

REPORT REFERENCE NO.	DSFRA/19/14
MEETING	DEVON & SOMERSET FIRE & RESCUE AUTHORITY (Ordinary Meeting)
DATE OF MEETING	7 JUNE 2019
SUBJECT OF REPORT	LOCAL PENSIONS BOARD – FURTHER CONSIDERATIONS
LEAD OFFICER	DIRECTOR OF CORPORATE SERVICES
RECOMMENDATIONS	<p>(a). that the Authority considers this report and determines:</p> <p>(i). whether it would wish to re-appoint the Clerk (Monitoring) Officer as an employer representative on the Local Pensions Board for a further four year term of office (Section 2 of this report refers);</p> <p>(ii). whether it would wish to increase the overall size of the Board from 6 to 8 (to take effect on appointment of the additional employer and member representatives) and if so to select which of the options as identified in paragraph 3.2 it would wish to adopt to appoint to the additional employer representative place;</p> <p>(iii). subject to (a)(ii) above, that the revised quorum provisions, set out in paragraph 3.1 of this report, are implemented with immediate effect</p> <p>(b). that it be noted that, in accordance with the previously agreed delegation, the Head of Human Resources is currently undertaking a process to identify a member representative to fill the space resulting from expiry of the initial four year term of office and will similarly undertake a process to identify an additional employer representative should the Authority agree to increase the overall size of the Board.</p>
EXECUTIVE SUMMARY	This report advises of a proposal from the Local Pensions Board to increase the size of the Board from 6 to 8 (one additional Scheme Manager representative and one additional Scheme Member representative).
RESOURCE IMPLICATIONS	Nil.
EQUALITY RISKS AND BENEFITS ANALYSIS (ERBA)	This report is considered compatible with existing equalities and human rights legislation
APPENDICES	Nil.

LIST OF BACKGROUND PAPERS

- A. Report DSFRA/15/5 (Establishment of Local Pensions Board for Firefighters' Pensions Scheme) to the Authority budget meeting on 20 February 2015 (and the Minutes of that meeting)
- B. Report DSFRA/15/26 (Local Pensions Board – Additional Appointments) to the Authority meeting on 14 December 2015 (and the Minutes of that meeting)
- C. The Public Services Pension Act 2013
- D. The Firefighters' Pension Scheme (England) Regulations 2014
- E. The Firefighters' Pension Scheme (Amendment)(Governance) Regulations 2015
- F. Guidance on roles and responsibilities relating to public service pension schemes as published on the Pensions Regulator's website – see link below:

<https://www.thepensionsregulator.gov.uk/en/public-service-pension-schemes/understanding-your-role/roles-and-responsibilities>

1. BACKGROUND

- 1.1. The Authority's Local Pensions Board (dealing only with Firefighters' Pensions Schemes) was established at the Authority meeting on 20 February 2015 (Minute DSFRA/46 refers) in compliance with the Firefighters' Pension Scheme (Amendment)(Governance) Regulations 2015 ("the Regulations"). The Board is responsible for assisting the Authority (as Scheme Manager):
- (a). to secure compliance with:
 - (i) the Regulations;
 - (ii) any other legislation relating to the governance and administration of Firefighters' Pension Schemes; and
 - (iii) any requirements imposed by the Pensions Regulator in relation to Firefighters' Pension Schemes; and
 - (b). to ensure the effective and efficient governance and administration of Firefighters Pension Schemes.
- 1.2. The Regulations provide that it is the responsibility of the Scheme Manager to determine membership of the Local Pensions Board and the manner in which members of it are to be appointed and removed. The Regulations also provide that there must be a minimum of 4 on the Board and that there must be an equal number of employer (i.e. Scheme Manager) representatives and member (i.e. Scheme beneficiary) representatives.
- 1.3. In establishing the Board, the Authority reserved the power to appoint employer representatives and delegated responsibility for undertaking a process for and appointing employer representatives to the Head of Human Resources (or equivalent post-holder). At the outset, the Board comprised total of four members (two employer and two member representatives). The Authority resolved that the employer representatives should be the Clerk (and Monitoring Officer) and the Treasurer (as proper financial officer).
- 1.4. At its meeting on 14 December 2015, the Authority approved a request from the Local Pensions Board to increase the overall size to 6 members (three employer and three member representatives)(Minute DSFRA/38 refers). The Authority approved that the additional employer representative should be an Authority Member, with this appointment confirmed at each Authority annual meeting. The current member representatives are the Authority Clerk (Monitoring Officer) and Treasurer together with Councillor Wheeler (appointed until the Authority Annual Meeting in 2019).

2. APPOINTMENT OF CLERK (MONITORING OFFICER) AND TREASURER AS EMPLOYER REPRESENTATIVES

- 2.1. The Board has agreed an operating protocol that provides for a usual term of office of four years, subject to certain conditions being met (continuing to be a Scheme member or, in the case of employer representatives, either an employee or Member of the Authority). As mentioned earlier in this report, the appointment of an Authority Member as an employer representatives is subject to confirmation at the Authority's Annual Meeting. The operating protocol also provides:
- "To maintain continuity of knowledge and experience built up by the inaugural members of the Board, after the first four years only two positions will be considered for appointment, i.e. year 5 is first new appointment process, year 6 is second new appointment process etc. This will have the potential effect that two Board members could serve for five years and a further two for 6 years before their initial term ends.

There will be no restriction on existing Board Members being re-appointed to the Board following the end of their initial (or subsequent) term of office.”

- 2.2. The Board was initially constituted in February 2015, so this year effectively marks “year 5” in the appointments process. Two positions (one employer representative and one member representative) should be as such open to appointment at this time.
- 2.3. The Clerk (Monitoring Officer) was one of the initial appointments to the Board and has indicated that he is willing to continue. On this basis, the Authority is invited to re-appoint the Clerk (Monitoring Officer) as an employer representative for a further four year term of office (i.e. until the Authority annual meeting in 2023).
- 2.4. In line with the Authority’s agreed delegation (see paragraph 1.3 above), the Head of Human Resources is currently seeking to appoint to the member representative position.

3. REQUEST TO EXPAND OVERALL SIZE OF THE BOARD

- 3.1. At its meeting on 15 February 2019, the Local Pensions Board agreed to ask the Authority to approve an increase in overall size of the Board from 6 to 8 members (comprising four employer and four member representatives) i.e. one additional employer representative and one additional member representative. The main reason for this was that, given Board’s quorum requirements (currently four, to comprise two employer and two scheme member representatives), it had been necessary to cancel Board meetings owing to unavailability of the required attendees. The Board had discussed reducing the quorum requirement to three but had been unable to reach consensus on this. The Board had agreed, though, that a potential solution might be to increase the overall size of the Board and, subject to this being approved, the quorum requirement moving forwards would be 50% of the membership i.e. four attendees, to comprise at least one employer and one member representative.
- 3.2. If this increase in overall size is approved, then the following options are suggested to the Authority in terms of filling the additional employer representative post:

Option 1

Serving member representatives on the Board have indicated that the additional employer representative place might filled by a senior, uniformed officer (for example, either the Deputy or an Assistant Chief Fire Officer). The rationale for this is that other fire and rescue authority local pension boards have similar membership.

Of relevance here is that the Regulations stipulate (Regulation 4C) that the scheme manager (i.e. the Authority) must be satisfied that any person appointed as a member of the local pension board does not have a conflict of interest defined as follows (Section 5(5) of the Public Service Pensions Act 2013):

“conflict of interest”, in relation to a person, means a financial or other interest which is likely to prejudice the person’s exercise of functions as a member of the board (but does not include a financial or other interest arising merely by virtue of membership of the scheme or any connected scheme).

A senior uniformed officer would have a personal financial interest in the Firefighters’ Pensions Schemes (by virtue of being a future beneficiary). While the relevant regulations do not prohibit a senior uniformed officer from serving on the Board as an employer representative, it should be noted that a senior uniformed officer would be eligible to serve as a member representative and the Authority should consider carefully whether being able to serve in both capacities creates a personal conflict of interest that would be difficult to manage.

Option 2

The Authority may wish to appoint a third senior non-uniformed officer to serve as an employer representative on the Board. Should the Authority be minded to approve this option, it is recommended that the Clerk be delegated authority to undertake a process to identify a member of staff to be appointed for a four year term of office and to determine that appointment.

Option 3

The Authority may wish to appoint a second Authority Member to serve as an employer representative on the Board. Should the Authority be minded to approve this option, it is recommended that the appointment be made at this meeting.

Option 4

The Authority might wish to appoint an external person, with relevant subject matter knowledge and experience, to be an employer representative. Such a person might also Chair the Board. The Regulations provide that any person to be appointed as an employer representative should have the capacity to represent the employer, but are not prescriptive in requiring this to be a serving officer or Authority Member.

The regulations associated with the management of the various Firefighter Pensions Schemes are technically complex. Guidance on roles and responsibilities for those involved in public service pension schemes, published on the website of the Pensions Regulator, highlights that “some [local pension boards] have other types of members, such as independent experts or independent chairs or vice-chairs”. Given that the remit of the Board is one of advising the Scheme Manager and providing a level of scrutiny to ensure regulatory compliance and effectiveness/efficiency of governance, an external person with the requisite subject matter knowledge and experience serving as an employer representative could bring an additional level of scrutiny adding value to the Board’s effectiveness.

Should the Authority be minded to approve Option 4, it is recommended that the Clerk to the Authority be delegated authority to undertake a process to identify and appoint a relevant external person with the capacity to represent the employer as an employer representative on the Board. It is also recommended that the position be offered with a remuneration level of £500pa plus travel and subsistence expenses at the same rate as set out in the Authority’s Members Scheme of Allowances (mileage rate currently 45p per mile).

- 3.3. If the Authority is minded to approve an increase in the overall size of the Board, it is proposed that the Board should implement the revised quorum provisions, set out in paragraph 3.1 of this report, with immediate effect.

4. CONCLUSION

- 4.1. The Authority is invited to consider this report and determine:
1. whether it would wish to re-appoint the Clerk (Monitoring) Officer as an employer representative on the Local Pensions Board for a further four year term of office (Section 2 of this report refers);
 2. whether it would wish to increase the overall size of the Board from 6 to 8 (to take effect on appointment of the additional employer and member representatives) and if so to select which of the options as identified in paragraph 3.2 it would wish to adopt to appoint to the additional employer representative place.

- 4.2. The Authority is also asked to note that, in line with the previously agreed delegation, the Head of Human Resources is currently undertaking a process to identify a member representative to fill the space resulting from expiry of the initial four year term of office and will similarly undertake a process to identify an additional employer representative should the Authority agree to increase the overall size of the Board.

MIKE PEARSON
Director of Corporate Services