

## LOCAL PENSION BOARD

### Report of the Pensions Administrator / Manager

9 December 2020

### PENSIONS UPDATE

#### **1.0 Purpose of Report**

- 1.1 To provide Members with information on scheme membership and scheme changes as well as training, governance and communication issues.

#### **2.0 Introduction**

- 2.1 This report provides Members with scheme information, together with updates on current issues and training.

#### **3.0 Scheme Membership Information**

- 3.1 The following active memberships of the firefighters' pension schemes are taken from pay data as at 23 October 2020 (for Wholetime Firefighters) and 15 October 2020 (for On-Call Firefighters), and compared with active membership as at 25 September 2020 (for Wholetime Firefighters) and 14 August 2020 (for On-Call Firefighters).

##### 3.1.1

Firefighters' Pension Schemes Membership	Wholetime	
	23/10/2020	25/09/2020
1992	32	35
2006	2	2
2015	254	251
Retained Modified	3	3
Opted Out	11 (3.62%)	11 (3.63%)

- 3.1.2 The variations for wholetime membership are as follows:

- **1992 scheme** 3 retirements
- **2006 scheme** no movement
- **2015 scheme** 4 starters (WT recruitment, on-call staff on temporary WT or OSR posts)  
1 leaver
- **Retained modified scheme** no movement

- **Opt Outs** No members have opted out of the 2015 Scheme since the 19 October 2020 Board meeting.

### 3.2

<b>Firefighters' Pension Schemes Membership</b>	<b>On-Call</b>	
	<b>15/10/2020</b>	<b>14/08/2020</b>
1992	0	0
2006	5	5
2015	300	300
Retained Modified	10	10
Opted Out	12 (3.40%)	13 (3.60%)

3.2.1 The variations for On-Call membership are as follows:

- **2006 scheme** no movement
- **2015 scheme** 2 starters (new employees)  
2 leavers
- **Retained modified Scheme** no movement
- **Opt Outs** No members have opted out of the 2015 Scheme since the 19 October 2020 Board meeting.

3.3 The following table shows the retired members according to each scheme as at 12 November 2020 compared to 15 September 2020. Membership continues to be split between pensioners and dependants.

#### 3.3.1

<b>Firefighters' Pensions Schemes Retired Membership</b>	<b>12/11/2020</b>	<b>15/09/2020</b>
1992 (Pensioners)	443	442
1992 (Dependants – widow / partner / child pension)	83	84
2006	19	19
2006 (Dependants – widow / partner / child pension)	1	1
2015	10	10
2015 (Dependants – widow / partner / child pension)	3	3
Retained Modified	52	51

Retained Modified (Dependants – widow / partner / child pension)	2	2
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3.3.2 The variations for members with a pensioner status are as follows:

- **1992 scheme**            3 retirement from active status implemented  
3 deaths of pensioners
- **2006 scheme**            no movement
- **2015 scheme**            no movement
- **Retained modified scheme**    1 retirement from active status implemented

3.4 The following table shows the deferred members of each scheme as at 12 November 2020, compared to those as at 15 September 2020.

3.4.1

<b>Firefighters' Pensions Schemes Deferred Membership</b>	<b>12/11/2020</b>	<b>15/09/2020</b>
1992	28	28
2006	147	147
RDS Modified	27	27
2015	194	181

3.4.2 The variations in deferred pension members cover pensions that have come into payment, leavers and those who have opted out of the scheme (who don't qualify for a refund of their contributions).

#### **4.0 Internal Dispute Resolution Procedure (IDRP)**

4.1 There is an Internal Dispute Resolution Procedure for dealing with any complaints. Initial information on this two-stage process can be found at:

<http://www.wypf.org.uk/Member/Fire/IDRP/InternalDisputeResolutionPro.aspx>

There have been no new IDRP applications since previous meeting.

#### **5.0 Pension Board Training Update**

5.1 Clair Alcock, LGAs Senior Pensions Advisor is joining us at this meeting to deliver our annual Pension Board training.

## 6.0 Other Work Items

- 6.1 Monthly postings up to and including October 2020 have been submitted to West Yorkshire Pension Fund (WYPF).
- 6.2 Following confirmation of 2020s national pay award (and local CPD increase), the post-1 July 2020 retirements that were processed using 2019s pay rates, have been recalculated and are awaiting checking. This work involves advising WYPF of the revised national rate applicable from 1 July, as well as revised CPD contribution amounts and pensionable public holiday payments (where applicable). This information will be submitting by WYPFs deadline of 31 January 2021.
- 6.3 The annual Pensions Regulator scheme return has been completed on our behalf by WYPF, and this has been checked by the Pensions Administrator / Manager. It was submitted before the 15 December deadline. *[there is a separate public sector pensions administration and governance survey that is completed by the Pensions Administrator / Manager and the Chair of the Board, with input from WYPF. Typically we would have received this before now. To date we don't know when the Regulator plans to issue this].*
- 6.4 Various items of data cleansing have taken place at the request of WYPF, in preparation of the 2020 scheme valuation.
- 6.5 The Pensions Administrator / Manager responded to a request from the NFCC to confirm that we, as an authority, would be interested in participating in a joint approach to obtaining legal advice relating to whether or not we can implement the Home Office's Immediate Detriment guidance. The OPFCC were consulted as part of this.
- 6.6 The Pensions Administrator / Manager completed LGAs data request that highlighted how many expected cases we could have that falls within the scope of Immediate Detriment guidance (and of which, how many appear to have an administrative 'issue' that might prevent immediate detriment from being followed. The completed LGA spreadsheet is included as part of this meeting's papers.

In summary, 5 members will reach their FPS 1992 30-year date before 31 March 2022 (3 claimants and 2 non-claimants), with 1 case affected by an administrative 'issue' that requires further guidance.

In addition, there are a further 24 members who *could* decide to retire prior to 31 March 2022 due to them attaining their earliest retirement eligibility, i.e. being aged at least 50 but under 55, and having 25+ (but not yet 30) years' scheme membership. Of these 24, 12 have an 'issue' of some kind that currently isn't covered by guidance.

- 6.7 Work is currently underway drafting a report to the Chair of the Board in relation to the pensions risk register, highlighting the need for this to be considered in some detail should the proposed enableNY changes going ahead.
- 6.8 Following discussions with the Head of Finance, an item worthy of mention concerns the resource-heavy work that takes place every year between January and March that involves both Finance and the Pensions Administrator / Manager.

Detailed scheme membership reconciliations need to be done to ensure the records held by NYFRS tally with the records of WYPF, with any outstanding leaver notifications submitted as a priority. This undertaking is part of the annual exercise

that allows the Government Actuary's Department (GAD) to prepare the necessary disclosures in the audited accounts.

## **7.0 Discretions made by Scheme Manager**

- 7.1 The Scheme Manager is responsible for the operation of the scheme, and the Police, Fire and Crime Commissioner is regarded as the Scheme Manager. However, this duty has been delegated to the Pensions Administrator / Manager.
- 7.2 For the period 1 October to 9 December 2020, no discretions needed to be exercised.

## **8.0 Legislative update**

<b>SI</b>	<b>Reference title</b>
2020/122	The Restriction of Public Sector Exit Payments Regulations 2020

## **9.0 Firefighters' Pension Schemes Bulletins Summary**

### **Age discrimination consultation responses**

Between 16 July and 11 October 2020, HM Treasury (HMT) consulted on changes to the transitional arrangements of the unfunded public service pension schemes introduced in 2015.

On 9 October, responses were submitted by the LGA and Scheme Advisory Board (SAB). These responses can be found on our dedicated age discrimination remedy webpage, along with the submissions from the Wales and Scotland SABs.

### **Immediate detriment information note**

We advised in FPS Bulletin 37 – September 2020 that we had drafted a note to provide additional information to FRAs on the key considerations on implementing the Home Office informal guidance on immediate detriment.

The LGA immediate detriment information note and accompanying template matrix have now been published and can be found on the Age Discrimination Remedy (Sargeant) page. Please note that each FRA's nominated contact for the Sargeant litigation will have further information in order to inform your authority's approach to immediate detriment cases. This is for reasons of legal privilege. Please ensure that you liaise with the nominated contact for your FRA before taking any action.

### **Special Members of FPS 2006 - Second options exercise**

We understand stakeholders are keen to receive updates on the expected second special members options exercise, sometimes referred to as Matthews or O'Brien. While at this stage we cannot provide more definitive information, we have published a new special members factsheet which provides a brief background on the introduction of special members and comments on the expectations of a second exercise.

Special members were introduced to the Firefighters' Pension Scheme 2006 (FPS 2006) in 2014, following *Matthews v Kent and Medway Towns Fire Authority* [2006] UKHL 8 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. Following the European Court of Justice's decision in *O'Brien v Ministry of Justice* which is a case

concerning fee paid judges in the Judicial Pension Scheme, the UK Government have recognised the right for retained firefighters employed before 1 July 2000 to elect to become a special member from the start date of their employment.

This will necessitate a second options exercise, for which legal discussions have commenced between central government, the LGA on behalf of FRAs and trade union legal representatives to consider who is in scope and the details of the settlement exercise.

Regulations for England will be drafted and consulted on following the conclusion of the legal discussions. It is expected further regulations and consultations for the devolved governments will follow later. Unfortunately, no timescales are known at this stage.

There is no further action needed at this time by FRAs or their administrators.

### **Medical retirement IQMP certificates**

We have been receiving an increased level of enquiries related to medical retirement certificates for use by IQMPs.

Medical retirement is leaving employment from the FRA under either ill-health retirement or injury. Ill-health retirement can and often does occur on its own. Injury retirement occurs due to a direct result of the firefighter's work and will always also trigger ill-health retirement. An injury pension is paid under the regulations of the Firefighters' Compensation Scheme 2006 (FCS 2006). The amount of benefit payable does not depend on what pension scheme the member may be in, however, it will be calculated in reference to the service attributable to the employment in which the injury is received. Ill-health retirement occurs under the pension scheme rules, and benefits may be different depending on the pension scheme the member is in:

- Firefighters' Pension Scheme 1992 (FPS 1992)
- Firefighters' Pension Scheme 2006 - Standard and Special members (FPS 2006)
- Firefighters' Pension Scheme 2015 (FPS 2015)

Which ill-health form to use is not laid down in legislation, subsequently it is for FRAs to satisfy themselves that the forms meet the requirements of the legislation and that the IQMP has answered the relevant questions. In 2009, following meetings of an ill-health review group, a form was developed that brought together the requirement to consider redeployment as a result of the Marrion case, and the different rules and eligibility for FPS 1992, FPS 2006 and FCS 2006.

In 2015, following feedback that the forms were unwieldy to use and had led to errors of interpretation the forms were simplified and separated across the schemes. The new forms considered the questions for IQMPs only and did not try to give guidance on employment considerations.

Those forms are held on the password-protected ill-health and injury webpage and **must** be downloaded each time to ensure the most recent version of the form is being used.

Each approach to the forms has pros and cons and the SAB are considering a programme of work to ensure that more resources and information about medical retirement are readily available to FRAs and members. More detail can be found in the minutes of the SAB meeting of 13 June 2019.

This work may take some time and may be impacted by the Court findings in the age discrimination case known as Sargeant and the resulting HMT consultation on age discrimination in public service schemes.

In the short term we are drafting a short summary factsheet on medical retirement issues and will be making some changes to the forms. We will advise a timescale for this work in the next bulletin.

### **Fire and Rescue workforce and pensions statistics published**

The Home Office published workforce and pensions statistics for Fire and Rescue Services (England) on 22 October 2020. The pension scheme statistics, covering April 2019 to March 2020, reflect data returns on income, expenditure and membership submitted by all 45 FRAs in England.

Some key results:

- Firefighters' Pension Scheme expenditure in 2019-20 was around £908 million.
- In 2019-20, 80 per cent of expenditure was "recurring outgoing payments" and 19 per cent was "commutation payments". "Transfers" and "miscellaneous expenditure" totaled less than 1 per cent
- Firefighters' Pension Scheme income in 2019-20 was around £387.5 million.
- Employer contributions nearly doubled from £135 million in 2018-19 to £260 million in 2019-20 as a result of changes to the discount rate set by HM Treasury from April 2019.
- In 2019-20, 67 per cent of income was "employer contributions", 30 per cent was "employee contributions" and the remaining 3 per cent comprised transfers, miscellaneous income and ill-health charges.
- The Firefighters' Pension Scheme deficit in 2019-20 was around £520 million.
- As at 31 March 2020, the total number of pensioner members was 46,228. Of these, 94 per cent were members of FPS 1992.

### **Immediate detriment request for information – reminder**

In FPS Bulletin 37 – September 2020, the SAB asked for information on the number of members who are likely to become eligible for payment of benefits under the terms of the Home Office immediate detriment note. This includes:

- Any member refused ill-health retirement under the FPS 2015 as the lower ill health criteria was not met.
- 1992 transition members of FPS 2015 who reach age 55 before 31 March 2022.
- 1992 transition members of FPS 2015 who reach 30 years' service before 31 March 2022.
- 1992 transition members of FPS 2015 who will have 25 years+ service and be over 50 by 31 March 2022.
- The SAB also want to understand what percentage of the FPS 2015 membership within the immediate detriment (ID) category are likely to be affected by complicating factors, such as divorce or transfers. To date we have only received responses from eight FRAs. The SAB kindly request that FRAs complete the ID information sheet by 30 November 2020. Please note that clicking the link downloads an Excel spreadsheet.

Completed returns should be submitted to [bluelight.pensions@local.gov.uk](mailto:bluelight.pensions@local.gov.uk).

### **Restriction of exit payments in the public sector**

The Restriction of Public Sector Exit Payments Regulations 2020 come into force on 4 November 2020. As expected, the regulations have limited application for the FPS, as exemptions apply to two of the exit payments which would otherwise fall within the

scope of the £95,000 cap: enhanced commutation (FPS 1992) and Authority Initiated Early Retirement (AIER) (FPS 2006 and FPS 2015) on fitness grounds.

In some limited circumstances of AIER the cap would still apply and we understand that the Home Office is working with the Government Actuary's Department (GAD) to establish how the assessment against the cap can be undertaken for the fire scheme. This will be achieved either through regulatory change or statutory GAD guidance.

### **Public Service Pensions GMP indexation consultation**

On 6 April 2016, the government introduced the new State Pension which removed the mechanism that enabled public servants in "contracted-out" employment between 1978 and 1997 to have their Guaranteed Minimum Pension (GMP) fully price protected. The interim solution of full indexation was brought in, which was later consulted on and extended until 5 April 2021. This ensured that public service pensioners had the GMPs they had earned in public service fully indexed by their public service pension scheme.

On 7 October the government published a consultation on Public Service Pensions: GMP indexation.

The consultation sets out how the government proposes to ensure it continues to meet its past commitments to public service employees regarding the full indexation of public service pensions, including for any GMP element.

The consultation will last for 12 weeks and closes on 30 December 2020. The consultation and supporting written ministerial statement can be found on the new consultations page of the Regulations and Guidance website.

The LGA will be responding in due course.

### **Compensation Scheme – Qualifying Injury COVID-19**

Readers will recall that questions have been previously asked as to whether a firefighter being identified with a positive case of COVID-19 would be treated as a qualifying injury for the purposes of eligibility to benefits under the compensation scheme, and the Home Office were asked to provide clear assurances that any firefighter who dies from COVID-19 will be recognised as having died from a qualifying injury.

The Home Office have confirmed the following statement:

“The Home Office is unable to provide such assurances as this this would interfere with the established legal process for determining an entitlement to awards payable under the FCS and may set unhelpful future precedents. The responsibility for making such decisions rests with employing FRAs, who are best placed to consider the relevant facts in each case.

FRAs should note that the IQMP guidance for the firefighters' pension schemes and compensation scheme clearly sets out the processes that employers should follow when making a decision on scheme members' ill-health/injury/death entitlements. Paragraph 3.27 of the guidance sets out that when a case is being referred to an IQMP the employing FRA should state whether or not they accept that the injury/death being considered should be treated as a qualifying injury. This process allows employing FRAs to provide their views on whether any firefighter's death should be treated as a qualifying injury. As explained above, employing FRAs are best placed to consider the detailed facts in each case in order to make these decisions”



In order to make a decision with regards to whether COVID-19, which is widely present in the general population, has been contracted specifically due to conditions in the workplace, the FRA will need to consider each case on a case by case basis in light of the full facts and a blanket approach would not be appropriate.

In considering whether COVID-19 was contracted 'in the exercise of duties as a firefighter' FRAs would need to take several matters into account including but not limited to:

- Whether the incident has been taken into account for sick pay purposes.
- The work (and/or leave) pattern for the individual, being mindful of incubation times.
- Known COVID situations in any incident/location attended.
- Colleagues within the same Crew/Watch known to have been infected in the same timeframe.
- Known results whether positive or negative tested at any point over the relevant timeframe for the case in hand
- Any instruction by the FRS not to attend work within the relevant timeframe because of contact with a colleague who had come into work at a point when they would have been infectious
- FRA risk control measures, such as PPE, Distancing, Hygiene, Work Bubbles etc
- Medical reports

The HSE advice in RIDDOR (the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013) includes information about making a judgement and reasonable evidence for their purposes.

### **Joint Fire and Police CIPFA webinar – Sargeant/ McCloud stakeholder management**

CIPFA is running a joint Fire and Police webinar on Tuesday 15 December at 10am:

“Stakeholder management will be a key component of your plan to deliver the McCloud remedy. In this seminar, we will cover the changes faced by a variety of stakeholders in the Police and Fire Network. The focus will be on member engagement, the member journey and the opportunity that presents, whilst managing the risks.”

As registration is not yet open for this event, we will circulate details by email to the bulletin distribution list as they become available.

## **10.0 West Yorkshire Pension Fund Key Performance Indicators**

10.1 WYPF provides monthly reporting on administration matters and Key Performance Indicators (KPI). The latest KPI results are shown below.

North Yorks Fire (1 to 31 October 2020)						
WORKTYPE	TOTAL CASES	TARGET DAYS FOR EACH CASE	TARGET MET CASES	MINIUM TARGET PERCENT	TARGET MET PERCENT	AVERAGE TIME TAKEN
Transfer In Quote	2	10	2	85	100	3
Deferred Benefits Set Up on Leaving	7	10	4	85	57	42.57
Pension Estimate	1	10	1	85	100	4
Change of Address	2	20	2	85	100	3
General Payroll Changes	2	20	2	85	100	1.5
Age 55 Increase to Pension	2	20	2	85	100	3
Update Member Details	3	20	3	100	100	0

## **11.0 Recommendations**

11.1 That Members note the content of the report.

### **David Hood**

Pensions Administrator / Manager

9 December 2020

### **Background documents:**

2015 Firefighters' Scheme Complaints and Dispute process:

<http://www.wypf.org.uk/Member/Fire/IDRP/InternalDisputeResolutionPro.aspx>

Immediate Detriment Cases to March 2022 – NYFRS