

# Warwickshire Fire and Rescue Local Pension Board of the Firefighter's Pension Scheme

11 July 2017

## Current Pensions Issues - Update

### Recommendation

That the Warwickshire Fire and Rescue Local Pension Board of the Firefighters' Pension Scheme notes and comments on the report.

### 1.0 Background

1.1 This report gives detail of issues affecting both the service in relation to pensions expenditure and also to costs that could affect the pension fund. These are set out in Appendix A.

### 2.0 Current Issues

- 2.1 One decision is outstanding concerning the Pensionable Pay challenge for RDS Firefighters; once the decision is taken this may need to be reported to the Staff and Pensions Committee for final agreement.
- 2.2 Other issues are awaiting decisions to be taken by the Home Office but should not have a cost implication for the service or the pension fund.

	<b>Name</b>	<b>Contact Information</b>
Report Author	Liz Firmstone	<a href="mailto:lizfirmstone@warwickshire.gov.uk">lizfirmstone@warwickshire.gov.uk</a>
Head of Service	John Betts	<a href="mailto:johnbetts@warwickshire.gov.uk">johnbetts@warwickshire.gov.uk</a>
Strategic Director	David Carter	<a href="mailto:davidcarter@warwickshire.gov.uk">davidcarter@warwickshire.gov.uk</a>
Portfolio Holder	Cllr Alan Cockburn	<a href="mailto:allcockburn@warwickshire.gov.uk">allcockburn@warwickshire.gov.uk</a>

## Appendix A

<b>FIRE PENSIONS ISSUES – CURRENT POSITION @ July 2017</b>		
	Issue	Latest Position
1	<b><u>Ill Health Retirements and Dependents error</u></b>	
	In 2014, CLG were approached by a County Fire & Rescue Authority (FRA) who had identified an error relating to the treatment of ill health and injury pensions. Retained Fire Fighters not in the pension scheme are still eligible to receive a full ill-health pension if injured on duty, or a death in service pension. FRAs are required to meet the cost of these from their own revenue funding. WFRS, amongst other authorities, had wrongly charged the cost of these to the pension fund. This means that they were funded by DCLG rather than WFRS.	<p>At the end of 2016/17 the Home Office confirmed that they required a further repayment of £259,000 in final settlement. This was paid from the provision of £754,000 WCC had set aside for this purpose. The remaining £494,000 has been returned to WFRS general reserves.</p> <p><b>This issue is now closed.</b></p>
	WFRS undertook a review to identify the value of payments wrongly charged to the pension fund. From April 2006 to March 2015, the error amounted to £1,004,000. In addition, DCLG may levy an interest charge of approximately £201,000, bringing the total potential liability to £1,205,000.	
	The administrative and accounting arrangements set down in the Pension Scheme regulations provide for a three year cycle covering surpluses and deficits currently running from 2013/14 to 2015/16. This suggests that we only need to correct for 2013/14 and 2014/15. Of the £1,004,000 total, £250,000 relates to 2013/14 and 2014/15. The £250,000 has been returned to DCLG through the pensions grant.	
2	<b><u>Pensionable Pay challenge - RDS firefighters</u></b>	
	In April 2015, WFRS were approached by the FBU who had identified a potential error relating to WCC's treatment of pensionable pay for RDS Fire Fighters. Currently, the RDS Fire Fighters' retainer fee is treated as pensionable, but not the amounts paid to them for call outs and overtime. This is because the regulations describe "permanent pay" as pensionable, but does not provide a definition of "permanent pay". The FBU contend that call-outs and overtime should also be pensionable.	<p>Based on the revised figures calculated in September 2016 the additional annual cost to WCC in employer contributions would be in the region of £108k, per annum, assuming no back pay is required.</p> <p>A further question has been raised as to whether the RDS training allowance should also be pensionable, and the request for legal advice has been extended to include this issue.</p>
	In addition, an IDR (Internal Dispute Resolution Process) has been received on this same issue.	
	Legal advice has been received which indicates that, according to case law and the pensions ombudsman, contributions only have to be paid on the retainer, and no back-pay is required, but recommends that the Fire Authority and delegated scheme manager consider whether pension should be payable on all elements. Paying pension on all elements would align WFRS with most other brigades in the country. Following this legal advice the IDR has been to a stage 2 review. This was referred to WCC's Staff and Pensions Committee, and the outcome was that pensionable pay remains the same but that Legal Services and the CFO should revisit in the near future. The CFO has sought additional QC legal advice.	
	The individual who raised the IDR has been informed of the stage 2 review and to date no further communication has been received. It is anticipated that if the CFO decides not to make contributions on all pay then the IDR is likely to be referred to the pensions ombudsman and/or an employment tribunal. The individual has two years within which to appeal to the pensions ombudsman.	
	With regard to changes to future practices, once the IDR is resolved, a report may be required to Staff and Pensions Committee, seeking agreement to change the definition of "permanent pay" for RDS, in order that in future, contributions will be made on all pay.	

	<b>Issue</b>	<b>Latest Position</b>
3	<b><u>Contributions for Firefighters joining FPS aged 18-20, with &gt; 30 years service (Employee Contributions Holiday)</u></b>	
	The FBU recently lodged a legal challenge in relation to firefighters who joined the 1992 Firefighters' Pension Scheme (FPS) aged 18-20. These firefighters have previously had to contribute for up to 32 years to receive a 30 year pension at the earliest age of 50. This is because the FPS has an accrual cap of 30 years reckonable service, i.e. no more pension can be accrued after thirty years' contributions.	Actually only affects about 16 people in WFRS – data submitted to the Home Office at the end of October concerning individuals and payments made. Home Office has now reimbursed WCC for those payments.
	In December 2015 DCLG confirmed that members under the age of 50 who have accrued 30 years' service will be able to take a contributions holiday from the time they attain 30 years' reckonable service until they reach age 50.	<b>This issue is now closed.</b>
	The pension regulations have had to be changed and that effect backdated to 2006. As this is a change to the pension regulations it is expected that the reimbursement is funded by the Pension Fund/Home Office.	
4	<b><u>GAD v Milne Commutation Factors review</u></b>	
	The Pension Ombudsman has recently upheld a complaint regarding the lack of a review of commutation factors used for retirement lump sum calculations between 1998 and 2006. The conclusion was that the Government Actuarial Department (GAD) should have issued updated tables, meaning that many Fire Fighters who retired between 1998 and 2006 should have been paid higher lump sums.	No update - No further action required unless the FBU is successful in getting additional back-payments agreed by the Home Office.
	Following the ombudsman's decision, DCLG has agreed to meet the liability of both backdated costs and interest thereon. WCC has provided DCLG with data on all WFRS pensioners affected and has received payment from DCLG in respect of these. All WFRS affected pensioners have now been paid.	It is proposed that this issue is closed, and only added back into the update report if and when there is a change in the situation.
	So far these costs have been backdated to 2001. The FBU is trying to have payments backdated even further but it is assumed that central government would also fund any additional costs, should they be agreed.	
	The Ombudsman has also decided not to investigate a claim that affected individuals who suffered a loss of income on the investments they could have made if the lump sum calculations had been correct at the time of award.	
5	<b><u>Transitional Protections challenge</u></b>	
	The FBU has launched a legal challenge against the current transitional protection arrangements in place with the introduction of the 2015 firefighters' pension scheme. This relates to the date that certain members of the old schemes join the new 2015 scheme.	No further update - No action required unless regulations are changed in which case we will need to assess the impact on WFRS.
	Members who were between 15 and 10 years away from normal retirement age as at 1st April 2012 were given transitional protection to stay in their final salary scheme and continue to build up service in that scheme. The date these members would join the 2015 scheme depended on how close to retirement they were but was based purely on age and not service.	
	The argument is (a) that the protections were unfair as they did not take scheme service into account; and (b) that the cut-off date of 1st April 2012 was unfair on some members. The challenge hopes to change the dates and include more members in the transitional protection arrangements.	
	If it were changed it would mean the fire authority or central government adjusting the contributions and back dating changes to anyone who should not have joined the 2015 scheme. This would require a further change to the regulations and we will not be able to predict any potential financial impact until we know how the issue is to be resolved.	

	Issue	Latest Position
6	<b><u>Retained Firefighters' Modified Scheme</u></b>	
	The exclusion of retained firefighters from the Firefighters Pension Scheme 1992 was challenged under the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000. As a result a settlement was reached allowing retained firefighters, with service between 1 July 2000 and 6 April 2006, to have "special" membership of Firefighters Pension Scheme 2006 based on their employment during this time period.	Officers in Finance, Pensions and HR are working together to confirm whether any such payments were made, and if so, whether they were subject to PAYE. A response will be made to HMRC by the deadline of 31 <sup>st</sup> July 2017 with the data requested.
	To implement this settlement the Modified Scheme was created providing retrospective benefits for those eligible to join who elect for special membership, and who pay the appropriate contributions.	
	Those who did elect to join would be entitled to receive back dated pension payments. These payments are chargeable to Tax under Section 569 ITEPA 2003 and therefore should have been subject to PAYE. HMRC has contacted all FRSs to determine whether they made payments in arrears to the Modified Scheme, and if so whether they were subject to PAYE.	