

DEVON & SOMERSET FIRE & RESCUE AUTHORITY

LOCAL PENSIONS BOARD

DATE OF MEETING	9 December 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.

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. 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. The Pension Regulator require an annual return for all pension schemes that the Service is associated with. WYPF will submit these returns on behalf of the Service prior to the deadline of 15th December 2020.

3. PENSION COMMUNICATIONS

- 3.1. There are no specific pension communications to staff that need to be reported on for this meeting.

4. PENSION PROJECTS

Transition Protection Judgement

- 4.1. Since the last LPB in September 2020 the Service has provided further information to Scheme Advisor Board (SAB) on Immediate Detriment cases. In previous Scheme Manager reports, reference has been made to the Immediate Detriment cases which could be impacted in advance of a decision on the Government's final approach to removing the age discrimination as found in the McCloud/Sargeant Employment Tribunal litigation.
- 4.2. The immediate detriment cases are those staff that were transitioned to the 2015 scheme and become eligible to retire and would like their benefits to be paid from the legacy scheme or do not qualify for an ill-health pension under the 2015 scheme but would under the 1992 scheme.

4.3. Within FPS 37 Bulletin – September 2020, the SAB requested further information on the number of cases within Services who are likely to be affected by complicating factors and the number of members who are likely to become eligible for immediate detriment between now and 31 March 2022 to include the following:

- Any member refused ill-health retirement under the FPS 2015 as the lower ill-health criteria was not met.
- 1992 transition members of FPS 2015 who reach age 55 before 31 March 2022.
- 1992 transition members of FPS 2015 who reach 30 years' service before 31 March 2022.
- 1992 transition members of FPS 2015 who will have 25 years+ service and be over 50 by 31 March 2022.

4.4. The Service has been able to provide this information and we have 22 staff within the immediate retirement category but none of these are claimants. This is an important point since the interim order from the Home Office in August 2020 entitles claimants to be treated as members of FPS 1992 but the guidance is informal and does not give detailed guidance on the process of payment of benefits. There is further information on this provided through the LGA within an information note that can be found here:

<http://www.fpsregs.org/images/Age-discrimination/LGA-immediate-detriment-information-note-October-2020.pdf>

O'Brien vs Ministry of Justice

4.5. This case is often referred to as Matthews or O'Brien but is now titled by the SAB as the Special Members of FPS 2006 - Second options exercise. A factsheet has been produced which provides a brief background on the introduction of special members and comments on the expectations of a second exercise.

4.6. The Government has recognised the right for retained firefighters employed before 1 July 2000 to elect to become a special member from the start date of their employment. This will necessitate a second options exercise, for which legal discussions have commenced between central government, the LGA on behalf of FRAs and trade union legal representatives to consider who is in scope and the details of the settlement exercise.

4.7. Regulations for England will be drafted and consulted on following the conclusion of the legal discussions. At present, no timescales are known and there is no further action needed at this time. There is further information on this provided through the LGA within an information note that can be found here:

<http://www.fpsregs.org/images/Factsheets/Special-members-FPS-2006-factsheet.pdf>

Pensionable Pay for the Payment for Availability System

- 4.8. The Service has developed a new payment scheme for on-call staff which replaces the Retaining Fee with a Payment for Availability (P4A) which provides a payment for each hour of cover rather than the standard Retaining Fee. At the LPB meeting on 9 September, the consensus of the Board was that P4A should be considered as pensionable. The FBU has subsequently challenged this and stated that a national, and a legal determination are required.
- 4.9. The Service has sought further guidance through the LGA, Senior Pension Adviser who has confirmed that there is no national body or process which could determine whether a local allowance is pensionable. It is for fire and rescue authorities to make their own decisions on whether a payment is considered as pensionable because such local decisions rely on the precise circumstances of the payment. The Authority has given due consideration to this pay element applying the Pension Regulations and Blackburne principles in accordance with the guidance and resources provided through the Firefighters' Pensions England Scheme Advisory Board. The Scheme Manager is therefore satisfied that the Authority has made its decision in accordance with the available guidance and will not need to take any further steps.

Fixed-Term Contracts and eligibility to join the FPS

- 4.10. Previously the LGA has released an information factsheet on eligibility to join the FPS. The interpretation within the Regulations state that a regular firefighter is a person employed by an Authority and excludes those that are in a temporary capacity. This would mean that only those who meet the eligibility under the scheme rules qualify for benefits from the Firefighters' Pension Schemes and the Firefighters' Compensation Scheme. If a person does not meet the FPS eligibility requirements the appropriate scheme is the Local Government Pension Scheme (LGPS). This terminology concerning employed on a temporary capacity would exclude fixed-term contracts.
- 4.11. This matter has previously been raised via the LGA and it would appear that the SAB had commissioned legal advice which the Service has not been able to access. The Scheme Manager has been granted permission to attend the next SAB meeting on 10 December 2020 to raise this matter directly with the SAB.

5. 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.

6. INTERNAL DISPUTE RESOLUTION

6.1. Within the Firefighters' Pension Scheme formal complaints are made via the Internal Disputes Resolution Procedure (IDRP). There has been one new complaint under this procedure since the last Local Pension Board meeting.

6.2. A Stage 1 application under the IDRP has been received in relation to whether the Area Manager allowance is pensionable. The Service had previously accepted that the Area Manager (AM) allowance was pensionable but the IDRP application related to flat rate overtime payments that were paid on an interim basis following the end of the old AM rota scheme and prior to the commencement of a new formal scheme. The working arrangements for the flat-rate overtime were in effect trialling the new AM rota and the hours were sufficiently regular to be submitted as a form of rota which suggested that it was scheduled or planned in advance. Based on the Blackburne Principles the payments have been deemed as pensionable and adjustments are now being made.

7. PENSION ADMINISTRATOR QUALITY OF SERVICE

7.1. Trend analysis reports have been produced using the WYPF monthly reports and it is pleasing to note that WYPF have now adopted these within their monthly reporting.

STEVEN POPE
Head of Human Resources