

REPORT REFERENCE NO.	LPBC/XX/XX
MEETING	DSFRS LOCAL PENSION BOARD – FIREFIGHTERS’ PENSIONS
DATE OF MEETING	29 MAY 2019
SUBJECT OF REPORT	SCHEME MANAGER UPDATE
LEAD OFFICER	Head of Human Resources
RECOMMENDATIONS	<i>That the update from the Scheme Manager should be a standing item for the Local Pension Board and that the report should be discussed and any additional actions agreed.</i>
EXECUTIVE SUMMARY	This report provides a summary of current pension matters both nationally and locally which have required input from the Service. This report should also be considered in conjunction with the regular monthly Bulletins which are issued by the Firefighters’ Pensions Advisory Board.
RESOURCE IMPLICATIONS	Will be specific to each pension item.
EQUALITY RISK & BENEFITS ASSESSMENT	None related to this specific paper.
APPENDICES	WYPF Monthly Performance Report – May 2019
LIST OF BACKGROUND PAPERS	Nil.

1. INTRODUCTION

- 1.1 This is the update report from the Authority delegated Scheme Manager for the Devon & Somerset Fire & Rescue Authority - Local Pension Board (LPB). As a reminder, the Scheme Manager is defined as being the Fire and Rescue Authority under The Firefighters' Pension Scheme (England) Regulations 2014. However, the Scheme Manager may delegate any functions under these Regulations. The Authority has set out in the Discretions Policy where decisions will need to be taken by the Authority. However, the day-to-day managing and administering of the pension schemes, and any statutory scheme that is connected with them, is delegated to the Head of Human Resources.
- 1.2 The Local Pension Board provides a number of functions as set out in the Terms of Reference, which include: assisting the Scheme Manager to ensure compliance with the relevant regulations and the efficient and effective management of the pension administration; advising on member communications; and monitoring complaints.
- 1.3 This report provides a summary of current pension matters both nationally and locally and further updates will be provided on these matters in future reports, together with any items for which the LPB has specifically requested further information.

2. PENSION SURVEYS & ANNUAL RETURNS

- 2.1 Since the last LPB in February 2019, there have been no further surveys or annual returns. However, I previously had reported on the FPS Administration Benchmarking - Employer Survey: This survey was commissioned by the Scheme Advisory Board (SAB) as a benchmarking review part of FPS administration in relation to cost and service provided. The Scheme Advisory Board have commissioned Aon to undertake this benchmarking review.
- 2.2 Whilst the Service response had been completed, the SAB had also asked for member views in relation to the frequency and quality of information that members receive about their benefits. The invitation to participate in the survey was promoted by the Service through the Scheme Manager sending all active members an invitation and link to participate in the survey.

3. PENSION COMMUNICATIONS

3.1 Annual Benefits Statement

- 3.1.1 There is a legal requirement to provide an Annual Benefit Statement (ABS) to all active members ie those who are in pensionable service with Devon & Somerset FRS. This requirement is set out in the Public Service Pensions Act 2013. The requirement is that the ABS are provided to staff by no later than the 31st August each year.
- 3.1.2 The Service changed pension administrators with effect from the 1st April 2018 from Peninsula Pensions to the West Yorkshire Pension Fund (WYPF). In the

main, WYPF made good progress with the production of ABS statements. There was however, a problem with the On-call Modified Pension. These members had not previously had an ABS and WYPF did not hold all of the necessary information. There were 71 members of the On-call Modified Scheme. The Service provided WYPF with the initial elective decisions from DSFRS staff and also the cost calculation information so that WYPF were able to proceed with these calculations. They estimated that the statements would be produced by the end of February 2019 and in future years it was anticipated that WYPF would have the information they need and therefore would not have the same difficulties that they encountered for the 2017/18 statement.

- 3.1.3 At the Local Pension Board meeting on the 15th February 2020, the Board considered the breach by the WYPF and due to the numbers affected (71 members – representing 100% - for one particular scheme) which was considered as significant. The Board considered that raising awareness of the issue at a national level would be beneficial and that it should be reported to The Pension Regulator (TPR).
- 3.1.4 On the 21st February 2019, WYPF confirmed that they had completed the ABS statements for these members of the On-call Modified Scheme. However, as an action from the LPB meeting, the matter has been reported to The Pension Regulator.
- 3.1.5 In terms of the production of the ABS statements for 2018/19, WYPF are reviewing the information that they provide and seeking to incorporate additional projections. I would anticipate that this change will be well received by the active members and it will also reduce the number of enquiries that WYPF receive for additional estimates. The online My Pension portal is also currently being configured and tested.
- 3.1.6 From a DSFRS perspective, we still currently have a problem with the monthly and annual reporting of earnings and pension contributions from the iTrent payroll. The yearend information is required by WYPF in order for them to complete the ABS statements by the 31st August and therefore the information should be provided to WYPF in a timely manner. As part of the payroll project, the Service jointly with DWFRS commissioned MHR to develop a monthly output file from iTrent. This was not successful and I am currently seeking further information from MHR, the payroll provider as to why this was not completed. In the meanwhile we had a second attempt with the Service, WYPF and MHR on the 16th April 2019 to rectify this problem. Progress was made but not sufficient to enable a final annual output file to be produced. In order to provide WYPF with the data that they urgently require, a report is therefore being developed by the HR Systems team and then in the longer term we can address the problem with the monthly reporting.

3.2 Notification Of Annual Allowance Or Lifetime Allowance Breaches

- 3.2.1 Active members who have exceeded their Annual Allowance receive a Pension Savings Statement from WYPF in October each year following the end of the Pension Input Period (PIP) in April each year. There is also further information

available through the WYPF website and also the HMRC website. The WYPF Client Relationship Manager attended the Service on the 30th October to provide training sessions for those staff were most likely to be impacted by this. Further training sessions were offered to all staff at Station Manager and above for awareness training sessions in March 2019.

- 3.2.2 There is still a need to incorporate further information into promotion letters where there is the potential for the Annual Allowance to be exceeded.

4. PENSION PROJECTS

4.1 Pensionable Pay For Allowances

- 4.1.1 The Service has previously reported on this following the acceptance that the Area Manager Rota Allowance and the Training Allowance should be treated as pensionable pay. Back-dating arrangements were put in place and these allowances are now paid as pensionable pay.
- 4.1.2 There are other Allowances that are yet to be determined as pensionable; Dog Handler allowance, Special Rescue allowance and Additional Responsibility Allowances. Despite the Grey Book stating the ARAs are not pensionable we know that this is not authoritative and that we must consider the specifics of the contract.
- 4.1.3 The case concerning pensionable pay has been heard by the High Court of Justice and the judgement has been handed down. We therefore now have sight of the exact issues within this case. The case related to whether certain allowances paid in addition to basic pay within Mid and West Wales Fire & Rescue Authority should be regarded as pensionable. The allowances referred to were a training allowance, a daily crew allowance, a self-rostering allowance and an USAR allowance.
- 4.1.4 The training allowance was judged to be pensionable for staff in permanent training positions as were the daily crewing allowance and self-rostering allowance. However, the USAR allowance was not considered as pensionable as it is paid in relation to the performance of the duties within a specialist role rather than that of a firefighter and was subject to separate government funding on a year by year basis.
- 4.1.5 My understand is that the LGA still intend to hold a workshop on this topic during the summer and prepare guidance information. Once we have that guidance, further determinations can be made concerning our own allowances.

4.2 Transition Protection Judgement

- 4.2.1 I previously reported that the Court of Appeal have determined that the manner in which the transitional provisions have been implemented has given rise to unlawful direct age discrimination. The court found that, having introduced the protections, the Government should have justified the discriminatory impact but that it had failed to do so, and therefore justification on the grounds of legitimate

aims must fail. As a result they dismissed any further deliberation over the question on proportionality of means. The CoA judgment remitted the case to the Employment Tribunal to consider remedy however we knew that the Government and Employers were likely to seek to appeal the matter to the Supreme Court.

4.2.2 I have received confirmation that an application to the Supreme Court seeking permission to appeal the Court of Appeal's decision has been made and initially the outcome of that application was expected in April but indications are now that the outcome of that application will not be known until July.

4.2.3 At this stage it is a watching brief for the Service but should the final decision be in favour of Sargeant and Others v London Fire and Emergency Planning Authority then it could undo the transitional protection as it has currently been implemented and create additional work for the Service.

4.3 Abatement

4.3.1 The general abatement rule is that on re-employment the salary paid for the new employment added to the pension in payment (plus inflation) cannot be more than the member's salary (plus inflation) at the point they retired. If there is an excess then the pension in payment will be reduced to bring the level back in line with the salary at retirement. There is no age limit on abatement, and this continues for the full period of re-employment by an FRA in any capacity. When the re-employment ends, the pension will be reinstated to the full amount. It should be noted that Abatement does not apply in the Firefighters' Pension Scheme 2015. This approach has been applied to uniformed staff in accordance with our Pay Policy Statement.

4.3.2 The advice received from WYPF on this matter is that staff who move into the LGPS or are working on a casual basis should also be abated. For casuals, any recovery would be commenced after a 12 month period once it is known what the annual earnings have been. No further progress has been made with this work at this stage.

5. REPORTING BREACHES OF LAW

5.1 Within the LPB Reporting Breaches Procedure, we refer to Section 70 of the Pensions Act 2004 (the Act) and the requirement that, where a person has reasonable cause to believe that:

- (a) a duty which is relevant to the administration of the scheme in question, and is imposed by virtue of an enactment or rule of law, has not been or is not being complied with; and
- (b) the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions

that then they must give a written report on the matter to the Regulator as soon as is reasonably practicable.

5.1. The detail of the decision concerning the ABS breach is set out in section 3.1.

- 5.2. There is a second matter which is a potential breach relating to split pensions and how Peninsula Pensions undertook the calculation since we are aware of a case where multiple splits were considered rather than the one split which is permissible. The Service is working with WYPF through this matter.

6. INTERNAL DISPUTE RESOLUTION

- 6.1 Within the Firefighters' Pension Scheme formal complaints are made via the Internal Disputes Resolution Procedure. I previously reported on the cases over the last 3 years and no further cases have been submitted since the last LPB meeting. The one live case has moved from Stage 1 to Stage 2.

7. PENSION ADMINISTRATOR QUALITY OF SERVICE

- 6.1 WYPF are continuing to make improvements in the Service that they provide and this is reflected in the steps that they are taking concerning the ABS statements with additional projections and the online My Pension portal.
- 6.2 The Client Relationship Manager can attend a future LPB meeting and if that could coincide with her attendance for the Pension Seminar in October then that would be beneficial.
- 6.3 I have attached the latest Performance report provided from WYPF. I remain very impressed with the quality of technical advice and service that we receive.

8. RECRUITMENT OF LPB MEMBER REPRESENTATIVES

- 8.1 A voluntary vacancy for a Member Representative on the LGP board was advertised on the 26th April 2019 with a closing date of the 17th May 2019. I have received some interest and particularly through the TUs and would anticipate that we will be able to make appointment to such vacancies as they arise.

STEVEN POPE
Head of Human Resources

