

# 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 1<sup>st</sup> 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 2<sup>nd</sup> Modified exercise – (Matthews)
2. Appendix 2 – Memorandum of Understanding for 2<sup>nd</sup> Modified exercise

### Background Papers

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

	<b>Name</b>	<b>Contact Information</b>
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