

DEVON & SOMERSET FIRE & RESCUE AUTHORITY

LOCAL PENSIONS BOARD

DATE OF MEETING	24 June 2020
SUBJECT OF REPORT	SCHEME MANAGER UPDATE
REPORT AUTHOR	Head of Human Resources
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.
APPENDICES	Appendix 1: Link to written government statement on the Transitional Arrangements claim and remedy (HCWS187)

1. INTRODUCTION

- 1.1 This is the update report from the Devon & Somerset Fire & Rescue Authority (the Authority) delegated Scheme Manager for the Authority's Local Pension Board (LPB). 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 LPB 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 at subsequent LPB meetings.

2. PENSION SURVEYS & ANNUAL RETURNS

- 2.1 Since the last meeting of the LPB on 18 March 2020, the Service has submitted a response to an annual SAB survey relating to the numbers of cases and any emerging themes for the Internal Dispute Resolution Procedure (IDRP).
- 2.2 The Service also responded to a survey regarding, 'pension administration – service provision during Covid-19 restrictions for staff'.

3. PENSION COMMUNICATIONS

Annual Benefit Statements (ABS)

- 3.1 There is a legal requirement to provide an Annual Benefit Statement (ABS) to all active members by no later than the 31st August each year, i.e. those who are in pensionable service with the Devon & Somerset Fire & Rescue Service (the Service). This requirement is set out in the Public Service Pensions Act 2013.
- 3.2 The data required by the scheme Administrator, West Yorkshire Pension Fund (WYPF) for the 2020 ABS was submitted on time, during May 2020. The Service is fully up to date with the pension reporting required monthly by WYPF.

COVID-19 and the FPS

- 3.3 The LGA Pension Team has developed a new page on the website to give informal guidance during the Coronavirus (COVID-19) pandemic. This page will continue to be updated with relevant news, information and links throughout the current challenging situation and can be found here:
<http://www.fpsregs.org/index.php/covid-19-and-the-fps>
- 3.4 The website includes information on the Protected Pension Age which has been relaxed during this period and means that re-employment as a result of Covid-19 requirements would not impact on the taxation of pension benefits. However, in terms of Retirement & Re-employment, the Service would still require a break in service from a contractual perspective. The abatement arrangements have also been under review but have not at this stage been modified.

- 3.5. The LGA has taken legal advice on the eligibility to join the FPS and has explored the regulation wording and effect on the definition of a firefighter and temporary contracts. From the legal advice, the LGA has concluded that eligibility to the scheme under the regulations rests on the person being employed as a 'firefighter' and that the employment to not be temporary. The Scheme Manager has therefore been seeking further clarity from the national pension advisor on the impact upon the staff who are on Fixed-term contracts within the Service.
- 3.6. Questions have also been raised concerning the compensation scheme and the qualifying injury status for a firefighter that dies from COVID-19. This matter has been raised with officials at the Home Office who have confirmed that the matter is being discussed with HM Treasury and other Government Departments. As yet no further information has been made available.
- 3.7. There was also information about eligibility to join the pension scheme and that the contract would need to state that the role includes resolving operational incidents or leading and supporting others in resolving operational incidents. In order to ensure that any Ambulance Drivers remain covered by the Injury on Duty arrangements this work has been undertaken through existing contracts with staff either working additional hours on their On-call contract or doing so within their Wholetime contract.

4. PENSION PROJECTS

Transition Protection Judgement

- 4.1. The situation remains as reported in the last update, which is that proposals are yet to be finalised nationally in respect of the transitional protection remedy following the Supreme Court's decision to deny the Government permission to appeal the Court of Appeal's judgement that transitional provisions introduced to the reformed judges and firefighters pension schemes in 2015 gave rise to unlawful age discrimination.
- 4.2. On 18 December 2019, the Employment Tribunal made an interim order on remedy. It provided that, 'pending the final determination of all of the remedy issues, those that brought claims in England and Wales are entitled to be treated as if they remained in the Firefighters Pension Scheme (FPS) 1992'. The order anticipated that the final determination on that remedy issue in regard to membership of FPS1992 should be resolved around mid-July 2020. It acknowledged that it may be some time after this that this part of the remedy can be put in effect for all claimants. Given the current situation with Covid-19, this date now seems unlikely and FPS Bulletin 33 noted that discussions are ongoing. The latest bulletin states that the position at the moment remains as per FPS Bulletin 28 – January 2020 in that all entitlements including immediate ones should remain under the existing rules for the time being.
- 4.3. Whilst this position is disappointing and frustrating to members, there is nothing the Service can do locally about this. The Service has received representations from Trade Union reps but will need to wait until further information is available. The Service understands from written statement HCWS187 that initial proposals are to return members to their former final salary scheme for the 'remedy period', but to offer a choice to the member, including those who were deemed protected in the final salary scheme, to receive benefits based on the current Career Average Revalued Earnings (CARE) scheme if it is better to do so. At this stage it is not clear when the end of the 'remedy period' will be, however, it is not expected to be before 2022, as the current working assumption is that it will take three years to bring in these proposals.

- 4.4. The bulletin also drew out the fact that it is currently not known when the member might be able to make the choice and the options outlined were either (1) at the end of the remedy period (and at the same time right across the public sector) or (2) at the member's retirement age.
- 4.5. Bulletin 33 also stated that current understanding is that if a firefighter retires before remedy has been applied to the schemes, they will remain eligible for their position to be remedied retrospectively and benefits recalculated if necessary.

New Claim on Transitional Protections

- 4.6. A new claim has been submitted nationally in relation to any injury to feelings award concerning the transitional arrangements. The claims are of a similar type as the main claims brought by the FBU on behalf of their members in that they allege that the transfer to the 2015 pension scheme amounts to age discrimination. Injury to feelings awards have not yet been determined in the existing proceedings, as they are part of the ongoing remedy process. These new claims are considered as an approach to protect the claimants' position and the defence of these claims will be co-ordinated nationally.

O'Brien vs Ministry of Justice

- 4.7. There are no recent updates with regard to this case, however, when the Service receives the information required to commence work required to remedy this, it is likely to be a significant project as the Service will need to look back to 1976.
- 4.8. As a reminder, below is some background to the case (summarised from <https://www.frsa.org.uk/obrien-pension/>):
- 4.9. Mr O'Brien, who was a part time judge from 1 March 1978 to 31 March 2005, had argued that he should be entitled to the same retirement pension as his full-time colleagues (on a pro rata basis) and that all service, including the element of service prior to 7 April 2020, should be taken into account in the calculation of the amount due.
- 4.10. Decisions and subsequent appeals, between the Employment Tribunal and Ministry of Justice, resulted in a referral to the Court of Justice of the European Union (CJEU), who concluded that part-time work undertaken before the deadline for transposing the Part-Time Workers Directive on 7 April 2000 must be taken into account for the purposes of calculating a retirement pension. In Mr O'Brien's case this meant that all of his service as a part time judge would be taken into account.
- 4.11. In response to this judgement, the government accepted that eligible claimants who have already established under the PTWR, a successful claim for a pension remedy in respect of a fee paid appointment, would be entitled to further remedy in respect of claimed pre 7 April 2000 service in that appointment.
- 4.12. The government is currently considering how such service should be credited.

REPORTING BREACHES OF LAW

- 5.1. Within the Board's Reporting Breaches Procedure, Section 70 of the Pensions Act 2004 (the Act) is referenced. This requires 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

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

- 5.2. There have been no breaches reported since the last Local Pension Board meeting. The previous report noted reportable breaches in respect of the delay in sending out the Annual Benefit Statements for the modified scheme and also to a matter where there was misapplication of the rules in relation to split pensions.

6. INTERNAL DISPUTE RESOLUTION

- 6.1. Within the Firefighters' Pension Scheme formal complaints are made via the Internal Disputes Resolution Procedure. There have been no new complaints under this procedure since the last Local Pension Board meeting.

- 6.2. Information concerning the Internal Disputes Resolution process is available via the Service web page along with links to the information on the WYPF website.

7. PENSION ADMINISTRATOR QUALITY OF SERVICE

- 7.1. The client service that the West Yorkshire Pension Fund (WYPF) provides continues to be to of a reasonable standard and it is recognised that WYPF is working hard to ensure that clients receive the best possible service.

- 7.2. In the last Scheme Manager report, it was noted that there had been some issues in the calculation of senior officer pension entitlements and that these would be considered internally before escalation. This matter has been raised with WYPF who have provided satisfactory explanations as to the calculation of the Life Time Allowance and subsequent taxation. Since there are specific complications with pensions and taxation for Senior Officers, WYPF has agreed to make their most experienced advisors available for such complex matters so that we can alleviate such issues in the future.

- 7.3. In previous reports, reference was made to discussions with WYPF resulting in agreement to feedback on the KPIs agreed under the contract to ensure that:

- (a) all agreed KPIs are reported;
- (b) it will be made clear where indicators will only be reported by exception (e.g., rare cases); and
- (c) consideration is given to the use of performance trend analysis to add further value to the report.

- 7.4. The above was introduced in the February 2020 monthly report and officers will continue to discuss how reporting can be improved.

8. COVID-19 BUSINESS CONTINUITY

- 8.1. The Service has Business Continuity plans and a Covid-19 risk register. To ensure internal business continuity with pay and pensions, the Service has taken steps to enable remote working through the provision of laptops to all HR staff. This has enabled a significant amount of homeworking. Where staff do need to attend work on occasions then social distancing and hand sanitising measures are in place.
- 8.2. The Service is liaising with WYPS to provide assurance that the Business Continuity arrangements for our pension provider are all in place to ensure the continuity of pension services without disruption or loss of service.

9. RECRUITMENT OF LPB MEMBER REPRESENTATIVES

- 9.1. One of the member representative positions on the LPB was due to expire this month. However, in keeping with emergency legislation for Councils etc. that allows for appointments to be extended because of the Covid-19 emergency, it has been agreed with the Chair of the LPB to extend the term of office of existing Member Representative. The Member is very willing to serve for at least another year and so the appointment has therefore been extended by 12 months because of Covid-19 arrangements.

**STEVEN POPE
Head of Human Resources**

Appendix 1:

Copy of written statement HCWS187 (Downloaded on 8th June 2020 from <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2020-03-25/HCWS187/>)

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Pensions Update: Written statement - HCWS187

WS

Treasury

Made on: 25 March 2020

Made by: John Glen (The Economic Secretary to the Treasury)

 HCWS187

Pensions Update

The government is developing proposals to address the unlawful age discrimination identified by the Court of Appeal in the 2015 reforms to the Judicial and Firefighters' pension schemes.

On 15 July 2019, the government announced it would take steps to remove this discrimination retrospectively (HCWS1725). It confirmed that this would apply to pension scheme members with relevant service across all those public service pension schemes that were introduced in 2014 and 2015, regardless of whether individuals had made a claim. This is a complex undertaking, and it is important to get it right.

Since February 2020 relevant pension schemes have been conducting technical discussions with member and employer representatives to seek initial views on the government's high-level proposals for removing the discrimination.

I am grateful for the constructive engagement of trade unions, staff associations, public service employers and other stakeholders in these discussions. The government is considering the initial views of stakeholders and continuing to work through the details of the technical design elements of the proposals. Detailed proposals will be published later in the year and will be subject to public consultation. The government will welcome views on these proposals.

For the avoidance of doubt, members of public service pension schemes with relevant service will not need to make a claim in order for the eventual changes to apply to them.

I would like to reassure members that their pension entitlements are safe. The proposals the government is considering would allow relevant members to make a choice as to whether they accrued service in the legacy or reformed schemes for periods of relevant service, depending on what is better for them. The government will provide more detail later in the year, but if an individual's pension circumstances change as a result, the government may also need to consider whether previous tax years back to 2015-16 should be re-opened in relation to their pension.

The government will also set out its proposal to remove the discrimination for future service in the forthcoming consultation.

In January 2019, the government announced a pause to the cost control mechanism in public service pension schemes, due to uncertainty about benefit entitlements arising from the McCloud judgment. Alongside its proposals for addressing discrimination, the government will also provide an update on the cost control mechanism.

This statement has also been made in the House of Lords: [HLWS182](#)