2021 the Government withdrew their previous guidance on dealing with immediate detriment cases, citing the legal complexities of implementing the remedy in advance of new legislation. The Government also provided clarification on what costs they were prepared to fund, although this still left a number of issues open to interpretation. It was clear both legal and tax issues were left to resolve.
6. On 28 January 2022 the Chief Fire Officer and the Director of Finance met to discuss a paper produced by Fund Officers in association with the Monitoring

Officer, which set out all known issues, the areas where there continued to be considerable uncertainty and the options open to them. A copy of this paper is attached as an annex to this paper.

Delegated Decision of the Chief Fire Officer and Director of Finance

7. There were three options presented within the paper to the Chief Fire Officer and Director of Finance. These were:
 - To agree the immediate adoption of the Immediate Detriment Framework in so far as Officers were able to process payments
 - To defer a decision to await further guidance
 - To determine not to adopt the Framework, and to await the implementation of the remedying legislation before making any payments to correct the current discrimination.
8. The meeting was attended by Officers of the Fund and the representative of the Monitoring Officer to respond to all questions. At the conclusion of the meeting, the Chief Fire Officer and the Director of Finance jointly agreed that they had sufficient information on which to make a decision, and determine to agree option one, and to adopt the Immediate Detriment Framework with immediate effect.
9. The key issues which supported this decision as set out during the meeting were as follows:
 - Agreeing option 3 to await the implementation of the remedying legislation would continue an approach which the Courts had already found to be both unlawful and discriminatory. As such there was clear risk that the decision would be subject to further legal challenge involving additional legal costs and increased compensation over and above the other options
 - Agreeing option 2 to await further guidance left the question as to when a final decision was to be made uncertain, with the significant complexities associated with the issue meaning it was possible that no further guidance would in fact be forthcoming. The legal risks associated with option 3 were therefore largely retained under option 2.
 - There were a known group of fire fighters within the Oxfordshire Fire Service who were due to retire before the end of the current financial year. Deferring a decision under option 2 would mean that these firefighters would face considerable uncertainty over the pension payments they would receive. This created a significant operational risk in that decisions to retire could be revoked/deferred, making succession planning very difficult, and potentially resulting in additional costs to the service where 2 firefighters were appointed to the same post.
 - As well as the clear legal and operational arguments, there was a strong moral argument and a duty of care to the workforce, most of whom had given significant service to the Oxfordshire Fire Service.
 - Under the latest information made available by the Government, the known costs of adopting the Framework at this time were £34,000 (although it was noted that the decision by the Government not to

reimburse even these costs was likely to be subject to further legal challenge). Whilst it was noted that dependent on final decisions taken by the Government there could be additional costs associated with contributions paid to the “wrong” scheme, and tax charges it was felt that the risk of these further costs was low. Given the risk of further legal challenge, it was noted that these costs could also become payable under either of the other 2 options, although in this case it was likely that they could be compounded by additional legal and compensatory costs.

10. In summary therefore the Chief Fire Officer and Director of Finance determined that the financial costs and risks of option 1 would be outweighed by the potential financial costs and risks of either option 2 and 3 when taken alongside the operational risks of deferring a decision, and the moral and legal duty owed to staff to address the known shortfall in their current/forthcoming pension benefits resulting from the unlawful and discriminatory nature of the current regulations.

Lorna Baxter
Director of Finance

Contact Officer: Sean Collins
Tel: 07554 103465

February 2022