



DEVON & SOMERSET FIRE & RESCUE AUTHORITY

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| REPORT REFERENCE NO. | RC/10/7 |
| MEETING | RESOURCES COMMITTEE |
| DATE OF MEETING | 8 FEBRUARY 2010 |
| SUBJECT OF REPORT | DEBT WRITE OFF |
| LEAD OFFICER | TREASURER |
| RECOMMENDATIONS | <i>That it be recommended to the Devon and Somerset Fire and Rescue Authority on 19 February that the debt relating to the overpayment of ill health and injury payments as set out within paragraph 2.3 of report RC/10/7 to an ex firefighter be written off.</i> |
| EXECUTIVE SUMMARY | <p>The Financial Regulations of the Authority state that debts relating to salary and similar, of greater than £5,000 must be considered for write off by the full Authority.</p> <p>The report outlines the circumstances and legal advice relating to overpayment of pension to a fire pensioner.</p> |
| RESOURCE IMPLICATIONS | As indicated within the report. |
| EQUALITY IMPACT ASSESSMENT | An initial assessment has not identified any equality issues emanating from this report. |
| APPENDICES | None. |
| LIST OF BACKGROUND PAPERS | <p>DSFRA Financial Regulations, approved at the meeting of the Shadow DSFRA meeting held on the 11 April 2007.</p> <p>Revision to the DSFRA Financial Regulations, as approved at the DSFRA meeting held on the 14th July 2009.</p> <p>Devon and Somerset Fire and Rescue Authority (Combination Scheme) Order 2006</p> |

NOT FOR PUBLICATION BY VIRTUE OF PARAGRAPHS 1, 2 & 3 OF PART 1 OF SCHEDULE 12A (AS AMENDED) OF THE LOCAL GOVERNMENT ACT 1972

1. INTRODUCTION

- 1.1 During 2006/7 a Somerset firefighter left the service and was assessed by a medical practitioner to be eligible for the award of lower tier ill health and injury pensions.
- 1.2 Following combination of the Devon and Somerset Fire and Rescue Services in April 2007 and receipt of documentation by Devon Pensions (who took on responsibility for the administration and payment of pensions from combination), it was identified that the ex firefighter in this case had incorrectly received higher tier ill health and injury payments.
- 1.3 Normal practice would have been for the overpayment to be recovered over a similar period to that over which the payment had taken place and a debt would technically be due to the Authority.
- 1.4 Somerset Pensions acted appropriately by following instruction of the employing body, which specified that the ex firefighter should receive higher tier awards.
- 1.5 As it would not have been evident to the person in question that the amounts calculated were incorrect, advice was sought from the legal advisers to Devon and Somerset Fire and Rescue Authority (DSFRA) as to whether debt recovery should be pursued in this case. The response received was as follows:

“The basic principle is that an overpayment as a result of a mistake is recoverable however any decision to recover must be made with consideration of the individual’s circumstances i.e. if the individual had relied on the overpaid money in making financial decisions and recovery would cause him financial harm.

In this case however I do not think that recovery would be possible given that the overpayment was as a result of a decision made by the HR department to award the higher tier ill health pension contrary to medical opinion. As the overpayment was not as a result of a genuine mistake I can see no basis for recovering the money.”

- 1.6 The correct amounts of monthly ill health and injury pensions are now being paid to the pensioner.

2. FINANCIAL AND OTHER IMPLICATIONS

- 2.1 Paragraph 20 (2) of the Devon and Somerset Fire and Rescue Authority (Combination Scheme) Order 2006 states that

“There shall be transferred from Somerset County Council to the Authority any rights and liabilities held or incurred by them solely in connection with the discharge of fire and rescue authority functions in respect of:-

(a) any contract of employment with a person transferred in accordance with paragraph 16;

(b) any contract for the provision of services or the delivery of goods;

(c) the Firefighters’ Pension Scheme as set out in Schedule 2 to the Firemen’s Pension Scheme Order 1992(a);

(d) the Local Government Pension Scheme Regulations 1995(b);

(e) the Local Government (Discretionary Payments) Regulations 1996(c);

(f) the Local Government Pension Scheme Regulations 1997(d);

(g) the Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2000(e);

(h) the Firefighters Compensation Scheme (England) Order 2006(f).”

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12A (AS AMENDED) OF THE LOCAL GOVERNMENT ACT 1972**

- 2.2 Ill health pensions are awarded under the Firefighters' Pension scheme and injury pensions are awarded under the Firefighters Compensation Scheme (England) Order 2006. Accordingly, the decision for recovery or otherwise lies solely with DSFRA.
- 2.3 The total amount overpaid to the pensioner was £22,059.30 comprised as follows:
- Ill health lump sum overpaid £3,255.15
 - Injury gratuity overpaid £6,753.99
 - Ill health pension overpaid £1,216.73
 - Injury pension overpaid £10,833.43
 - Total £22,059.30
- 2.4 The debt relates to payments covering three financial years, £13,535.15 in 2006/7, £6,743.25 in 2007/8 and £1,780.90 in 2008/9.
- 2.5 Injury gratuities and pensions have to be met from the Authority's funds. Ill health lump sums and pensions have, since 2006/7, been met from the Firefighters Pension Fund. The Firefighters Pension Fund operates by the difference between pension outgo and employee and employer contributions being met by grant paid by the Department for Communities and Local Government (CLG). As a result of the overpayment of ill health lump sum and pension, grant in the sum of £4,471.88 has been over claimed, which DSFRS will need to repay to the CLG. This sum can be found from underspends on other pension budget lines.
- 3. CONCLUSION**
- 3.1 There is clear evidence that overpayment to an ex firefighter has occurred. Legal advice was therefore sought as to whether recovery of the debt was appropriate and this has confirmed that there are no grounds for recovering this debt. In line with DSFRA Financial Regulations, therefore, the Committee is asked to recommend to the Devon and Somerset Fire and Rescue Authority that the debt relating to this ex firefighter be written off.
- 4. RECOMMENDATION**
- 4.1 That it be recommended to the Devon and Somerset Fire and Rescue Authority on 19 February that the debt relating to the overpayment of ill health and injury payments as set out within paragraph 2.3 of report RC/10/x to an ex firefighter be written off.

KEVIN WOODWARD
Treasurer