



STAFFORDSHIRE FIRE & RESCUE SERVICES

Governance – Immediate Detriment Framework

Internal audit report 1.22/23

FINAL

24 October 2022

This report is solely for the use of the persons to whom it is addressed.
To the fullest extent permitted by law, RSM UK Risk Assurance Services LLP will accept no responsibility or liability in respect of this report to any other party.

THE POWER OF BEING UNDERSTOOD
AUDIT | TAX | CONSULTING



1. EXECUTIVE SUMMARY

With the use of secure portals for the transfer of information, and through electronic communication means, 100 per cent of our audit has been conducted remotely. Remote working has meant that we have been able to complete our audit and provide you with the assurances you require. Based on the information provided by you, we have been able to sample test, or undertake full population testing using data analytics tools, to complete the work in line with the agreed scope.

Why we completed this audit

A governance review of the Immediate Detriment Framework has been completed as part of the 2022/23 internal audit plan. The review has focused on the key governing decisions which the Service has taken regarding implementation of the Framework, management of the Framework and the recent ceasing of the Framework in May 2022.

Following the judgement in the McCloud/Sargeant case, it was found that the implementation of the 2015 Firefighters Pension Scheme was discriminatory on the grounds of age. These affected members were categorised in two categories:

- Category One being members who are approaching retirement; and
- Category Two being members who have already retired and have benefits in payment.

The Local Government Association (LGA) released updated guidance in June 2021 which confirmed the power of the Fire Risk Authority (FRA) to calculate and pay pension entitlement under legacy schemes through the application of Section 61 of the Equality Act 2010. This guidance captured future retirees only who were taper or unprotected members and where no technical issues existed (such as annual allowance breaches or historic tax issues). At this stage the Authority agreed to process straightforward cases and assess the risk on a case-by-case basis.

This guidance was then superseded by a Memorandum of Understanding (MOU) / Immediate Detriment Framework which was agreed between the LGA and Fire Brigade Union (FBU). The guidance set out mechanisms for dealing with the more technical issues previously excluded and incorporated rigid timeframes for information to be processed, released to the claimants and for

payments to be made. Authorities were encouraged to adopt this framework to avoid further tribunal claims from the FBU.

Recently the Staffordshire Fire and Rescue Services (the Authority) have made the decision to pause the processing of Immediate Detriment Cases. The purpose of this audit is to ensure that a consistent and robust governance framework is in place which can be demonstrated and has been consistently applied to support the governance decisions made by the Service and the Strategic Governance Board for Fire (and Firefighters' Pension Scheme Manager) for the Firefighters' Pension Schemes.

Conclusion

Our review concluded that the Service has employed a consistent and robust governance framework with regards to the introduction, application, and recent ceasing of the Immediate Detriment awards. Supporting evidence, sign-off and clear rationale was found to have been maintained on file for all key decisions impacting the overarching governance framework.

Internal audit opinion:

Taking account of the issues identified, the Authority can take substantial assurance that the controls upon which the organisation relies to manage the identified area are suitably designed, consistently applied and operating effectively.



Key findings

The following aspects of the control framework were found to be operating effectively:



Following the release of the Immediate Detriment guidance by the LGA which allowed the Authority the power to calculate and pay pension entitlements under the Legacy Scheme, the Strategic Governance Board (SGB) took the decision to use the guidance to process “straightforward cases”. These are cases with no technical issues such as contribution holidays, annual allowance, or associated tax issues etc. This was determined by the Authority to be of limited risk and allow assessment on a case-by-case basis. The decision was formally made and approved by the SGB on 18 June 2021.



Following the release of the MOU, the Scheme Manager adopted the new Framework on the basis that although heavy costs could be incurred through processing the cases, these are likely to be less than the financial impact of a claim from the FBU, should the Framework not be adopted. Additionally, the West Yorkshire Pension Fund (WYPF) believed that they would be able to manage the capacity of claims. Review of the Decision Note, which was signed by the Staffordshire Commissioner, confirmed that all options were considered, and this course of action deemed the most suitable.



As a result of information shared by the NFCC in late October 2021, it had established that the LGA’s understanding was that any elements of remedy which were deemed to be “compensation” and were paid ahead of the legislation would not be recoverable and would need to be funded by the FRA.

HMRC subsequently released a policy note in October 2021 which stated that the Financial Bill due in April 2022 would make these unauthorised payment charges (UPC) authorised.

However, review of the LGA-FBU statement in November 2021, identified that the FBU would accept no further delay to remedy payments to its members.

Therefore, the Authority made the decision to continue to process Immediate Detriment Cases for members who, if remedied within 12 months of retiring, would avoid any taxation issues arising. This was based on the rationale that it should be possible to process those claims already received within 12 months of retirement date.

Review of the “Note on HO withdrawal of guidance - Nov 21”, found that the Home Office had withdrawn their guidance on processing Immediate Detriment cases citing that processing cases ahead of legislation creates risk, uncertainty, and administrative burdens for all parties, including individuals.



The Authority subsequently decided to continue to process category one cases, but not send any communications to those category two cases. The rationale behind this was that there was a need to collect data on cases in scope, so the decision was taken to continue as the data was required. Furthermore, the overriding factor was still that the cost of any claim from the FBU will be greater than the administrative burden of remedy.

In December 2021, the Authority received tax advice from Bevan Brittain, subject to legal privilege, regarding lump sum and pension arrears.



The Authority decided it was appropriate to continue with pipeline cases. The decision was taken, because the scrutiny of cases and associated lump sums that were estimated to be due were not overly burdensome. When considering the cost of these against the financial burden associated with a claim from the FBU, it was decided by the Authority that it would be cost effective.



Discussion within the national team meetings held bi-weekly, found that some FRA's had interpreted the HMT note as indicating that Authorities may be liable for the contributions due to the legacy scheme should cases be processed under the Immediate Detriment Framework. Consequently, the Authority decided to continue to process those cases already in the pipeline on the basis that in "reality the contributions paid into the 2015 scheme will no longer be due to that scheme and should be refunded."

Following a letter from HMT to the Scheme Advisory Board 23 March 2022 which cited that a lack of legislation regarding tax relief when transferring schemes and further advice from the National Police Chiefs Council (NPCC) and National Fire Chiefs Council (NFCC), the Authority published a remedy update in April 2022, which was presented to the SGB. We identified that this recommended that the Authority pause Immediate Detriment payments on the grounds that:



- The view of legal Counsel obtained by the National Police Chiefs Council (NPCC) is "...that scheme managers should not be implementing immediate detriment at this time as there is no legal mechanism to pay without undue risks to both members and the force";
- The NPCC believes this represents a firm view and that it will be difficult to mitigate the risks of implementing Immediate Detriment without specific guidance on how to process cases in this way. This view is shared by National Fire Chiefs Council (NFCC);
- The number of upcoming retirements is double that already processed which could significantly increase any cost to the Authority as it is not yet clear which elements of remedy will be recoverable and which will fall as a liability to the Authority. There has also been no definition yet what constitutes "legitimate pension payments" and therefore will be paid as a normal Pension Scheme cost;

- The potential liability already faced by the Authority could be any or all the costs associated with employee contributions, additional lump sums and any tax complexities which arise from the overpayment of contributions in one scheme and the deficit owed to another; and
- Whilst it is accepted that members will experience reduced payments at the point of retirement, legislation is due to be enacted no later than 1st October 2023 and all payments will be backdated to the date of retirement with compensation being paid in the form of interest at a simple 3%. This should go some way to mitigating the detriment suffered.

Review of the minutes of the SGB meeting which took place 3 May 2022, confirmed that the SGB had made the decision to pause awards under the Immediate Detriment Framework until further guidance is released.

APPENDIX A: CATEGORISATION OF FINDINGS

Categorisation of internal audit findings

Priority	Definition
Low	There is scope for enhancing control or improving efficiency and quality.
Medium	Timely management attention is necessary. This is an internal control risk management issue that could lead to: Financial losses which could affect the effective function of a department, loss of controls or process being audited or possible reputational damage, negative publicity in local or regional media.
High	Immediate management attention is necessary. This is a serious internal control or risk management issue that may lead to: Substantial losses, violation of corporate strategies, policies or values, reputational damage, negative publicity in national or international media or adverse regulatory impact, such as loss of operating licences or material fines.

The following table highlights the number and categories of management actions made as a result of this audit.

Area	Control design not effective*		Non-Compliance with controls*		Agreed management actions		
					Low	Medium	High
Governance – Immediate Detriment Framework	0	(7)	0	(7)	0	0	0
Total					0	0	0

* Shows the number of controls not adequately designed or not complied with. The number in brackets represents the total number of controls reviewed in this area.

APPENDIX B: SCOPE

Scope of the review

The scope was planned to provide assurance on the controls and mitigations in place relating to the following area:

Objective of the area under review

To consider and provide assurance to ensure a consistent and robust governance framework can be demonstrated and has been consistently applied to support the decisions made by the Strategic Governance Board for Fire (and Firefighters' Pension Scheme Manager) for the Firefighters' Pension Schemes regarding the immediate detriment framework.

The following areas will be considered as part of the review:

The Service has recently paused the awarding of retirement pensions from the Firefighters' Pension Schemes under the Immediate Detriment Framework. This action has been taken following various guidance documents received from the National Fire Chiefs' Council and National Police Chiefs' Council, Home Office, and Legal advice received under legal privilege and HMT. The current guidance is being reviewed and revised legislation is due to be released in October 2023.

This review will consider the overarching framework employed by the Service in the introduction, application and recent ceasing of Immediate Detriment awards. Supporting documentation for key decisions and processes will be reviewed to ensure they were channelled and signed-off via the appropriate governance channels (Scheme Manager, Commissioner's Office and Strategic Governance Board etc).

The following limitations apply to the scope of our work:

- We will consider the governance processes surrounding the Immediate Detriment Framework. However, we will not confirm that individual awards were appropriately processed, that the amounts awarded are accurate, or that decisions made in relation to each case were in line with legislation and supporting guidance etc;
- The results of our work are reliant on the quality and completeness of the information provided to us; and
- Our work does not provide absolute assurance that material errors, loss or fraud do not exist.

Debrief held 1 August 2022
Draft report issued 3 August 2022
Responses received 24 October 2022

Internal audit Contacts Daniel Harries, Head of Internal Audit
Daniel.Harris@rsmuk.com / 07792 948767

Angela Ward, Senior Manager
Angela.Ward@rsmuk.com / 07966 091471

Kishan Patel, Assistant Manager
Kishan.Patel@rsmuk.com / +44 121 214 3356

Final report issued 24 October 2022

Client sponsor David Greensmith, Chief Finance Officer

Distribution David Greensmith, Chief Finance Officer

rsmuk.com

The matters raised in this report are only those which came to our attention during the course of our review and are not necessarily a comprehensive statement of all the weaknesses that exist or all improvements that might be made. Actions for improvements should be assessed by you for their full impact. This report, or our work, should not be taken as a substitute for management's responsibilities for the application of sound commercial practices. We emphasise that the responsibility for a sound system of internal controls rests with management and our work should not be relied upon to identify all strengths and weaknesses that may exist. Neither should our work be relied upon to identify all circumstances of fraud and irregularity should there be any.

Our report is prepared solely for the confidential use of Staffordshire Fire and Rescue Services, and solely for the purposes set out herein. This report should not therefore be regarded as suitable to be used or relied on by any other party wishing to acquire any rights from RSM UK Risk Assurance Services LLP for any purpose or in any context. Any third party which obtains access to this report or a copy and chooses to rely on it (or any part of it) will do so at its own risk. To the fullest extent permitted by law, RSM UK Risk Assurance Services LLP will accept no responsibility or liability in respect of this report to any other party and shall not be liable for any loss, damage or expense of whatsoever nature which is caused by any person's reliance on representations in this report.

This report is released to you on the basis that it shall not be copied, referred to or disclosed, in whole or in part (save as otherwise permitted by agreed written terms), without our prior written consent.

We have no responsibility to update this report for events and circumstances occurring after the date of this report.

RSM UK Risk Assurance Services LLP is a limited liability partnership registered in England and Wales no. OC389499 at 6th floor, 25 Farringdon Street, London EC4A 4AB.