

DEVON & SOMERSET FIRE & RESCUE AUTHORITY

(Extraordinary Meeting)

20 April 2021

Present:

Councillors Randall Johnson (Chair), Best, Biederman, Bown, Buchan, Clayton, Coles, Colthorpe, Drean, Hannaford, Healey MBE, Long, Peart, Prowse, Radford, Redman, Vijeh, Wheeler (Vice-Chair) and Yabsley.

Apologies:

Councillors Corvid, Eastman, Napper, Saywell, Thomas and Trail BEM.

Alison Hernandez (Devon & Cornwall Police & Crime Commissioner).

Sue Mountstevens (Avon & Somerset Police & Crime Commissioner).

DSFRA/79 Section 112 Proper Officer

(An item taken in accordance with Section 100B(4)(b) of the Local Government Act 1972).

The Chair determined that this should be considered as a matter of urgency to ensure that the Authority was compliant with the requirements of Section 112 of the Local Government Finance Act 1988.

The Authority was advised that, in line with its earlier decision (Minute DSFRA/68, budget meeting held on 19 February 2021 refers), the Appraisals & Disciplinary Committee had, on 24 March 2021, interviewed for and appointed to the post of Director of Finance & Resourcing and had also designated the successful candidate as the officer responsible for the proper administration of the Authority's financial affairs.

The successful candidate had accepted the appointment but a commencement date was still to be confirmed. Pending this commencement and from the date of leaving (6 May 2021) of the current post holder, it would be necessary for the Authority to designate an existing officer as the officer responsible for the proper administration of the Authority's financial affairs, as required by Section 112 of the Local Government Finance Act 1988.

RESOLVED that, with effect from 7 May 2021 and until commencement of the Director of Finance & Resourcing, the Service Head of Finance be designated as the officer responsible for the proper conduct of the Authority's financial affairs in accordance with Section 112 of the Local Government Act 1988.

DSFRA/80 Exclusion of the Press and Public

RESOLVED that, in accordance with Section 100A(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in the following Paragraphs of Part 1 of Schedule 12A (as amended) to the Act:

- for Minute DSFRA/81, Paragraph 4, namely information relating to consultations or negotiations or contemplated consultations in connection with a labour relations matter arising between the Authority or a Minister of the Crown and employees of or office holders under the Authority; and
- for Minute DSFRA/82, Paragraph 5, namely information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

DSFRA/81 Authority "In Principle" Agreement to join Delt Shared Services Ltd. as a Shareholder

(An item taken in accordance with Section 100A(4) of the Local Government Act 1972 during which the press and public were excluded from the meeting).

The Authority considered a report of the Deputy Chief Fire Officer (DSFRA/21/10) on a proposal relating to human resources and organisational development provision for the Devon & Somerset Fire & Rescue Service (the Service).

In response to issues raised by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) on Service performance against the People pillar of the Inspection, the Service had commissioned an external review of its human resources and organisational development provision.

Stemming from the review, the Service aspiration was to secure level 4 on the Deloitte Burin Maturity Model.

Options to secure this had been evaluated by the Service Executive Board which considered that the optimum solution would be to enter into a shared services arrangement with Delt Shared Services Ltd.(Delt), a private limited company which was 100% owned and governed by public sector shareholders.

The report identified what would be involved in this process, which would require the Authority becoming a shareholder in Delt and the TUPE transfer of existing Service staff to Delt on their existing terms and conditions of employment (including pension entitlement). Affected staff would continue to work from Service Headquarters.

A full business case was being prepared for consideration by the Service Executive Board. The next Service Inspection was scheduled for Autumn 2021 at which time HMICFRS would, amongst other things, be seeking evidence that improvement areas identified at the last inspection either had been or were being addressed.

RESOLVED

- (a). that the Authority approves, in principle, becoming a shareholder in Delt Shared Services Ltd. to facilitate a combined human resources and organisational development provision to the Service from Delt; and

- (b). that the Chief Fire Officer be delegated authority to implement, on behalf of the Authority, this in-principle decision subject to production of and approval by the Service Executive Board of a satisfactory full business case identifying all risks, costs and benefits to the Service.

DSFRA/82 Firefighters' Pension Scheme (FPS) - Age Discrimination Remedy

(An item taken in accordance with Section 100A(4) of the Local Government Act 1972 during which the press and public were excluded from the meeting).

The Authority considered a report of the Director of Governance & Digital Services (DSFRA21/11) on a proposal for the Authority to address “immediate detriment” cases following the McCloud/Sargeant ruling, in December 2018, that the transitional protections for the Firefighters Pension Scheme (FPS) 2015 were age discriminatory.

A subsequent Employment Appeal Tribunal decision had established an expectation that, in light of the ruling, fire and rescue authorities should seek to remedy “immediate detriment” cases at the earliest opportunity and prior to the government’s ultimate remedy solution, which had been subject to consultation but which would require legislative change and was not anticipated until April 2022 at the earliest.

Both the government and the Local Government Association had issued guidance to fire and rescue authorities but this guidance did not carry legal standing. Additionally, there were still a number of issues (including individual tax liabilities) that were still to be resolved.

Consequently, legal advice had been commissioned on behalf of the Authority on progressing “immediate detriment” cases at the earliest opportunity while mitigating any potential risks to which the Authority might be exposed. This advice (as appended to the report) had informed the proposals in the report.

RESOLVED

- (a). that the Authority notes that the effect of the law is that the original pension protection arrangements were unlawful and discriminatory but Sections 61 and 62 of the Equality Act 2010 have the effect of disapplying any discriminatory provisions in a pension scheme and, as a result of this, in principle all firefighters who belonged to the FPS 1992 immediately before 1 April 2012 and were still members as at 31 March 2015, are protected from transfer to the FPS 2015 until 1 April 2022;
- (b). that the Authority approves that:
 - (i). any staff still subject to transitional, tapered, protection from transfer into the FPS 2015 under the previous discriminatory protection provisions will no longer be subject to that transitional protection and will not be placed in the FPS 2015 at the end of that period but rather will remain in the FPS 1992 until 1 April 2022 when the Government will enact new legislation providing for a new public service pensions scheme;

- (ii). officers be delegated authority to approve as required any “immediate detriment cases”, as defined by the Home Office Guidance of 21 August 2020, on a case-by-case basis in accordance with the principle that, if chosen by the individual concerned, they may retire (prior to 1 April 2022) on pensions calculated under the FPS 1992 subject to:
 - 1. There being no continuing and/or unresolved complexities and uncertainties that mean that it would not be practical and/or appropriate to process such cases in that manner at the time; and
 - 2. Those members entering into settlement agreements protecting the Authority from liability for any future changes to the arrangements that may arise from Government policy or actions and/or in regard to any future liabilities that apply as a result of the transfer back into the FPS 1992;
- (c). that the Authority confirms its awareness of:
 - (i). the Government’s commitment to allow those who were members of the FPS 1992 the choice of having their pension benefits calculated under the FPS 1992 or FPS 2015 until 31 March 2022 for the “remedy period” of 1 April 2015 to 31 March 2022; and
 - (ii). there being a range of legal complexities and uncertainties that surround giving effect to the above and in regard to treating those wrongly transferred out of the FPS 1992 as if they had always remained in that scheme; and
- (d). that this Authority confirms its commitment both to maintaining a vigilant watch on developments in regard to the above and, subject to those further developments and clarifications, to seeking to comply fully with its legal duties in regard to pension benefits.