

Warwickshire Fire and Rescue Local Pension Board of the Firefighters' Pension Scheme

Date: Monday 6 June 2022
Time: 2.00 pm
Venue: Council Chamber, Shire Hall

Membership

Martin Reohorn (Chair)
Barnaby Briggs
Caroline Jones
Sian Marsh
Paul Morley
Tony Morgan

Items on the agenda: -

1. General

(1) Apologies

(2) Board Members' Disclosures of Interest

(As stipulated by the Public Sector Pensions Act 2013 and set out in Annex A of the Agreed Board Terms of Reference).

(3) Public Minutes of the Previous Meeting

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2. Update report for the transfer of Firefighter Pensions Schemes administration and Pensioner Payroll

9 - 10

3. Governance and Regulatory Update

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4. Risk Monitoring

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5. Forward Plan

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6. Next Steps

7. Any Other Business

8. Future Meeting Dates

To note future meeting dates as follows:

13 September 2022

7 November 2022

13 February 2023

9. Reports Containing Exempt or Confidential Information

To consider passing the following resolution:

‘That members of the public be excluded from the meeting for the item mentioned below on the grounds that their presence would involve the disclosure of exempt information as defined in paragraphs 3 and 5 of Schedule 12A of Part 1 of the Local Government Act 1972’.

10. Firefighter Pension Schemes - immediate Detriment update

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Monica Fogarty

Chief Executive

Warwickshire County Council

Shire Hall, Warwick

To download papers for this meeting scan here with your camera



Disclaimers

Disclosures of Pecuniary and Non-Pecuniary Interests

Members are required to register their disclosable pecuniary interests within 28 days of their election of appointment to the Council. Any changes to matters registered or new matters that require to be registered must be notified to the Monitoring Officer as soon as practicable after they arise.

A member attending a meeting where a matter arises in which they have a disclosable pecuniary interest must (unless they have a dispensation):

- Declare the interest if they have not already registered it
- Not participate in any discussion or vote
- Leave the meeting room until the matter has been dealt with
- Give written notice of any unregistered interest to the Monitoring Officer within 28 days of the meeting

Non-pecuniary interests relevant to the agenda should be declared at the commencement of the meeting.

The public reports referred to are available on the Warwickshire Web
<https://democracy.warwickshire.gov.uk/uuCoverPage.aspx?bcr=1>

Observing the Meeting

There will be no webcast available for this meeting. Scheme members and scheme employers who wish to attend should contact Democratic Services by email on democraticservices@warwickshire.gov.uk.

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Warwickshire Fire and Rescue Local Pension Board of the Firefighters' Pension Scheme

Monday 14 February 2022

Minutes

Attendance

Committee Members

Martin Reohorn (Chair)
Barnaby Briggs
Caroline Jones
Paul Morley

Officers

Neil Buxton, Technical Specialist - Pension Fund Policy and Governance
Liz Firmstone, Service Manager (Transformation)
Ian Marriott, Delivery Lead – Commercial and Regulatory
Paul Spencer, Senior Democratic Services Officer

1. General

1(1) Apologies

Victoria Jenks, Pensions Administration Delivery Lead.

1(2) Board Members' Disclosures of Interest

None.

1(3) Minutes of the Previous Meeting

The minutes of the previous meeting were agreed as a true and accurate record.

2. Warwickshire Fire and Rescue Local Pension Board, Risk Register

Neil Buxton, Technical Specialist - Pension Fund Policy and Governance, presented this report to the Board. It provided an update on risk appetite, the risk register, risk monitoring and the risks identified. Appendices to the report provided the risk definitions and the risk register. The main area of focus for the risk register was the outsourcing to West Yorkshire Pension Fund (WYPF). A

comprehensive report on this would be provided to the next meeting, to include where responsibility for each risk rested under the new outsourced pensions administration arrangements.

The Chair asked if there was a need to change any of the risks in relation to the current position on immediate detriment. Liz Firmstone would check if there had been an adjustment following the withdrawal of the Home Office guidance. Further information on immediate detriment would be provided as part of an item later on the agenda.

The Chair noted the information provided about the outsourcing and responsibility for risk. Discussion about the responsibilities for the scheme manager, the current position and the potential sharing of knowledge and reduced risk from the revised model, when this was implemented. Officers had reviewed the risk register looking at areas where the new provider should become responsible.

The Warwickshire Fire and Rescue Local Pension Board noted the report and the attached risk register.

3. Warwickshire Fire and Rescue Local Pension Board Forward Plan

Neil Buxton presented this report to the Board, which set out a rolling forward plan for a one-year period. Reference to the training sessions which would be provided for the Board.

Barnaby Briggs asked about the recurring item on administration service outsource. There would be periodic reports to this Board relating to the outsourced aspects. The Chair understood these would explain how the revised arrangements had 'bedded in'. It was viewed as similar to the administration activity and performance update reports. Liz Firmstone suggested that the forward plan report could include how the outsourcing process was going and part of it would be a post-implementation review and then ongoing monitoring. There was an expectation that someone from WYPF would present the reports to the board at least initially.

The Chair noted the plans for training for the Board and where possible, this would be held jointly. He encouraged attendance as this would be useful for new members particularly. Neil Buxton would circulate the training dates to the Board. The Chair referred to an LGA quarterly guide which it would be useful to align the forward plan to.

The Board noted its forward plan, with the changes outlined above.

4. Warwickshire Fire and Rescue Local Pension Board, Policy Update

Neil Buxton presented this report to the Board, which set out the policies reviewed either as part of an annual review, or where there had been minor amendments required. Specific sections were provided on the cyber security policy, breaches policy and terms of reference & conflicts of interest policy.

Neil Buxton focussed on the cyber security aspects. There was a reliance on the County Council's ICT infrastructure. A number of meetings had taken place with ICT colleagues and given the importance of having robust cyber security arrangements, a range of tests of systems were proposed. The Pension Regulator placed a lot of importance on cyber security. It was also

important to become conversant with the WYPF practices and policies and how these would interrelate to those in Warwickshire.

The Board noted the content of the report.

5. Pensions Administration Service Activity and Performance update

This report was presented by Liz Firmstone, Service Manager (Transformation). It updated the Board on key developments affecting the administration of the Fire Pension Scheme and the performance of the Pensions Administration Service (PAS). The following areas were highlighted:

- An update on the change of service provider to transfer administration of the payroll functions to WYPF
- On immediate detriment cases, the Home Office guidance had been withdrawn. An update was provided on the current position for Warwickshire and planned way forward
- Consultation on regulation changes
- McCloud/Sergeant project update
- Internal Dispute Resolution Procedure (IDRP)
- Cost control mechanism
- LGA bulletins
- FRA remedy self-assessment survey

Further detail was provided in a number of appendices.

Barnaby Briggs commented on the position on immediate detriment. Endeavours were being made to liaise with fire service personnel whilst this was resolved. Context was provided on the number individuals affected as category 1 or category 2 cases. The Chair agreed that ongoing communication with those affected was important. Liz Firmstone offered to report back on whether there may be any further category 2 cases and the position of those cases identified to date in regard to a 62-day timeframe, linked to a memorandum.

The Chair asked about the McCloud/Sergeant software changes. Warwickshire would be changing to a different software solution (Civica) as part of the move to WYPF and he asked about the data transfer aspects. There were ongoing discussions, and a detailed update could be sought. He clarified that the board just needed to be assured this was in hand.

On the IDR case the Chair asked what type of issue this related to. It concerned reemployment and abatement and was not related to immediate detriment. There were no known trends for IDR cases. It would be helpful to bring an analysis of the FRA remedy self-assessment survey back to the next meeting. This could include comparative information from the collaboration group for the region and it would enable shared learning.

The Board noted the updates.

6. Any Other Business

Barnaby Briggs would provide updated contact details for board member Tony Morgan. He also noted that Councillor Horner was not shown on the invite list for the meeting.

The Chair placed on record his thanks to Neil Buxton as this was Neil's last meeting before retiring and he was wished well for the future. Martin Griffiths had been appointed as his replacement.

A discussion on the potential of having a face-to-face meeting once per year, with June being suggested. There was also an option of using hybrid meeting technology so some participants could join remotely.

7. Future Meeting Dates

The dates of future meetings were noted.

The meeting rose at 2.35pm

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Chair

Warwickshire Fire and Rescue Local Pension Board of the Firefighters' Pension Scheme

6 June 2022

Update report for the transfer of Firefighter Pensions Schemes administration and Pensioner Payroll

Recommendation(s)

That the Board note and comment on this report.

1. Executive Summary

- 1.1 This report provides an update on the transfer of the administration service to West Yorkshire Pension Fund in respect of the Firefighter Pension Schemes and Pensioner Payroll.
- 1.2 In June 2021, a decision was made to transfer the Firefighter Pension Schemes' administration service and Fire Pensioner payroll, which were being provided by Warwickshire County Council, to a third-party provider.
- 1.3 Warwickshire Fire and Rescue Service has a membership of approximately 1,000 past and present members across 5 different pension schemes. This is a relatively small membership and the significant complexities involved in maintaining the knowledge and expertise needed to manage the work presented a considerable risk to resilience and business continuity.
- 1.4 West Yorkshire Pension Fund was selected to take on these services, and officers are pleased to confirm that the service was successfully transferred on 1st April 2022.
- 1.5 A member of the Pensions Administration team has been nominated as contract manager to ensure that West Yorkshire Pension Fund meets our service delivery needs as set out in the contract specification. Contract meetings will be held monthly and information from these meeting will be fed back to the Local Fire Pension Board. Staff and Pensions Committee will be kept informed of how the contract is performing through the regular updates they receive on Pensions Administration.
- 1.6 Warwickshire, together with colleagues from Shropshire, Staffordshire, Hereford & Worcester, Leicester, Derby and Nottingham, have created a regional client group, as all of these Fire Authorities now contract with West Yorkshire. The group will work together on sharing best practice, governance and policies and ensuring consistency of the service provided by West

Yorkshire. The group has representatives from finance, contract management, technical and human resources.

2. Financial Implications

- 2.1 Transferring the service to West Yorkshire provides a cost saving of approximately £16,000 per year.

3. Environmental Implications

- 3.1 None

4. Supporting Information

- 4.1 None

5. Timescales associated with the decision and next steps

- 5.1 None

Appendices

None

Background Papers

None

	Name	Contact Information
Report Author	Lisa Eglesfield, Liz Firmstone, Victoria Jenks	lisaeglesfield@warwickshire.gov.uk , lizfirmstone@warwickshire.gov.uk , vickyjenks@warwickshire.gov.uk
Assistant Director	Andrew Felton	andrewfelton@warwickshire.gov.uk
Strategic Director	Strategic Director for Resources	robpowell@warwickshire.gov.uk
Portfolio Holder	Portfolio Holder for Finance and Property	Peterbutlin@warwickshire.gov.uk

The report was circulated to the following members prior to publication:

Local Member(s): none

Other members: n/a

Warwickshire Fire and Rescue Local Pension Board of the Firefighters' Pension Scheme

6 June 2022

Governance and Regulatory Update

Recommendation(s)

That the Board notes and comments on this report.

1. Executive Summary

- 1.1 This report updates the Board on regulatory developments in the Firefighter Pensions arena.

2. Financial Implications

- 2.1 None

3. Environmental Implications

- 3.1 None

4. Regulatory Update

4.1 Cost control mechanism

Following HM Treasury's publication of Amending Directions in October 2021, the Home Office has finalised the 2016 valuations for the Fire Pension Scheme (FPS), providing certainty on the outcome to scheme members.

On 16 March 2022, the final outcome of the cost-control element of the 2016 valuation for the FPS in England was published, confirming a breach to the cost cap ceiling of 14.6%. This process had previously been paused following the uncertainty arising from the McCloud and Sargeant judgments and was 'un-paused' in 2020. The report confirms that the cost control element of the 2016 valuation is not used to set the employer contribution rate, and changes to the employer contribution rates resulting from the 2020 valuations will take effect from April 2024.

In 2021, the government announced proposed reforms to the Cost Control Mechanism which will be implemented in time for the 2020 valuations. These reforms do not affect the 2016 valuations as the government previously decided that it would be inappropriate to reduce member benefits based on a mechanism that may not be working as intended. The government therefore announced that any ceiling breaches found when schemes complete the 2016 valuations will be waived. This means that no member will face a reduction in their benefits as a result of the 2016 valuation.

In November, trade unions across the public sector launched a judicial review against the government about McCloud/ Sargeant remedy costs in the cost control mechanism. The provisional results of the 2016 cost cap valuation showed that all public service schemes were cheaper than expected. This would have led to a reduction in contributions or improvements in benefits from April 2019 had the cost control process not been paused.

4.2 Home Office consultation and amending legislation

The reforms to deliver the necessary changes following McCloud/Sargeant are referred to in this report as the “2015 Remedy”.

On 8 March 2022, the Home Office published its consultation response on the prospective elements of the 2015 Remedy. This response confirms the amendments to the pension scheme regulations, which will remove the transitional protections from the FPS 2015. In addition, it confirms provisions for an ill health underpin which will ensure that a protected member who applies for ill health retirement before 31 March 2022, and which is determined in their favour after that date, is treated no less favourably than if the application had been determined on that date.

4.3 The Police and Firefighters’ Pension schemes (amendment) Regulations 2022

The amendments came into force on 1 April 2022 and enable the prospective elements of the 2015 Remedy as set out in the consultation. A further Home Office consultation will take place later in the year on the retrospective amendments that are required to fully deliver the 2015 Remedy. This includes establishing the deferred choice underpin (DCU) and the changes needed to offer pensioners and beneficiaries of deceased scheme members an immediate choice between legacy or reformed scheme benefits.

4.4 Matthews – second options exercise

A category of members of the Firefighters’ Pension Scheme 2006 (FPS 2006) known as “special members” was introduced in 2014, following the House of Lords decision in *Matthews v Kent and Medway Towns Fire Authority &*

others. This allowed retained firefighters employed between 1 July 2000 and 5 April 2006 to join the FPS 2006 with retrospective effect to 1 July 2000 (the date that the Part Time Workers (Prevention of Less Favourable Treatment) Regulations came into force

A time-limited options exercise took place between 2014 and 2015 to allow eligible individuals to join the FPS. While the benefits awarded to special members largely mirrored the benefits under the FPS 1992, the FPS 2006 was amended as the FPS 1992 was closed.

However, in 2018, the European Court of Justice ruled in the case of *O'Brien v Ministry of Justice* (which concerned part time judges) that remedy could extend back prior to the date that the Part-time Workers Directive was required to be implemented on 7 April 2000.

On 9 March 2022, after an extended period of negotiations, a Memorandum of Understanding (MoU) was agreed between the government, the Fire Brigades Union, the Fire & Rescue Services Association, and FRA employers. It was confirmed that remedy for retained firefighters affected by the *O'Brien* judgment will be provided by way of a second options exercise, allowing in-scope individuals the opportunity to purchase pension entitlement as a special member of the FPS 2006. The LGA has produced a factsheet concerning the second options exercise which is at Appendix 1. The Memorandum of Understanding is at Appendix 2.

The Home Office has a maximum period of 18 months to draft, consult, and introduce the necessary secondary legislation. FRAs will be expected to start the second options exercise as soon as possible after the legislation comes into force.

The exercise will run for a maximum period of 18 months. Prior to the legislation coming into force, FRAs are advised to take steps to identify retained firefighters who were employed between the relevant dates and ascertain what steps were taken to identify and contact individuals who were eligible for the first options exercise.

4.5 Immediate detriment

On 23 March 2022, HM Treasury (HMT) provided a response outlining the factors behind the withdrawal of the Home Office guidance on immediate detriment. The response highlights that Section 61 of the Equality Act 2010 does not, in HMT's opinion, allow for amendment of a member's tax position.

The response details several tax complexities which have been identified and will be dealt with through legislation.

Following this, the Council has decided to pause making any payment of members benefits under immediate detriment. For members who wish to

retire between 1st April 2022 and when the legislation is in place, benefits will be paid under current regulations. A paper confirming this decision will be presented at the next Staff and Pensions Committee meeting.

4.6 Public Service Pensions and Judicial Offices Act 2022

The Public Service Pensions and Judicial Offices Bill received Royal Assent on 10 March 2022 and became the Public Service Pensions and Judicial Offices Act 2022 (PSPJOA 2022), which will come into force on 1 April 2022.

The PSPJOA 2022 legislates for how the government will remove the discrimination identified by the courts in the way that the 2015 reforms were introduced for some members. The main elements of the Act are:

- Eligible members of the main unfunded pension schemes have a choice of the benefits they wish to take for the “remedy period” of April 2015 to 31 March 2022.
- From 1 April 2022, when the remedy period ends, all those in service in main unfunded schemes will be members of the reformed pension schemes.

4.7 DWP consultation on pensions dashboards

On 11 March 2022, the LGA and SAB submitted their responses to the Department for Work and Pensions (DWP) consultation on the draft Pensions Dashboards Regulations 2022 in respect of the Firefighters' Pension Schemes. The Council supports that response.

While the LGA and SAB are supportive of dashboards and their purpose, there are strong concerns over the proposed staging schedule given the conflicting pressures faced by administrators and the data that will be available at that time. The LGA and SAB responses to the DWP consultation both therefore ask for the staging date to be delayed a further 12 months until April 2025.

4.8 The Finance Act 2022

The Finance Act 2022 received Royal Assent on 24 February 2022 and comes into force on 6 April 2022.

Sections 9 and 11 will have a consequential impact on the 2015 Remedy for the FPS:

- Section 9: Annual allowance deadlines. Deadlines for electing for scheme pays and associated payment and reporting deadlines will be extended for certain members who are informed of a change in

pension input amount for a past pension input period.

- Section 11: Powers to change tax rules related to the 2015 Remedy.

The Act provides HM Treasury (HMT) with wide powers to make regulations to address tax impacts that arise as a result of implementing the 2015 Remedy. Different regulations may apply to different public service pension schemes. The regulations will have retrospective effect. Any measures will require secondary HMT legislation to implement, which is not anticipated until later in 2022

4.9 Mandatory scheme pays deadlines are changing

The Finance Act 2022 and the Registered Pension Schemes (Miscellaneous Amendments) Regulations 2022 will change the timescale for members to make or amend a mandatory scheme pays election when paying an annual allowance charge. The changes will apply when the information used to calculate a member's pension input amount is retrospectively amended.

5. Timescales associated with the decision and next steps

5.1 None

Appendices

1. Appendix 1- LGA Factsheet for 2nd Modified exercise – (Matthews)
2. Appendix 2 – Memorandum of Understanding for 2nd Modified exercise

Background Papers

1. <https://www.fpsregs.org/images/Valuation/FPS-England-cost-cap-valuation-2016-final-report.pdf>

	Name	Contact Information
Report Author	Martin Griffiths, Victoria Jenks	martingriffiths@warwickshire.gov.uk, vickyjenks@warwickshire.gov.uk
Assistant Director	Andrew Felton	andrewfelton@warwickshire.gov.uk
Strategic Director	Strategic Director for Resources	robpowell@warwickshire.gov.uk
Portfolio Holder	Portfolio Holder for Finance and Property	peterbutlin@warwickshire.gov.uk

The report was circulated to the following members prior to publication:

Local Member(s): none

Other members: n/a

Information

Summary of “Matthews” MoU and second options exercise

Purpose

This factsheet has been prepared to provide a summary of the “Matthews” MoU and second options exercise under which certain retained firefighters will be able to purchase further pension entitlement.

Background

Stakeholders will be aware of the category of members of the Firefighters’ Pension Scheme 2006 (FPS 2006) known as “special members” who were introduced in 2014, following [Matthews v Kent and Medway Towns Fire Authority & others](#), which allowed retained firefighters employed between 1 July 2000 and 5 April 2006 to join the FPS 2006 with retrospective effect to 1 July 2000.

Matthews & others v Kent & Medway Towns Fire Authority & others concerns the application of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 to retained duty system employees. Those Regulations were brought into force on 1 July 2000 to implement the EU Part-time Workers Directive (albeit that had an implementation deadline of 7 April 2000). Following a protracted legal process up to and including the House of Lords judgment, settlement agreements were reached in respect of terms and conditions in 2015 with both the RFU (now FRSA) and the FBU in regard to the many thousands of Employment Tribunal cases. The defence of the pensions aspect of the case was led by government. The LGA coordinated the defence and settlement of the claims for FRAs through the auspices of the National Employers.

The House of Lords judgment led to those who were serving during the period 1 July 2000 (the date the Regulations came into force) to the date on which they elected to join the 2006 Scheme, to have special provisions which generally reflect the rules of the Firefighters’ Pension Scheme 1992 (FPS 1992), further details of which can be found on the dedicated [FPS 2006 Special Members section of the FPS Member website](#).

A time-limited options exercise took place between 2014 and 2015 to allow eligible individuals to join the FPS. While the benefits awarded to special members largely mirrored the benefits under the FPS 1992, the FPS 2006 was amended as the FPS 1992 was closed.

More recently, work has again had to take place on the pensions aspect of this case, following the European Court of Justice's decision in [O'Brien v Ministry of Justice](#) concerning fee paid judges in the Judicial Pension Scheme. The judgment held that remedy could extend back before the Part-time Workers Directive was required to be implemented on 7 April 2000. As a binding judgment, that finding applies across all such claims and therefore the UK Government recognised the right applies to retained firefighters' claims or potential claims.

After an extended period of negotiations on the scope and mechanics of the settlement, a [Memorandum of Understanding \(MoU\) was agreed by all parties on 9 March 2022](#). Negotiations were again led by government given the issues were solely around the pension aspect of the case. The role of the LGA within the negotiations was to endeavour to mitigate potential issues that could cause problems for FRAs, as far as it was possible to do so.

Remedy for retained firefighters affected by the O'Brien judgment will be provided by way of a second options exercise allowing in-scope individuals the opportunity to purchase pension entitlement as a special member of the FPS 2006.

Scope

The following individuals are in scope for the second options exercise:

1. Retained firefighters employed on any date between 7 April 2000 and 30 June 2000 (inclusive);
2. Retained firefighters employed on any date between 7 April 2000 and 30 June 2000 (inclusive) as well as on any date between 1 July 2000 and 5 April 2006 (inclusive);
3. Retained firefighters employed on any date between 1 July 2000 and 5 April 2006 (inclusive) who were eligible to take part in the first options exercise **but were not given opportunity to do so**.

Retained firefighters employed on any date between 1 July 2000 and 5 April 2006 (inclusive) who were given opportunity to take part in the first options exercise but did not elect to do so within the statutory time limits are **not in scope for the second options exercise** (see below for more details).

In scope individuals do not need to have made an Employment Tribunal claim in order to be offered retrospective access to the FPS 2006.

Entitlement

Retained firefighters in scope will be able to purchase pension entitlement as a special member for some or all of their service between 7 April 2000 and 5 April 2006, as well as any continuous service up to 7 April 2000 and/ or continuous service from 5 April 2006.

A retained firefighter transferring from one Fire and Rescue Authority (FRA) to another without a break in service will be treated as having continuous service with the second FRA.

Opportunity to take part in the first options exercise

A retained firefighter will be deemed to have been given opportunity to take part in the first options exercise where the FRA can evidence all of the following:

- Eligible individuals were notified within two months of 1 April 2014 that they may be entitled to join the FPS 2006 as a special member ([Part 11, Rule 5A\(4\)](#));
- Applicants were provided with a statement of service and contributions within four months of their application being received ([Part 11, Rule 5A\(13\)](#));
- On or before 31 May 2015, eligible individuals who received a notification under Part 11, Rule 5A(4) were provided with a statement of service and contributions if they had not already received one ([Part 11, Rule 6C\(4\)](#)); and
- Any election to pay mandatory special pension contributions took effect from the date that the election was received, and the individual became a special member ([Part 11, Rule 6C\(5\)\(a\)](#)).

Acceptable evidence will be either:

- File copies of the expression of interest letter and detailed offer letter (Annex A and B to the MoU) addressed to the relevant individual at their last known address; or
- A mail merge database including the name and last known address of the relevant individual created on a date before the letters were sent, together with templates of the letters.
- This includes emails and email addresses, where an individual consented in writing to receive communications by email.

Where there is a dispute between a retained firefighter and an FRA as to whether adequate opportunity to take part in the first options exercise was provided on the basis of the evidence produced, the matter shall be dealt with under the FRA's Internal Dispute Resolution Procedure (IDRP).

If the dispute is not resolved through IDRPs, the individual retains the ability to pursue the matter with the Pensions Ombudsman.

The second options exercise

The regulations to implement the second options exercise in England will be drafted by the Home Office and consulted on before they are laid before Parliament. The Home Office has a maximum period of 18 months to draft, consult, and introduce the necessary secondary legislation.

FRAs will be expected to start the second options exercise as soon as possible after the legislation comes into force. The exercise will run for a maximum period of 18 months after it begins.

Retained firefighters who elect to join the FPS 2006 under the second options exercise will be required to pay the relevant employee contributions, with interest applied¹.

Retained firefighters who elect to join the FPS 2006 under the second options exercise as a special pensioner member will receive interest on their pension arrears.

Retained firefighters who elect to join the FPS 2006 under the second options exercise and who are unable to obtain tax relief on their contributions through self-assessment will have the cost of purchasing past service reduced accordingly, in line with guidance provided by GAD.

Aggregation

A further issue arose around during negotiation of the MoU around an inability to aggregate periods of pensionable service in the FPS as a retained firefighter with periods of service as a wholetime firefighter (“aggregation”). This has been addressed by affected retained firefighters (or their representatives) having the ability to give written notification to the GLD (on behalf of the Home Office) and FRAs prior to the commencement of the second options exercise of:

- their identity; and
- details of the factual and legal basis of any aggregation claims

with a view to discussions for six months from the MoU date leading to a resolution of those claims. If agreed resolution of the aggregation issues is not reached by then those Claimants can pursue Tribunal claims to determine outstanding issues in relation to them.

FRAs are asked to identify any retained firefighters who have transferred from retained to wholetime employment and are potentially affected by aggregation, and notify the LGA of the number of these potentially affected retained firefighters.

¹ Employer contributions will be picked up through future valuations as a past service cost.

Next steps

Prior to the legislation coming into force, FRAs are advised to take steps to identify retained firefighters who were employed between the relevant dates and ascertain what steps were taken to identify and contact individuals who were eligible for the first options exercise.

FRAs are also asked to provide the information on aggregation set out above, split by scheme that the firefighter joined in respect of their wholetime employment (i.e. FPS 1992 or FPS 2006). The deadline for providing this information is 31 May 2022.

The LGA will be working closely with the Home Office and GAD on the data requirements for the second options exercise over the coming months.

The LGA will also be working with the parties to the MoU and its wider stakeholder groups on communications for the second options exercise.

FRAs are strongly encouraged to respond to the Home Office consultation on the draft regulations to implement the second options exercise when it is published.

Further information and resources will be provided in due course.

This factsheet has been prepared by LGA to provide a summary of the MoU agreed on 9 March 2022, however it should be used only as an **informal view** of the interpretation of the firefighters' pension scheme as only a court can provide a definitive interpretation of legislation. This factsheet should not be interpreted as legal advice

Please address any queries on the content of this factsheet to bluelightpensions@local.gov.uk

March 2022

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Memorandum of Understanding

Dated 9 March 2022

Retained Firefighter pension claims

Introduction

The parties have discussed the resolution of these claims. Although they are still engaged in without prejudice negotiations, they now wish to record in open correspondence their intentions regarding the scope and operation of the proposed second options exercise. This letter will remain on a without prejudice basis until it is signed by the last signatory identified below. It is not intended to be legally binding. The ultimate scope and operation of the proposed second options exercise will be set out in the legislation referred to in paragraph 8 below, which will be subject to consultation and the secondary legislation making processes.

Relevant Background

The Claimants¹ are retained firefighters in England who brought proceedings under the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 [SI 2000/1551] (“**the PTWR**”). One of the claims related to their exclusion from the Firefighters’ Pension Scheme, which was then provided solely to full-time firefighters (see *Matthews v. Kent and Medway Towns Fire Authority* [2006] ICR 365).

Retained firefighters were allowed to join the New Firefighters’ Pension Scheme (“**the NFPS**”) from 6th April 2006, pursuant to the Firefighters' Pension Scheme (England) Order 2006 [SI 2006/3432].

Following the *Matthews* case, the Secretary of State amended the NFPS to give eligible retained firefighters, employed between 1st July 2000 and 5th April 2006 inclusive, retrospective access to the NFPS as “special members” (special firefighter members, special deferred members or special pensioner members). This retrospective access was given

¹ In this memorandum, “Claimants” means retained firefighters in England who have brought proceedings under the PTWR relating to their exclusion from the Firefighters’ Pension Scheme which was previously only provided to full-time firefighters (see *Matthews v. Kent and Medway Towns Fire Authority* [2006] ICR 365) or retained firefighters who have brought such claims but in addition brought claims relating to their exclusion from the Firefighters’ Pension Scheme under the Equal Pay Act 1970 and *Preston & others v Wolverhampton Healthcare NHS Trust & others* [2006] ICR 365

pursuant to The Firefighters' Pension Scheme (England) (Amendment) Order 2014 [SI 2014/445].

The employing Fire and Rescue Authorities in England (“FRAs”) then carried out an options exercise which opened on 1 April 2014 and closed on 30 September 2015 (“**the first options exercise**”), which was intended to allow existing and former retained firefighters with service between 1st July 2000 and 5th April 2006 an opportunity to join the NFPS, as special members, subject to the payment of appropriate contributions, in respect of their service during that period.

After the close of the first options exercise, the Court of Justice of the European Union ruled on 7th November 2018 in Case C-432/17 *O’Brien v. Ministry of Justice* ECLI:EU:C:2018:879 that a part-time fee-paid judge should have his pension backdated to include his service prior to the introduction of the PTWR on 1st July 2000.

Outline of the intended scope and operation of proposed second options exercise

The parties have discussed the resolution of these claims and intend the following principles to apply to the scope and operation of the proposed second options exercise (subject to the consultation and legislation processes):

1. In order to provide a remedy to those retained firefighters affected by the *O’Brien* judgment, the parties intend there to be a second options exercise to provide access to the NFPS as special members to the groups of retained firefighters set out below in paragraphs 2 and 4 (and as further described in paragraphs 3 and 5), subject to the payment of appropriate contributions.
2. The parties intend that the second options exercise will provide access to the NFPS for those retained firefighters who, whether Claimants or non-Claimants, fall within one or both of the following categories:
 - (i) were employed on any date between 7th April 2000 and 30th June 2000 (inclusive);
 - (ii) were employed on any date between 7th April 2000 and 30th June 2000 (inclusive) as well as on any date between 1st July 2000 and 5th April 2006 (inclusive).

Those retained firefighters who have service within (i) or (ii) are eligible to participate in the second options exercise and will be able to purchase pension entitlement in respect of all of their service falling within the period 7th April 2000 to 5th April 2006 (inclusive), as well as any uninterrupted service up to and including 7th April 2000 and/or from 5th April 2006 onwards (to the extent not already purchased in the first options exercise). For these purposes, a period of absence with or without pay does not count as an interruption unless the absence is caused by or results in the termination of employment. A retained firefighter who leaves the employment of a fire and rescue authority and, without a break in service, takes up employment with another fire and rescue authority shall be treated as having uninterrupted service with the second fire and rescue authority.

3. The parties intend that the second options exercise will be open to individuals falling within the group described in paragraph 2 above, regardless of whether they declined an offer of membership of the NFPS during the first options exercise.
4. The parties also intend that the second options exercise should include those who commenced service on or after 1st July 2000 but before 6 April 2006 and who were eligible² to take part in the first options exercise (and join the NFPS as special members), but who were not given an opportunity to do so. For the purposes of this paragraph, the parties' intentions are that a retained firefighter will have been given "an opportunity" to take part in the first options exercise where the relevant FRA complied with Rules 5A(4), 5A(13), 6C(4), and 6C(5)(a) of Chapter 2, para 1, Schedule 1 of SI 2006/3432.
5. The parties' joint intentions as to the method of identifying retained firefighters falling within paragraph 4 are set out in the following principles:
 - a) The FRAs will have the initial responsibility for identifying those retained firefighters they contend were given an opportunity to take part in the first options exercise and providing the evidence set out in (b) below.

² Eligible means a person satisfying rule 5A(2) of Chapter 2, para 1, Schedule 1 of SI 2006/3432.

- b) For the purposes of paragraph 4, the relevant FRA will be deemed to have complied with rules 5A(4), 5A(13) and 6C(4) of Chapter 2, para 1, Schedule 1 of SI 2006/3432 either:
- i) where they can produce file copy of the letters, substantially in the form of the letters in Annex A and B to this Memorandum, which were individually addressed to the individual concerned, at their correct most recently notified home address; or
 - ii) where the FRA can establish that the correct name and most recently notified home address was included at the time of sending the letters on a relevant mail merge database (and where the FRA can otherwise demonstrate that the mail merge was created before it is claimed the letters were sent which allows the FRAs to adduce other evidence that the letter was sent – for example an HR file note, in addition to having the correct name and address in the mail merge database), together with a template of the letter. Where an individual retained firefighter has consented in writing to communication by email, references in this subparagraph to “letters” include “emails” and references to “most recently notified home address” include “most recently notified email address”.
- c) For the avoidance of doubt, where there is a dispute between the retained firefighter and the relevant FRA in relation to the evidence in paragraph (b) (including whether or when it was received or responded to by the retained firefighter), then the matter is to be dealt with in accordance with the Independent Dispute Resolution Procedure (“IDRP”) provided for in the NFPS. The parties agree that the IDRP will be applicable to such disputes notwithstanding section 50(9)(a) of the Pensions Act 1995.
- d) If the IDRP does not resolve the matter, then the retained firefighter retains the ability to pursue the matter with the Pensions Ombudsman, subject to the provisions of section 146(6) of the Pension Schemes Act 1993.

6. The parties intend that the second options exercise will be open to all individuals falling within the groups set out at paragraphs 2 and 4 above (and as further described in paragraphs 3 and 5), regardless (a) of whether they have presented a claim to an Employment Tribunal concerning access to pension benefits for retained firefighters, and (b) regardless of whether they have now left pensionable service. The Respondents will not take any time limit points under the PTWR against these groups which would prevent them from participating in the second options exercise. Save for that situation, the Respondents reserve the right otherwise to rely on time limits, including where claims allege that the second options exercise does not constitute an adequate remedy.
7. The FBU and FRSA will not advertise amongst their members with service between 7th April 2000 and 5th April 2006 inclusive for further Claimants to present fresh claims to the Employment Tribunal concerning access to the NFPS or support such fresh claims, except in relation to claims which may fall within paragraph 15(b) below.
8. The second options exercise will be implemented via legislation amending the NFPS. The Home Office intends to introduce this legislation as soon as reasonably practicable. FRAs will be expected to commence the second options exercise as soon as reasonably practicable after the legislation comes into force, and it will run for a period of 18 months after it commences.
9. The Home Office will consult with the FRAs, the FBU and the FRSA (as well as any other persons the Secretary of State considers appropriate) prior to the legislation being laid before Parliament, in accordance with section 34(5) of the Fire and Rescue Services Act 2004. The FRAs will be required to carry out the second options exercise pursuant to the legislation.
10. Retained firefighters who decide to join the NFPS as special members under the second options exercise will be required to pay the relevant employee contributions. Those backdated contributions will also have interest³ applied.

³ It is the Home Office's intention that the methodology for calculating interest due will mirror that applied under the first options exercise (as set out in the 2014 Order (SI 2014/445)).

11. Those retained firefighters who decide to join the NFPS as special members and who have already retired will have interest⁴ added to their backdated pension arrears.
12. Retained firefighters who decide to join the NFPS as special members as part of the second options exercise, and who are unable to obtain tax relief through self-assessment will have the cost of purchasing past service reduced to reflect the tax relief that should have been received on their pension contributions. This will be calculated by reference to guidance provided by the Government Actuary's Department.
13. Upon commencement of the legislation implementing the second options exercise, the parties will invite all Claimants to withdraw their claims in the Employment Tribunal, with the exception of any claims falling within paragraph 15 below. The agreed process for seeking the withdrawal of these claims is set out in Annex C to this Memorandum.
14. The FBU and FRSA will not provide further legal assistance for Claimants who do not agree to withdraw their claims in response to the invitation at paragraph 13 above. Following commencement of the legislation implementing the second options exercise, the FRAs and the Home Office will be at liberty to apply to have any remaining claims with the exception of any claims falling within paragraph 15 below struck out, in accordance with the process set out in Annex C.
15. To the extent that there are any claims:
 - a) For consequential loss arising out of a Claimant's exclusion from the FPS, the Claimants will themselves, or through the FBU or FRSA (or those unions' legal advisers), give written notification to the GLD (on behalf of Home Office) and FRAs prior to the commencement of the second options exercise:
 - i) The identity of any Claimants who are claiming an award for consequential losses;
and

⁴ It is the Home Office's intention that the methodology for calculating interest due will mirror that applied under the first options exercise (as set out in the 2014 Order (SI 2014/445)).

ii) For each Claimant, details of the heads of loss and the sum claimed under each head of loss, together with the factual and legal basis on which it is contended the loss arises.

b) concerning any inability to aggregate in the FPS periods of pensionable service as a retained firefighter with periods of service as a full-time firefighter, the Claimants will themselves, or through the FBU or FRSA (or those unions' legal advisers), give written notification to the GLD (on behalf of the Home Office) and FRAs prior to the commencement of the second options exercise of:

- i) the identity of those Claimants; and
- ii) details of the factual and legal basis of the claims.

In respect of potential claims falling within paragraph (b), the parties are committed to continuing discussions regarding these potential claims. However, if agreed resolution of the matters contained within (b) has not been achieved within six months of the date of this MOU, that circumstance will be regarded by the parties as sufficient for the stay to be lifted, on application by any party, to the extent necessary for the Tribunal to determine outstanding issues in relation to those matters.

Whilst the parties cannot fetter Claimants asserting claims under paragraphs (a) and (b) above it is their expectation that Claimants will only do so where they or their representatives have given proper grounds for making such a claim prior to the commencement of the second options exercise, as provided for by this paragraph.

16. After the expiry of six weeks from the Claimants providing that information, the parties shall seek to agree directions to allow the Tribunal to resolve any claims falling within paragraph 15.

17. All parties will make a joint application to the Employment Tribunal for a stay of 18 months, with liberty to apply.

Annex A – template “expression of interest” letter

Dear *

Re: The Retained Firefighters’ Pension Settlement

Introduction of the new modified scheme for individuals who were employed as retained firefighters for all or part of the period 1 July 2000 to 5 April 2006 inclusive

When you started your employment as a retained firefighter with the Fire and Rescue Service, although you were covered by the same injury and compensation provisions as applied to regular firefighters, you were unable to join the Firefighters’ Pension Scheme 1992 (the “1992 Scheme”).

Following the Court’s decision in the Employment Tribunal case involving retained firefighters who made a claim for equal treatment with whole-time regular firefighters under the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Government has now introduced the terms of the Retained Firefighters’ Pension Settlement. The Settlement will offer new pension arrangements (the “*modified scheme*”) for all employees who were employed as retained firefighters between 1 July 2000 and 5 April 2006 inclusive (the “*relevant period*”).

The pension benefits on offer under the terms of the modified scheme are comparable, albeit different, to those provided under the terms of the 1992 Scheme. Full details on the terms of the modified scheme are set out in the accompanying employee information leaflet.

Please note that those who were employed on a day crewing contract, whereby having retained duties *and* whole-time firefighter duties under the **same contract of employment** are not eligible to join the modified scheme.

Options Exercise

Fire and rescue authorities are now required to undertake an options exercise to provide those individuals affected with an opportunity to join the modified scheme. Our records show that you were serving as a retained firefighter during the relevant period and may be entitled to join. If you are interested in joining the modified scheme but have previously joined the Firefighters’ Pensions Scheme 2006 (the “2006 Scheme”) from 6 April 2006 in respect of your retained employment, you will have the option of converting your 2006 Scheme service to service in the modified scheme.

If you express an interest in joining the modified scheme on the ‘expression of interest form’ enclosed, the details you provide will be treated at this stage as a request for further information and will not bind you to purchase pension rights. This information will be used to provide you with a personalised statement of the past service in respect of which you may be entitled to purchase, and to provide you with a quote on how much it will cost you to purchase that service. There will be **no commitment** to purchase any service at this stage.

ACTION REQUIRED - If you are interested in joining the modified scheme then it is important that you complete the attached form and return it **urgently** to us or, in the case where you are no longer employed as a retained firefighter, to your last employing fire and rescue authority.

Please note that if you fail to respond to this notification, your option to join the modified scheme may be lost. Once the options exercise has concluded there will be no further opportunity to join. The enclosed form **must** be completed and returned regardless of whether or not you intend to join.

If you were employed as a retained firefighter by more than one fire authority during the relevant period, you should also approach each authority as they will be responsible for implementing your pension entitlement in respect of that particular period of employment. You will also need to confirm on your expression of interest form whether you would like to combine the periods of retained service as a single membership. In this case, your last employing fire authority will liaise with your former employing authorities in order to determine your entitlement.

The employee contribution rate for purchasing the backdated service will reflect the contribution rate payable in the 1992 Scheme i.e. 11% of pensionable pay before April 2012 and the relevant contribution tariff in the 1992 Scheme for any period on or after April 2012. There will be a number of available options for members to pay back these contributions, please refer to the accompanying employee information leaflet.

Time-limited death grant

If you are the surviving spouse or civil partner of someone who was employed as a retained firefighter during the relevant period and who continued in that employment until they died before 6 April 2006, then you may be entitled to receive the payment of a death grant equal to 2.5 times the pensionable pay that the deceased earned in their last year of service, as determined by the fire authority. Your entitlement will be subject to the submission of an application to the deceased member's last employing fire authority before the 1 April 2015.

Please note that where there is no surviving spouse or civil partner, an eligible child of the deceased member, to be determined as on the date of the deceased's death, may make the application to the fire authority for the death grant before the 1 April 2015. Where the child is still a minor, the legal guardian of the child can make the application on behalf of the child.

Compensatory Injury Awards

Under the current terms of the Firefighters' Compensation Scheme there is a protected right for retained firefighters appointed before 6 April 2006 to receive a whole-time equivalent injury award and compensatory ill-health pension where they are permanently disabled whilst undertaking their role as a firefighter i.e. a qualifying injury. You will wish to note that this protected right **will be removed** from the 1 April 2014 regardless of whether you elect to join the modified scheme.

Any retained firefighter who suffers a qualifying injury on or after 1 April 2014 will receive a pro-rated injury award to reflect the part-time status of their employment. This is same treatment for retained firefighters appointed on or after 6 April 2006, and for part-time regular firefighters. The removal of these rights **will not affect** those former retained firefighters currently in receipt of an injury award.

Next Steps

Once the fire authority has received your completed expression of interest form, they will respond to you in writing setting out the amount of service you are entitled to purchase and the full cost of

purchasing this past service within 6 months of receiving your form. Once you have received the quote you will have 4 months to confirm that you wish to join the modified scheme; it will be at this stage that you will be required to commit to paying the backdated contributions, including interest, if you wish to join the modified scheme. Further details can be found in the employee information leaflet accompanying this letter.

If you have any questions about membership of the new modified scheme or would like additional information about this options exercise please contact [].

Yours sincerely

Annex B – template “detailed offer letter”

Dear xx

Re: The Retained Firefighters’ Pension Settlement- Introduction to the new modified scheme

I am writing to provide you with further information regarding your opportunity to join the modified pension scheme. Our records confirm that you were serving as a Retained Firefighter during the relevant period (2000- 2006). By returning the expression of interest form you have expressed an interest in joining the modified Scheme.

The information you supplied on your ‘expression of interest form’, along with the information we already hold, has been used to provide your individual statement of:-

- past pensionable service which you may be entitled to purchase, and
- a quote on how much it will cost for you to purchase that service.

Fire and Rescue Authorities can only provide a statement of cost and information about your options and cannot offer any financial advice. It is therefore your responsibility to seek independent financial advice as to how you proceed if you wish to do so.

You will find enclosed with this letter a document entitled ‘The Retained Firefighters’ Pension Scheme- modified pension arrangements and terms of payment for eligible individuals’. This is an informal guide which provides more information about the Scheme and your entitlements. It also contains the statement of individual details and the options election form.

As previously outlined, the modified scheme will be subject to the reforms that apply to all public service schemes from 1st April 2015. Members of the modified scheme who are not protected will transfer to the 2015 Firefighters’ Pension Scheme on 1 April 2015 or later if they are taper-protected.

If you are considering the option to convert service in the modified scheme to 2006 scheme membership and were between age 45 and age 50 on 1st April 2012, please be aware that this may impact your protected status. The Normal Retirement Age is 55 in the Modified Scheme and 60 for the 2006 scheme. Therefore members of the modified scheme as at 1st April 2012 who were within 10 years of age 55 will be protected, this changes to 10 years of age 60 for protection criteria of members of the 2006 scheme at 1st April 2012.

If you wish to progress the option to join the Modified Pension Scheme, you are now required to return the signed options election form, and a signed copy of this letter, **within four months of the date of this letter**, otherwise your option to join the Modified Scheme may be lost. Once the options exercise has concluded there will be no further opportunity to join.

NB * please return the options exercise form as soon as possible to confirm/decline if you wish to join this scheme.

As detailed in previous correspondence, the employee contribution rate for purchasing the backdated service will reflect the contribution rate payable in the 1992 Scheme i.e. 11%

of pensionable pay before April 2012 and the relevant contribution tariff in the 1992 Scheme for any period on or after April 2012.

By signing the options form you are committing to paying the backdated contributions, including interest as outlined in the statement of calculations. The interest amount will increase once an actual election to proceed is received.

If you have any questions about the process, please contact me on the number above. Payment can be made by periodic contributions or by lump sum as outlined in the document. The election to join takes effect on the day on which the notice of election (on the options election form) is received by the FRA **and is irrevocable once the first contribution, or the lump sum, has been paid.**

There may be options to transfer pension rights from a previous pension arrangement, including the FPS and NFPS. This would be dealt with after you have joined the Modified Scheme, although there will be associated time limits and so this will need to be dealt with promptly if you express an interest in a transfer of, or conversion of, pension rights.

Please sign the declaration below, and return this letter with the signed options election form.

If you have changed your mind, or wish to obtain further information please contact me on the number above.

Yours sincerely,
xxx

Annex C – Agreed process for the withdrawal of claims

Claims withdrawal process prior to commencement of the proposed legislation

1. Within 6 weeks of this Memorandum being signed by all parties, the FBU and FRSA will notify their members who may be affected by this Memorandum, using any usual written means for communicating such matters, that:

- a) it has been agreed with the Home Office and FRAs that their claims will be resolved via a second options exercise, pursuant to legislation;
- b) a detailed explanation of the terms of the second options exercise will be provided once the required legislation has been produced by the Home Office in draft.

2. Within six months of this Memorandum being signed by all parties, the Claimants' legal representatives (or their union) will write to the Claimants notifying them of the same information as set out in sub paragraphs 1 a) and b) above.

3. Once a draft of the legislation implementing the second options exercise is available, (and in any event no later than 3 weeks prior to the second options exercising commencing), and provided that the draft is consistent with the intended scope and operation of the second options exercise set out in this Memorandum:

- a) the FRAs will write to all those with service as a Retained Firefighter between 7 April 2000 and 5 April 2006 at their last known address notified to the FRA,
- b) the Claimants' representatives will write to the Claimants; and
- c) the FBU and the FRSA will write to their Retained Firefighter members;

in each case notifying them that:

- i) The parties agree that the terms of that draft legislation, if approved by Parliament and made in terms that are consistent with the intended scope and operation of the proposed second options exercise set out in this Memorandum, provide an effective remedy in respect of claims or

potential claims (relating to the matters set out in the footnote on page 1 of this Memorandum) with the exception of any claims falling within paragraph 15 of this Memorandum and subject to compliance with that paragraph 15;

- ii) It is intended that eligibility to participate in the second options exercise will be as set out in the draft legislation⁵;
- iii) Retained Firefighters identified by an FRA as ineligible to participate in the second options exercise will be entitled to challenge that decision via the usual IDR process, and, if necessary, the Pensions Ombudsman subject to the provisions of section 146(6) of the Pensions Schemes Act 1993;
- iv) There will be specific timeframes (set out in the legislation) for FRAs to notify eligible retained firefighters of their options under the second options exercise, and for eligible retained firefighters to respond. Eligible retained firefighters are advised to look out for correspondence from their FRA, and to respond promptly to it;
- v) The FBU and FRSA will, except in respect of any claims falling within paragraph 15 of this Memorandum, withdraw union funded legal representation in respect of the Employment Tribunal proceedings from any Union Member where she or he does not give consent to the withdrawal of their claim in the Employment Tribunal following the commencement of the legislation;
- vi) Shortly after the commencement of the legislation, Claimants will be sent a further letter inviting them to withdraw their claims in the Employment Tribunal. Failure by a Claimant to either withdraw their claim or consent to their claim being withdrawn by their legal

⁵ The parties expect the provisions of the draft legislation will be in accordance with paragraphs 2-5 of this Memorandum.

representative (or their union) will ultimately result in an application to the Employment Tribunal by the relevant FRA and/or Home Office to dismiss their claim or for an application for the claim to be struck out.

Claims withdrawal process following commencement of the proposed legislation

4. With the exception of any named Claimants already identified pursuant to paragraph 15 of this Memorandum, and provided that the terms of the legislation are consistent with the scope and operation of the second options exercise set out in this Memorandum, the Claimants' representatives will, within eight weeks of the commencement of the legislation, write to the Claimants they represent:
 - a) notifying them that the FBU or FRSA (as appropriate) considers that the legislation constitutes an effective remedy to their claims;
 - b) notifying them that, now that the legislation has come into force, the FBU or FRSA will not provide further legal representation in respect of their claims. This will not, however, prevent the FBU or the FRSA from providing Claimants or members with legal assistance for the purpose of enforcing entitlements under the legislation, including by way of reference to the IDRP and subsequently the Pensions Ombudsman;
 - c) inviting the individual to indicate their consent to the withdrawal of their claim in the Employment Tribunal by return slip or other suitable means.

5. Following confirmation by the Claimants of their instructions under paragraph 4 of this Annex, the Claimant's legal representatives will then write to the Employment Tribunal, copied to the legal representatives of the FRAs and the Home Office, in respect of any Claimant they are representing either:
 - a) withdrawing the claim; or

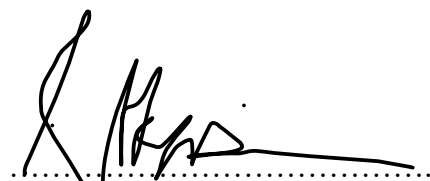
- b) notifying the Employment Tribunal that they will no longer represent the Claimant.
6. If a Claimant does not give instructions within three months of the letter referred to in paragraph 4(c) of this Annex, the Claimants' legal representative (or their union) will, within one month (of the expiry of that three month period), write to the Employment Tribunal, copied to the legal representatives of the FRAs and the Home Office, informing them that they no longer act for that Claimant.
7. Within two weeks of the commencement of the legislation, each FRA will write a letter to any unrepresented Claimants that they employ or formerly employed during the period set out in paragraph 3(a) of this Annex:
- a) notifying them that the FRAs and the Secretary of State consider that the legislation constitutes an effective remedy in respect of their claims;
 - b) reminding them of the time window in which to take part in the second options exercise and the method for doing so;
 - c) inviting them to withdraw their claims before the Employment Tribunal;
 - d) advising them of the steps they need to take to withdraw their claims before the Employment Tribunal;
 - e) notifying them that, in light of a) above, if their claims are not withdrawn, the FRA is at liberty to:
 - i) apply to the Employment Tribunal, asking it to send the unrepresented Claimants a "show cause" letter, in which the Tribunal will invite them to show the Tribunal why their claim should be allowed to proceed and what remedy they seek, given the commencement of the legislation; and/or

- ii) apply to the Employment Tribunal for an order that their claims be dismissed and/or struck out.

- 8. Upon the expiry of eight months from the commencement of the legislation, and except in relation to claims notified under paragraph 15 of the MOU, the FRAs and/or the Home Office or their representatives will be at liberty to write to the Employment Tribunal applying for the Claimants' claims to be either:
 - a) formally dismissed upon withdrawal; or

 - b) in respect of any claims which have not been withdrawn, dismissed on the basis that the legislation constitutes an effective remedy in respect of their claim, and that to continue with the claim amounts to unreasonable conduct.

Signed by Rachel Atkinson/Sarah Gawley
For and on behalf of the Home Office


.....
Director of Fire, Events and
Central Management

.....
Date 3 March 2022

Signed by Jeff Houston

For and on behalf of
the Local Government Association



Head of Pensions

.....7th March 2022.....
Date

Signed by
For and on behalf of the FBU



.....
General Secretary

.....9 March 2022.....
Date

Signed by Tristan Ashby
For and on behalf of the FRSA



.....
Chief Executive Officer


.....
Date

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Warwickshire Fire and Rescue Local Pension Board of the Firefighters' Pension Scheme

6 June 2022

Risk Monitoring

Recommendation(s)

That the Board note and comment on the report and the attached risk register.

1. Executive Summary

- 1.1 The Pensions Administration Service maintains a risk register in order to manage the risks facing the administration of the Firefighter Pension Schemes.
- 1.2 Risk monitoring is reported quarterly to the board to improve governance of the service
- 1.3 From 1st April 2022, risk actions relating to a number of the risks identified will now be the responsibility of West Yorkshire and the so the risk register has been updated to reflect this.

2. Financial Implications

- 2.1 None

3. Environmental Implications

- 3.1 None

4. Supporting Information

- 4.1 None

5. Timescales associated with the decision and next steps

- 5.1 The risk register will continue to be reviewed on a regular basis and reported to the board on a quarterly basis.

Appendices

1. Appendix 1 – Impact Scores
2. Appendix 2 - Risk Register

Background Papers

1. None

	Name	Contact Information
Report Author	Liz Firmstone, Martin Griffiths, Victoria Jenks	lizfirmstone@warwickshire.gov.uk, martingriffiths@warwickshire.gov.uk, vickyjenks@warwickshire.gov.uk
Assistant Director	Andrew Felton	andrewfelton@warwickshire.gov.uk
Strategic Director	Strategic Director for Resources	robpowell@warwickshire.gov.uk
Portfolio Holder	Portfolio Holder for Finance and Property	peterbutlin@warwickshire.gov.uk

The report was circulated to the following members prior to publication:

Local Member(s): none

Other members: n/a

1. Risk Assessment Criteria				
Score	Description	Probability of Occurrence	Likelihood of Occurrence	
1	Highly Unlikely	The event may occur in only rare circumstances (remote chance)	1 in 8+ years	
2	Unlikely	The event may occur in certain circumstances (unlikely chance)	1 in 4-7 years	
3	Possible	The event may occur (realistic chance)	1 in 2-3 years	
4	Probable	The event will probably occur (significant chance)	1 in 1-2 years	
5	Very Likely	The event is expected to occur or occurs regularly	Up to 1 in every year	

Score	Description	Members and Employers	Investments and Funding	Administration
1	Insignificant	Negligible impact - not noticeable by members or employers, no complaints or issues likely to be raised by members or employers. Example - Member or employer communication newsletter issued a few days later than planned.	Negligible impact - of a level that would not register for investment action. Example - Normal volatility levels being experienced in the investment portfolio.	Negligible impact - low level administrative issues resolved internally with no impact on key performance indicators Example - A manageable backlog of data to be uploaded to the administration system that has no impact on actual member payments.
2	Minor	Minor impact on members and/or employers which may cause correspondence about issues that can be resolved at source. Example - A member not being given the correct information first time when corresponding with the Fund and this having to be corrected, but having no impact on benefits paid	Minor impact on investment operations requiring monitoring and attention but not requiring anything other than business as usual actions. Example - minor adverse fund investment event, such as a credit default within a private credit portfolio which is of a business as usual nature.	Minor impact on administration performance requiring action within business as usual parameters. Example - an employer experiencing persist difficulty in providing correct data resulting in the need for extra training/support/correspondence to resolve
3	Moderate	Material adverse impact on members or employers that is of cause for concern to them and the Fund and requires escalation for non-business as usual resolutions More likely to be isolated issues but could have some scale. Example - Inability to finalise and sign off an admission agreement with a new employer resulting in escalation.	Material impact requiring bespoke corrective action, but manageable within the existing Investment Strategy Examples - Significant drift or step change in actual in asset allocation taking the Fund risk profile out of tolerances, or significant slippage in the implementation of a significant Fund transfer	Material impact on administration performance, but manageable within approved policies and procedures. Examples - Inability to agree a transfer of membership and liabilities from another fund, requiring arbitration by a third party, or disappointing data quality scores resulting in a need for an improvement plan.
4	Major	Significant adverse impact on members or employers that result in a direct impact on benefits paid or contributions due or member or employer satisfaction with Fund performance. Likely to result in complaints. More likely to be systemic issues. Examples - A significant delay in the issue of member annual benefit statements, or persistently charging an employer an incorrect contribution rate.	Major impact requiring significant corrective action and a change in Investmet Strategy or Funding Strategy, or the significant sale of assets under distress. May result in noticeable changes to employer contributions. Examples - Major change in the world economic outlook, or in the present value of future liabilities requiring a change in strategy, or inability to implement a significant Fund launch.	Major failure of administration function, likely to be systematic in nature, of a high profile nature to members and employers. Example - Widespread and persistent failure to meet key performance indicators such as dealing with certain types of administration query or action within deadlines, and receipt of significant numbers of complaints from members.
5	Catastrophic	Serious and systematic errors in benefits payments or administration KPIs, or significant volatility or increase in employer contributions. Significant breaches of the law Serious complaints and reputational harm caused Example - Systematic failure to monitor employer contributions resulting in subsequent identification of a large number of contribution deficits that employers cannot then catch up with.	Resulting in significant volatility or increase in employer contributions, inability to pay member benefits, or a need to significantly increase investment risk exposure. Significant failure to meet legal or regulatory requirements. Serious reputational harm caused Example - Catastrophic deterioration in the ability or employers to pay contributions resulting in a need for emergency investment and cashflow measures in order to keep paying benefits.	Catastrophic failure of administration function leading to inability to pay benefits accurately or at all on a large scale. Significant breaches of the law Serious complaints and reputational harm caused Example - Wholesale failure of the pension payroll function resulting in no member payments being made.

Risk	Risk Score (min)	Description
Low	0.1	Effective <ul style="list-style-type: none"> Controls well understood and diligently implemented No other controls considered necessary, ongoing monitoring only
Medium	7	Average <ul style="list-style-type: none"> Controls understood but further improvements / implementation required Controls can be improved to improve proactivity and continuous improvement

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Risk Identification					Inherent Risk Scoring			Existing Risk Controls		Residual Risk Scoring			Further Risk Controls		
Risk No.	Risk Descriptio	Outso	Risk app	Risk Causes	Risk Consequences (Effect)	Likelihood	Impact	Risk Score	Control	Responsibility	Likelihood	Impact	Risk Score	Control	Responsibility
1	Covid Pandemic (Administration and People Related)	Shared	Averse	Covid-19 pandemic (financial pressure on individuals and institutions, and more transactions being made online)	Members do not receive a high quality service	5	5	30	Office presence for processes that require it (e.g. physical post)	Both	3	3	12	Use of extraordinary committee or board meetings where	WCC
				Further restrictive lockdowns	Business interruption				IT systems supporting remote and flexible working	Provider (Pensions system) WCC (Other feeder systems)				Continue to develop flexible and remote working practices	WCC
				Staffing capacity impacted by both short and long term health implications of infection	High costs in order to maintain service resilience				Flexible working policies for staff	WCC				Review electronic signatory processes	Both
					Staff health, wellbeing and				Health and safety	Both					
					Impairment of the financial situation of employers				Policies that account for the scenario experienced	Both (e.g. business continuity)					
					Inability to make quick decisions in an emergency				Business continuity arrangements in place	Both					
					Non-payment of pensions				Ensure provider has satisfactory business continuity arrangements	WCC					
2	Inability to meet demand for activity	Provider	Averse	Taking on too many new customers / too quickly	Quality of services reduces	5	3	18	Medium term forecasting of demand and planning for the capacity and	Provider	3	3	12		
				Growth in complexity	Governance failures				Investing in quality and productivity of staff through training and	Provider					
				New and complex regulations (e.g. Sargeant (Age discrimination, Matthews retained Modified cases)	Key administration performance measures not met				Investing in systems development	Provider					
				Erosion of staff capacity/resilience due to long term remote working					Use of management information to monitor	Provider					
				Inability to recruit / retain appropriately skilled staff					Succession planning arrangements are in place	Provider					
				Inability of the officers to keep up with demand (capacity or skills)					Data quality reviewed at least annually	Provider					
				Persistently increasing customer expectations											
Unpopular government decisions impacting on Fire Pension Schemes															
3	Lack of capacity or competence to act as intelligent client and effective Scheme Manager	WCC	Averse	Outsourcing of delivery	• Quality of services reduces	5	3	18	Medium term forecasting of demand and planning for the capacity and resources required	provider	2	3	9	Collaboration with other Fire Authorities using same provider for continuous improvement	WCC
				Growth in complexity	• Governance failures				Investing in quality and productivity of staff through training and	provider					
				New and complex regulations (e.g. Sargeant (Age discrimination, Miller retained Modified cases)	• Key administration performance measures not met				Use of management information to monitor and manage performance	both					
				Erosion of staff capacity/resilience due to long term remote working					Succession planning	both					
				Inability to recruit / retain appropriately skilled staff					Data quality reviewed at least annually	WCC					
				Inability of the officers to keep up with demand (capacity or skills)					Maintain strong working relations with provider	WCC					
				Persistently increasing customer expectations											
Unpopular government decisions impacting on Fire Pension Schemes															
				Covid-19	Delays in decisions or their implementation				Building resilience requirements into service contracts	Both				Implementation of Cyber Security policy	Both
				Industrial action	Failure to meet performance targets				Digital record keeping	Both				Review and update disaster recovery plan	Both
				Small specialist teams with single person risks	Reputational damage				Storing data back ups off site	Both					

4	Business interruption	Both	Averse	Significant changes in adviser and consultant personnel	Data quality deterioration	3	4	16	Maintaining close links with advisers, consultants, and external	Both	2	3	9		
				Further high impact Covid events (e.g. infection waves, lockdowns)	Workload backlogs				Use of IT systems to work remotely	Both					
				Lack of systems maintenance	Significant restoration costs										
				Systems failure											
				Covid impact on staff											
				Disaster event - fire, flood, etc											
				Lack of remote working facilities											
5	Cyber security	Both	Averse	Systemic cybersecurity events (e.g. taking down financial trading)	Loss of data and/or data disruption	4	5	25	Use of scheme administrator systems and	Both	3	4	16	Implementation of Cyber security policy	Both
				Local cyber security events (e.g. targeting the Council)	Reputational damage				Staff training	Both					
				Personal cyber security events (e.g. phishing emails targeting staff)	Breaches of the law				Bespoke Scheme cyber security policy	Both					
				Inadequate system security	Fines										
				Inadequate staff training and staff	Costs of fixing issues										
					Business interruption										
5	Data Quality	Both (WCC as data controller and provider as data processor)	Averse	McCloud/Sargeant impact	Incorrect benefit payments to scheme members	3	3	12	Review data quality and agree action plan to address issues highlighted	Both	2	2	6	Audit of data quality management arrangements	WCC
				Persistently increasing customer service expectations	Complaints and disputes from scheme members				SLA with Council payroll service	WCC					
				Covid impact on member health and wellbeing - increasing the adverse impact of any problems with pensions	Negative reputational impact				Maintenance of Scheme website and sign posting to the new LGA Fire	Both					
				Member benefits paid incorrectly	Breaches resulting in fines from tPR				Staff training	Both					
				Inadequate administration systems and processes					Performance monitoring of employer data quality	Both					
				Poor data provided by employer					Performance monitoring of administration team	Both					
				Inadequate payroll services											
6	Fraud or corruption	Both	Averse	Poor application of controls by the Employer or Provider	Members lose benefits to fraudsters	4	3	15	Application of Authority code of conduct for officers, fraud strategy,	Both	3	3	12	Fraud risk review in 2022/23	WCC
				Increased financial pressure on individuals due to Covid-19 and its impact on the economy and jobs	Reputational risk				Application of division of duties and signatory processes for financial	Both					
				The passing of time since any previous targeted review of Fraud and corruption risk	Time spent unpicking the fraud risk				Periodic independent internal audit reviews of administration controls	Both					
				Fraud or corruption instigated by any Fund stakeholders	Fraudulent members gain benefits they are not entitled to				Annual external audit reviews	Both					
					Breaches resulting in fines from										
7	Governance Failure	Both	Averse	Lack of capacity to service governance requirements	Adverse impact on service reputation	3	4	16	Training needs analysis and plans for Committees	WCC	2	3	9		
				Lack of training	Exposure to unplanned risks or poor administration				Training needs analysis and plans for staff	Both					
				Lack of continuity in staffing, advisers, or committee / board members	Breaches of the law				Quarterly committee and Board meeting cycles	WCC					
				Inadequate checking/review of standards compared to requirements and best practice	Poor decisions				Monthly meetings between Scheme Administrator and	Both					
				Complacency in light of recent governance improvements	Decisions that are not appropriately authorised				All training provision to be made available to all committee and Board	WCC					
				Out of date policies and contracts	Customer dissatisfaction				Management of a policy	Both					
				Local government elections impact on committee continuity	Incorrect benefit payments to scheme members				Use of digital technology - remote working and	Both					
				Covid-19 - impact on officer, adviser, and committee/board personnel health and availability					Responding to government consultations	Both					
				Uncertainty around overall governance structure and responsibility for decision making and actions											
				Unpopular government decisions impacting on Fire Pension Schemes											

Warwickshire Fire and Rescue Local Pension Board of the Firefighters' Pension Scheme

6 June 2022

Forward Plan

Recommendation(s)

1. That the Board notes and comments on the Forward Plan in Appendix 1
2. That the Board identifies any areas of interest or activity to add to the Forward Plan

1. Executive Summary

- 1.1 This report provides an updated one year rolling forward plan for the Local Fire Pension Board.
- 1.2 This is not intended to be a definitive list, the intention is that it can be updated and amended on a rolling basis, at each meeting and can be informed on latest developments.

2. Financial Implications

- 2.1 None

3. Environmental Implications

- 3.1 None

4. Supporting Information

- 4.1 None

5. Timescales associated with the decision and next steps

5.1 Please refer to Appendix 1

Appendices

1. Appendix 1 – The Forward Plan for the Local Fire Pension Board

Background Papers

1. None

	Name	Contact Information
Report Author	Martin Griffiths, Victoria Jenks	martingriffiths@warwickshire.gov.uk, vickyjenks@warwickshire.gov.uk
Assistant Director	Andrew Felton	andrewfelton@warwickshire.gov.uk
Strategic Director	Strategic Director for Resources	Robpowell@warwickshire.gov.uk
Portfolio Holder	Portfolio Holder for Finance and Property	peterbutlin@warwickshire.gov.uk

The report was circulated to the following members prior to publication:

Local Member(s): None

Other members: n/a

Forward Plan items

Warwickshire Local Fire Pension Board

Q1 6 th June 2022	Q2 13 th September 2022	Q3 15 th November 2022	Q4 13 th February 2023
Standing Items			
Update report on completion of outsourcing			
Monthly admin report from West Yorkshire	Monthly admin report from West Yorkshire	Monthly admin report from West Yorkshire	Monthly admin report from West Yorkshire
Governance and Regulatory update	Governance and Regulatory update	Governance and Regulatory update	Governance and Regulatory update
Risk monitoring	Risk monitoring	Risk monitoring	Risk monitoring
	Chairs report		
Forward Plan	Forward Plan	Forward Plan	Forward Plan
Bespoke items			
Policies			
	Abatement Policy		Terms of Reference Conflict of interest register Discretions Policy
Training			
CIPFA local pension board training 18/05/2022		Matthews – 2 nd modified retained exercise	

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By virtue of paragraph(s) 3,5 of Part 1 of Schedule 12A
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