

**DEVON & SOMERSET FIRE & RESCUE AUTHORITY**

**LOCAL PENSIONS BOARD**

<b>DATE OF MEETING</b>	<b>17 March 2021</b>
<b>SUBJECT OF REPORT</b>	<b>SCHEME MANAGER UPDATE</b>
<b>REPORT AUTHOR</b>	<b>HR Rewards &amp; Benefits Manager</b>
<b>EXECUTIVE SUMMARY</b>	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 Scheme 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 (the Board). 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 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 at subsequent Board meetings.

## **2. PENSION SURVEYS & ANNUAL RETURNS**

- 2.1. Since the last meeting, the Pension Regulator's annual return has been submitted by WYPF on behalf of the Service for all pension schemes that the Service is associated with. This was completed prior to the deadline of 15 December 2020.
- 2.2. The results of the Pension Regulator Public Service Governance & Administration Survey 2019 have been published and can be found [here](#). The main headline from this as reported within FPS Bulletin 41 is that, in 2019, 55 per cent of Firefighters' schemes across the UK reported having all six processes in place. This was a reduction from 63 per cent in 2018. The LGA has refreshed its [six key processes factsheet](#) to reflect the most recent results and to provide guidance.
- 2.3. The Service has also responded to the Pension Regulator Public Service Governance & Administration Survey 2020.

## **3. PENSION COMMUNICATIONS**

- 3.1. A communication was issued to staff on 4 February 2021 noting that the Government had responded to the consultation to address the discrimination identified in the McCloud/Sargent case. The communication noted that the changes would take some time to implement and referred staff to the Age Discrimination Remedy page on the LGA website which can be found [here](#). More detail on the Government's response is in section 4 of this report.
- 3.2. In response to the growing number of enquiries regarding the McCloud Sargent case, the creation of a central repository of frequently asked questions has been raised with the LGA, who have asked us to send in any questions arising that have not already been covered.

## 4. **PENSION PROJECTS**

### ***Transition Protection Judgement***

- 4.1. On 4 February 2021, the Government published its response to the consultation on the proposals to remove the discrimination identified in the McCloud/Sargent case. Some of the key points from this are as follows:
- The Government believes it is not fair to move all of those in scope for remedy back into the legacy schemes, as many scheme members are likely to be better off in the 2015/reformed scheme.
  - Eligible members will be given the choice of whether to take legacy or reformed pension scheme benefits for the remedy period, which is between 1 April 2015 and 31 March 2022, using the deferred choice underpin (DCU) option. This means that eligible members will make their choice shortly before benefits are paid. This is irrespective of whether they have submitted a legal claim or not, or whether they are currently an active, deferred or pensioner member.
  - The Government's response made it clear that the choice for the remedy period is for either legacy scheme or reformed scheme benefits, and not a mix of aspects from one or the other.
  - The Government will need to bring forward new primary legislation when parliamentary time allows; pension scheme regulations will also need to be amended and will be subject to further consultation on a scheme by scheme basis.
  - Those who have already retired and/or received a pension award will be offered a choice, which will be applied retrospectively back to the date the award was made, as soon as is practicable after the required legislative and process changes can be made.
  - The Government believes that by deferring the choice most members will have greater certainty over their benefit entitlements when making the decision and that, in most cases, there would be no financial advantage to members in being able to make an immediate choice. They have noted, and will be considering whether further mitigating measures may be available, for the potential for contribution deficits to arise depending on the benefits ultimately selected.
  - The Government acknowledged the scale of the administrative challenge that DCU presents and, before schemes and administrators can progress the introduction of new processes and IT systems to deliver this, further technical policy decisions need to be made, and further legislation needs to be passed. The primary legislation will state that retrospective changes must be introduced by 1 October 2023.

- There are many complex tax implications from this and the Government indicated that, where possible, they would take proportionate steps to minimise the administrative burden on members. Tax issues referenced in the response include impacts & potential charges relating to the annual allowance, and also tax adjustments that may become due following the decision. The impacts on members who retire or receive benefits before the introduction of DCU are also covered.
- Anybody remaining in service from 1 April 2022 will do so as a member of the reformed scheme, regardless of age or any other factor.

- 4.2. Over the coming months the LGA intend to work with the relevant government departments to review the implications of the Government's response. They are also looking at ways to support FRAs, which will include some formal training events and meaningful member communications. Information regarding the data requirements has been issued as part of FPS Bulletin 42.
- 4.3. The Home Office issued some informal guidance on 21 August 2020 regarding the treatment of immediate detriment cases. This is not an endorsement by them to proceed in dealing with cases and this is a matter for FRAs to decide. The LGA is seeking additional input from HMT and the HO on this matter given the decision around remedy and policy decisions that are yet to be taken.
- 4.4. Legal advice will be sought collectively by FRA's with regard to immediate detriment cases. Given that the FBU commenced legal proceedings in the High Court on 3 March 2021 in order to force Fire and Rescue Authorities (FRAs) to pay retired members, this might force the issues that legal opinion was being sought on. The LGA's information note on immediate detriment can be found here.
- 4.5. It had been argued that FRAs were obliged by legislation to act as they did in implementing the pension transitional arrangements. This point was reviewed by the Employment Appeals Tribunal and a judgement was handed down on 12 February 2021.
- 4.6. The judgement was that both the Government and FRAs were responsible because FRAs could have made alterations to the scheme to avoid discrimination in accordance with section 62 of the Equality Act 2010. A relevant extract from the Tribunal paper is as follows:

*Upon the proper construction of section 62 of the Equality Act 2010 the appellants have vested in them the power to pass a resolution making non-discrimination alterations to the scheme of which they are managers in respect of those members who were last employed by them. In that respect, also, they were not obliged by a statutory requirement to discriminate against the Claimants on the grounds of age and so, by that route too, are unable to avail themselves of the statutory defence provided by paragraph 1(1) of Schedule 22.*

### ***O'Brien vs Ministry of Justice***

- 4.7. 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. Further information on this has been provided through the LGA within an information note that can be found here. There are no updates regarding this case since the last meeting.

### ***Fixed-Term Contracts and eligibility to join the FPS***

- 4.8. Steve Pope attended the SAB meeting on 10 December 2020 to discuss eligibility to join the FPS for those on fixed term contracts, noting that they would not have adequate compensation benefits if they were only entitled to use the LGPS when employed by Services. He requested access to the legal advice that the SAB had commissioned about this. The outcome was that it was confirmed that temporary employments are not pensionable. It was agreed that the legal advice would be put into a note which confirms the position so that FRA's could use this to get individual advice on this matter. The SAB did not provide a timeline for this to be done but the timeframe has been requested via the LGA.

### ***Public Sector Exit Payments Regulations 2020***

- 4.9. The Restriction of Public Sector Exit Payments Regulations 2020, which came into force on 4 November 2020 and set a cap of £95,000 on exit payments for public sector organisations, has been revoked by the Government after a review found the cap may have had unintended consequences.
- 4.10. The regulations had limited application for the FPS, as exemptions applied to two of the exit payments which would have otherwise fallen within the scope of the £95,000 cap. These related to enhanced commutation (FPS 1992) and Authority Initiated Early Retirement (AIER) (FPS 2006 and FPS 2015) on fitness grounds.

## **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 have been no new complaints under this procedure since the last Local Pension Board meeting.

**7. PENSION ADMINISTRATOR QUALITY OF SERVICE**

- 7.1. The Service continues to have an excellent working relationship with WYPF and both sides are continuing to seek to improve the arrangements that are in place.

**CAROLINE GOURLAY**  
**HR Rewards & Benefits Manager**