

# Decision Note – [Immediate Detriment Framework Adoption]



**STAFFORDSHIRE COMMISSIONER**  
Police | Fire and Rescue | Crime

## REQUEST FOR DECISION BY THE STAFFORDSHIRE COMMISSIONER

	Policing:	Crime:	Fire & Rescue:
This decision relates to:			x

### APPROVAL (for completion by Staffordshire Commissioner only)

Rationale for approval

**STAFFORDSHIRE COMMISSIONER**

Signature

Date 01/11/2021

Date decision required by: Friday 5<sup>th</sup> November 2021

If an urgent approval is required, please state reasons:

**For completion by Staffordshire Commissioner's Office only: -**

Decision Number: SCF/D/202122/002

Date Received: 12 November 2021

	Yes	No
Has the required decision been considered under the guidance of the Staffordshire Commissioner's Decision Making Policy?		
Has the required decision been deemed to be a Key Decision as defined within the Staffordshire Commissioner's Decision Making Policy?		
Who is empowered to make the required decision?		

<b>Title</b>	<b>Immediate Detriment Framework Adoption by Staffordshire Fire and Rescue Authority</b>
<b>Recommendation:</b>	
It is recommended that the Scheme Manager adopts the Immediate Detriment Framework and the Fire and Rescue Authority (FRA) implements this with its best endeavours.	
<b>Chief Executive</b>	
I hereby approve the recommendation for consideration.	
Signature	
Date	29/10/2021

**REPORT AND ADVICE TO THE STAFFORDSHIRE COMMISSIONER**

The Local Government Association (LGA) and the Fire Brigades Union (FBU) issued a joint statement on Friday, 8<sup>th</sup> October, together with a signed Memorandum of Understanding in relation to a framework for the processing of pension cases under Immediate Detriment (ID). Unlike the previous guidance issued by the LGA, the framework also includes retrospective cases and guidance on how to process some, but not all, of the technical issues that had been previously excluded.

Immediate Detriment allows for a remedy to be made, under best endeavours, ahead of the legislation becoming effective late in 2023.

The LGA have already released guidance which enables Service's to offer retiring members in the Firefighters' Pension Schemes the opportunity to have their benefits remedied on retirement – this has been termed Immediate Detriment and relies on Section 61 of the Equality Act. To date Immediate Detriment has been implemented by the Scheme Manager for retiring members where this has been possible.

Following the judgement in McCloud/Sargeant, further claims were made concerning Immediate Detriment with the claimants being supported by the FBU. The FBU was clear that matters for affected individuals needed to be resolved sooner rather than later and that it would, if necessary, support further legal cases. Whilst many FRAs were open to resolving such cases, the issue was the lack of a suitable mechanism to do so ahead of the legislation which also minimised the risks involved.

As a result the LGA and FBU have agreed and issued this Framework, setting out a mechanism for handling Immediate Detriment cases which includes some of the technical issues, which would have previously excluded members from being eligible for remedy under Immediate Detriment. During these discussions, the Government laid primary legislation before Parliament (Public Service Pensions and Judicial Offices Bill) and will make secondary legislation pursuant to the Bill (together these form the Remediating Legislation) with a legal remedy for the discrimination found in McCloud/Sargeant.

The LGA and FBU agree the Memorandum of Understanding and associated Framework are consistent with the principles set out in the Bill. If or when parts of the Remediating Legislation come into force, these will supersede the relevant part of the Framework.

Each FRA is being asked to consider adopting the Framework which is wider in scope than the previous guidance issued in June 2020 as this not only covers those who are eligible to retire (now Category 1 cases) but also those who have already retired and who wish to take their benefits from their legacy scheme (Category 2) as well as any ill health cases who do not qualify for a lower tier pension under the single pot arrangement but who would be eligible for the pension under their legacy scheme.

The FBU has agreed that it will not provide any financial or other support to Members who have received compensation, or are otherwise remedied under the Framework, to bring any court or tribunal proceedings relating to matters which have been (or are being) addressed under the Framework. This agreement does not apply to any question or dispute as to whether the Framework has been applied correctly in accordance with the MoU or issue which is not covered by the Framework.

The LGA and FBU will meet periodically to review the application of the Framework and discuss whether any changes are needed if the passage of the Bill adversely affects the ability of an FRA or Member to implement the Framework and/or the process which is set out.

The MoU will expire on the last date on which Remediating Legislation applicable to the issues set out in Annex 1 of the MoU come into force and will, in any event, expire on 1<sup>st</sup> October 2023. It may also be terminated in whole or in part by agreement in writing by the parties or by either party if the other party is in serious breach or repeated breach of its terms and the breach is not remedied within 21 days of it being asked to do so.

It is recommended that the Scheme Manager adopts the Framework and the FRA implements this with its best endeavours.

## **2. Issues for consideration**

The FBU have stated they will consider bringing further legal cases against an FRA who does not use its best endeavours to remedy the members who it believes is covered by the judgement in McCloud/Sargeant.

The FRA's ability to deliver under the Framework is heavily reliant on the Administrator (West Yorkshire Pension Fund) having the capability to meet the demand of its clients (it currently serves 21 of the FRAs). Initial discussions have been undertaken and it is hoped that a mechanism will be available for the FRA to provide additional information to WYPF on a template which will reduce the processing time required by WYPF. Staffordshire believe this is manageable within its existing resource at present, given the current workflow but this is dependent on demand not increasing significantly. However, WYPF have advised that the remedying template is likely to be available towards the end of November which will be a labour-intensive exercise.

The LGA have subsequently published guidance for FRAs to process cases under the Framework which has provided additional detail.

### 3. What other options have been considered?

The MoU is not legally binding and therefore there is an option not to adopt the Framework. This would however leave the FRA open to challenge by the FBU.

Consideration could be given to partial adoption of the Framework by the LGA indicated that it should be adopted in its entirety and it was not possible to "cherry pick" elements of it.

As the timeframes could be problematic, it is suggested that early engagement is undertaken with any members where these may not be met to reduce the possibility of challenge.

### 4. Consultation and Engagement undertaken

FBU - Engagement with the FBU locally led to concerns raised by them should the period prior to adoption be lengthy. This may suggest that they will not hesitate to bring claims should the principle of the Framework not be met by the FRA.

WYPF – initial discussions have been positive and both parties are open to collaboration to achieve the timeframes imposed.

## Report Implications

### Monitoring Officer comments:

See legal comments below.

Signature



Date 29/10/2021

### Section 151 Officer comments:

Adoption of the remedy will have cash flow issues for the Authority as payments will be made ahead of the legislation being laid by Parliament for retrospective cases. Additional pension costs incurred as part of adopting this Immediate Detriment Framework will be funded by the Government. Any additional tax liability arising for members as part of this process may result in a funding requirement by the Authority.

Signature



Date

29 October 2021

Yes

No

Has legal advice (outside of that provided by the Monitoring Officer) been sought on the content of this report?		x
<b>Legal Comments:</b>		
<p>The Immediate Detriment guidance sets out the Home Office assertion that the legal position which underpins the application of the guidance in the note is Section 61 of the Equality Act, which confirms that the power to calculate and pay pension entitlements under the legacy schemes is through this section of the 2010 Act.</p> <p>That provision means that eligible members have the right to be treated as though they have been in service in their legacy scheme since 1 April 2015, if this is what they want and they inform the scheme of this decision.</p> <p>Consultation with Louise Taylor has been undertaken during the Immediate Detriment Process as required.</p>		
<b>5. Equality Comments – please attach the completed EIA</b>		
An Equality Impact Assessment is not required for implementation of Immediate Detriment. Adoption of the Framework will remove the age discrimination ahead of the revised legislation.		
<b>6. Background/supporting paper</b>		
Memorandum of Associated, dated 8 <sup>th</sup> October 2021		
LGA Immediate Detriment Guidance		
<b>7. Public access to information</b>		
This decision not is protected.		
<b>8. Data Protection Impact Assessment - please attach the completed DIA</b>		
DP attached.		
<b>9. Is the publication of this form to be deferred?</b>		
No.		
<b>10. If the report is for publication, is redaction required?</b>		
	<b>Yes</b>	<b>No</b>
Of the Decision Note?		x
Of the Appendix?		x

**ORIGINATING OFFICER DECLARATION:**

<b>Author</b>	David Greensmith / Sue Wilkinson
<b>Signed</b>	
<b>Date</b>	29 October 2021





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# Data Protection Impact Assessment for

# Immediate Detriment Framework Adoption

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*A Data Protection Impact Assessment (DPIA) is required under the General Data Protection Regulations (GDPR) when there is likely to result in a high risk to individuals. Publication improves transparency and can increase the public's understanding of how their information is used. (Articles 35 and 36 GDPR)*

The DPIA guidance should be read in conjunction with the completion of this DPIA.

Upon completion of the DPIA template the Project Manager and IAO will review, sign off and send a copy to the Data Protection Officer for advice. The DPIA will then be considered and signed off by the Senior Information Risk Officer (SIRO). The SIRO may at this point ask that additional work is carried out or may decline the proposal and not accept any risks identified.

If the DPIA identifies a high risk and measures cannot be undertaken to reduce the risk then there is a requirement for the Data Protection Officer to consult with the Information Commissioner's Office (ICO).

This DPIA should be filled out at the beginning of any major project involving the use of personal data, or if you are making a significant change to an existing process. The final outcomes should be integrated back into the project plan.

Should you have any queries in relation to the Data Protection Impact Assessment Process then please contact the Data Protection Officer.

**DOCUMENT CONTROL**

<b>System Owner</b>	<b>Business Lead</b>	<b>Information Asset Owner</b>	<b>Project Manager</b>
Staffordshire Commissioner	David Greensmith	David Greensmith	Sue Wilkinson

<b>Author</b>	<b>Role</b>	<b>Department</b>
David Greensmith	Director of Finance	SCO

<b>Version</b>	<b>Version date</b>	<b>Requester of change</b>	<b>Summary of change(s)</b>

## Screening Questionnaire

The following questions are intended to help you decide whether a DPIA is necessary. The DPIA guidance document will assist you during the project lifecycle. Answering 'yes' to any of the following screening questions is an indication that a DPIA is required.

You can expand on your answers as the project develops.

**If there is no personal data involved then go to Section 8 – Conclusions.**

*"Personal data" means any information relating to an identified or identifiable living individual - Section 3(2) of the Data Protection Act 2018.*

Does the intended processing of personal information involve any of the following?

	<b>Intended processing</b>	<b>Yes</b>	<b>No</b>
1.	Systematic and extensive profiling with significant effects?		X
2.	Large scale use of sensitive data?		X
3.	Public monitoring?		X
4.	New technologies (processing involving the use of new technologies, or the novel application of existing technologies (including AI)?		X
5.	Denial of service: decisions about an individual's access to a product, service, opportunity or benefit which is based to any extent on automated decision-making (including profiling) or involves the processing of special category data?		X
6.	Large-scale profiling: any profiling of individuals on a large scale?		X
7.	Biometrics: any processing of biometric data?		X
8.	Genetic data: any processing of genetic data?		X
9.	Data matching: combining, comparing or matching personal data obtained from multiple sources.		X
10.	Invisible processing: processing of personal data that has not been obtained direct form the data subject in circumstances where the data controller considers that compliance with Article 14 of the GDPR would prove impossible or involve disproportionate effort.		X
11.	Tracking: processing which involves tracking an individual's geolocation or behaviour, including but not limited to the online environment.		X
12.	Targeting of children or other vulnerable individuals: the use of the personal data of children or other vulnerable individuals for marketing purposes, profiling or other automated decision-making, or if there is an intention to offer online services directly to children.		X
13.	Risk of physical harm: where the processing is of such a nature that a personal data breach could jeopardise the physical health or safety of individuals.		X
14.	Any other processing which is large scale involves profiling or monitoring, decides on access to services or opportunities or involves sensitive data or vulnerable individuals.		X

## Step 1 – Identify the need for a DPIA

Explain broadly what the project aims to achieve and what type of processing it involves. You may find it helpful to refer or link to other documents, such as a project proposal. Summarise why you identified the need for a DPIA.

Adoption of the Immediate Detriment Framework as agreed by the LGA and FBU

## Step 2 – Describe the processing

**Describe the nature of the processing:** how will you collect, use, store and delete data? What is the source of the data? Will you be sharing data with anyone? You might find it useful to refer to a flow diagram or another way of describing data flows. What types of processing identified as likely high risk are involved?

The processing of data will be accelerated through this process ahead of the legislation being passed.

The processing will be undertaken by the Pension Administrator West Yorkshire Pension Fund.

**Describe the scope of the processing:** what is the nature of the data, and does it include special category or criminal offence data? How much data will you be collecting and using? How often? How long will you keep it? How many individuals are affected? What geographical area does it cover?

There is no new or additional data being collected.

**Describe the context of the processing:** what is the nature of your relationship with the individuals? How much control will they have? Would they expect you to use their data in this way? Do they include children or other vulnerable groups? Are there prior concerns over this type of processing or security flaws? Is it novel in any way? What is the current state of technology in this area? Are there any current issues of public concern that you should factor in? Are you signed up to any approved code of conduct or certification scheme (once any have been approved)?

The processing will require retiring Members of the Firefighters' Pension Scheme to be processed as if they had never left their legacy pension scheme should they choose to do so. It will also allow members who have already retired to have their pension benefit recalculated using their legacy pension scheme on a best endeavours' basis where the Authority and West Yorkshire are able to do so.

**Describe the purposes of the processing:** what do you want to achieve? What is the intended effect on individuals? What are the benefits of the processing for you, and more broadly?

Members will be able to receive corrected pension benefits ahead of legislation being passed by parliament.

### Step 3: Consultation process

**Consider how to consult with relevant stakeholders:** describe when and how you will seek individuals' views – or justify why it's not appropriate to do so. Who else do you need to involve within your organisation? Do you need to ask your processors to assist? Do you plan to consult information security experts, or any other experts?

Consultation with the LGA and West Yorkshire Pension Fund and the FBU are ongoing.

### Step 4 – Assess necessity and proportionality

<p><b>Describe compliance and proportionality measures, in particular:</b> what is your lawful basis for processing? Does the processing actually achieve your purpose? Is there another way to achieve the same outcome? How will you prevent function creep? How will you ensure data quality and data minimisation? What information will you give individuals? How will you help to support their rights? What measures do you take to ensure processors comply? How do you safeguard any international transfers?</p>
<p>S61 of the Equalities Act provides the legal basis for processing.</p>

### Step 5: Identify and assess risks

<b>Describe the source of risk and nature of potential impact on individuals.</b> Include associated compliance and corporate risks as necessary.	<b>Likelihood of harm</b>	<b>Severity of harm</b>	<b>Overall risk score</b>
<p>Calculations may not be fully compliant with the revised legislation and may need to be corrected in the future.</p>	<p>Remote, possible or probable</p> <p>Possible</p>	<p>Minimal, significant or severe</p> <p>Minimal</p>	

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### Step 6: Identify measures to reduce risk

#### Identify additional measures you could take to reduce or eliminate risks identified as medium or high risk in step 5

Risk	Options to reduce or eliminate risk	Effect on risk	Residual risk score	Measure approved
Incorrect Pension Payments	Use of the ID Framework where possible	Eliminated, reduced or accepted  Reduced		Yes/no

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### Step 7: Sign off and record outcomes

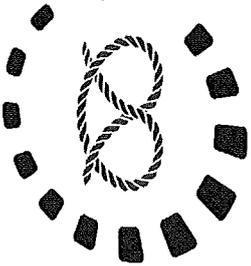
Item	Name/date	Notes
<b>Measures approved by:</b>		Integrate actions back into project plan, with date and responsibility for completion
<b>Residual risks approved by:</b>		If accepting any residual high risk, consult the ICO before going ahead
<b>DPO advice provided:</b>		HIA should advise on compliance, step 6 measures and whether processing can proceed
<p><b>Summary of DPO advice:</b>  <b>Based on the details provided within this document there does not appear to be any change, modification, or new data being process, solely the ability to transfer in a more efficient way. Based upon those facts no further actions are necessary.</b></p>		
<b>DPO advice accepted or overruled by:</b>		If overruled, you must explain your reasons
<b>Comments:</b>		
<b>Consultation responses reviewed by:</b>		If your decision departs from individuals' views, you must explain your reasons
<b>Comments:</b>		
<b>This DPIA will be kept under review by:</b>		The DPO should also review ongoing compliance with DPIA

## Step 8 - Conclusions

**Please provide a summary of the conclusions that have been reached in relation to this projects overall compliance with the DPA. If screening did not require a DPIA please state the reason below and attach a copy of this form to project/contract documentation.**

*After consideration of the screening questionnaire it has been determined that a DPIA is not required.*

Sign-Off Authority	Role	Date	Signature
	<b>Project Manager</b>	<b>29/10/21</b>	
	<b>Information Asset Owner</b>		
	<b>Data Protection Officer</b>	<b>12/11/21</b>	
	<b>Senior Information Risk Owner (SIRO)</b>	<b>12/11/21</b>	



# STAFFORDSHIRE COMMISSIONER

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## Appendix A – Calculation of Risk

### 9.1 Data Protection Principles

#### 1. Fair and Lawful

- Do you need to create or amend a privacy notice?
- If processing on the basis of consent, how will this be collected and recorded?

#### 2. Purpose Limitation

- Does the processing actually achieve your purpose?
- Will the data be used for another purpose?
- How will you prevent function creep?

#### 3. Data Minimisation

- Will you only process the data needed for your purpose?
- How will you ensure and maintain data quality?

#### 4. Accuracy

- How will you ensure data can be corrected or amended?
- Will you ensure data is accurate and up to date?

#### 5. Retention

- Do you have a review, retention and disposal policy?
- Can data be deleted/erased from all Staffordshire Police systems if required?
- Is the retention period necessary and proportionate?

#### 6. Security

- What technical and organisational measures are in place to protect data?
- How will you protect against unauthorised access, alteration or removal of data?
- What training and guidance will be given to staff?
- How would you identify and manage a breach?
- How will systems be tested?

#### 7. Data Subject Rights

- If an individual wishes to exercise their rights, including requesting access to data, or asking for data to be corrected, amended, restricted or deleted then you must have procedures in place to recognise such a request and refer it to the DPO.

Describe the source of risk and the nature of potential impact on individuals, include associated organisation/corporate risk and compliance risk	Likelihood of harm	Severity of harm	Initial Risk	Mitigation/ Solution	Result	Residual Risk
	1 - Highly unlikely 2 - Unlikely 3 - Possible 4 - Likely 5 - Highly likely	1 - Negligible 2 - Minor 3 - Significant 4 - Major 5 - Severe	Very High High Medium Low Very Low	Describe the mitigation and whether it will be implemented	Is the risk: - Eliminated - Reduced - Accepted	Very High High Medium Low Very Low



**Likelihood score**

Score	Probability %	Timeframe	Description
	1. Highly unlikely	0 to 5% chance	
2. Unlikely	>5 to 10% chance	1 in 5 years	May occur in exceptional circumstances
3. Possible	>10 to 20% chance	1 in 1 year	Realistic chance of occurring
4. Likely	>20 to 50% chance	1 in 6 months	Will probably occur
5. Highly Likely	>50% chance	1 in 3 months or less	Expected to occur or occurs regularly

**Impact Score**

Score	Financial/other enablers	Operational	Public Confidence/Reputational
1. Negligible	0 to <0.1% of budget/cost savings and / or Negligible impact on modern policing key activity delivery	0 to 0.5% shift in key: 1. Early Intervention measures 2. Supporting victims and witness measures 3. Managing offenders and/or Negligible impact on key operational activity delivery	0 to 0.5% shift in: 1. Levels of Satisfaction 2. Feelings of safety 3. Fair and respectful treatment and/or Low level localised media interest and/or Minor impact on key public confidence activity delivery

<p>2. Minor</p>	<p>&gt;0.1 to 0.5% of budget/cost savings Minor impact on modern policing key activity delivery</p>	<p>&gt;0.5 to 2.5% shift in key: 1. Early Intervention measures 2. Supporting victims and witness measures 3. Managing offenders measures and/or Minor impact on key operational activity delivery</p>	<p>&gt;0.5 to 2.5% shift in: 1. Levels of Satisfaction 2. Feelings of safety 3. Fair and respectful treatment and/or No external reputational impact and/or Negligible impact on key public confidence activity delivery</p>
<p>3. Significant</p>	<p>&gt;0.5 to 2% of budget/cost savings Significant impact on modern policing key activity delivery</p>	<p>&gt;0.25 to 5% shift in key: 1. Early Intervention measures 2. Supporting victims and witness measures 3. Managing offenders measures and/or Significant impact on key operational activity delivery</p>	<p>&gt;0.25 to 5% shift in: 1. Levels of Satisfaction 2. Feelings of safety 3. Fair and respectful treatment and/or Some negative regional media coverage or public/political concern and/or Significant impact on key public confidence activity delivery</p>

<p>4. Major</p>	<p>&gt;2 to 4% of budget/cost savings and/or Major impact on modern policing key activity delivery</p>	<p>&gt;5 to 10% shift in key:                      1. Early intervention measures                      2. Supporting victims and witness measures                      3. Managing offenders measures and/or Major impact on key operational activity delivery</p>	<p>&gt;5 to 10% shift in:                      1. Levels of Satisfaction                      2. Feelings of safety                      3. Fair and respectful treatment and/or                      1. Long term regional media coverage or public/political concern                      2. Limited national media coverage or public/political concern and/or Major impact on key public confidence activity delivery</p>
<p>5. Severe</p>	<p>&gt;4% of budget/cost savings and/or Severe impact on modern policing key activity delivery</p>	<p>&gt;10% shift in key:                      1. Early Intervention measures                      2. Supporting victims and witness measures                      3. Managing offenders measures and/or Severe impact on key operational activity delivery</p>	<p>&gt;10% shift in:                      1. Levels of Satisfaction                      2. Feelings of safety                      3. Fair and respectful treatment and/or                      1. Loss of credibility in organisation                      2. International media coverage                      3. Public enquiry and/or Severe impact on key public confidence activity delivery</p>

