

**Status of Report:** Public

**Meeting:** Local Pension Board

**Date:** 13 July 2022

**Subject:** Scheme Manager's Report

**Report by:** The Scheme Manager

**Author:** Colin Sharpe, Scheme Manager

**For:** Noting

### **Purpose**

1. To provide an update on the management of the Firefighters' Pension Scheme, including local administration, breaches, developments concerning the age discrimination remedy / immediate detriment, the risk register and sector updates.

### **Recommendation**

2. The Local Pension Board is asked to note this update and make any comments to the Scheme Manager and/or the CFA.

### **Executive Summary**

3. The LFRS Finance and HR teams continue to process day to day pensions work and the gathering of data relating to immediate detriment (McCloud/Sargeant) and the retained firefighters second options exercise (Matthews).
4. No breaches have been identified for the period to 30 June 2022.
5. The risk register has been reviewed, with no significant changes proposed.
6. With regards to immediate detriment, there are no significant updates since the last meeting of the Board, perhaps with the exception of the making of a national 'injury to feelings' claim.
7. Sector updates continue to be a useful source of information.

### **Background**

#### Local Management and Administration

8. The local management and administration of the scheme continues. The finance and HR teams continue to process day to day pensions work and the gathering of data relating to

immediate detriment (McCloud/Sargeant) and the retained firefighters second options exercise (Matthews). Data regarding the retained scheme is being provided to the LGA, as part of a national scoping exercise.

9. Meetings are held with the Regional Adviser and also with colleagues at Derbyshire and Nottinghamshire. Staff attend the fortnightly LGA 'coffee mornings', where any general updates are provided, together with a focus on a particular topic. Staff also attend meetings with WYPF as the scheme administrator.
10. Leicestershire County Council's internal audit service has recently completed a key financials pensions audit of LFRS, with an opinion of substantial assurance in relation to the internal controls. No recommendations for action or improvement were identified.

### Breaches

11. The Pensions Act 2004 requires that the Pension Regulator must be informed of breaches of the law where that breach is likely to be of material significance. No breaches have been identified for the period to 30 June 2022.

### Age discrimination remedy / immediate detriment

12. The Board will recall from previous reports that following an employment tribunal and subsequent appeals, the transitional protections related to the 2015 Firefighters' Pension Scheme were found to be age discriminatory. These reports have provided a detailed background.
13. The Local Government Association (LGA) and Fire Brigades Union (FBU) negotiated a Memorandum of Understanding (MoU) and a Framework agreement for handling Immediate Detriment cases. This was made available in early October 2021 and the CFA was to be asked to sign up at its December 2021 meeting. However, just days beforehand, the Home Office guidance underpinning the MoU was withdrawn following intervention by Her Majesty's Treasury, due to apparently fresh concerns about the level of risk and uncertainties relating to tax and associated matters. This unexpected development added to the complexities facing Fire and Rescue Authorities (FRAs). In the light of this, the CFA on 2 December 2021 agreed to pause action to address the immediate detriment and to receive a further report once matters became clearer.
14. Acting on the advice of the Chief Fire Officer and Scheme Manager, the CFA on 9 February 2022 agreed that a remedy should once again be offered to personnel approaching retirement (category 1), but that action regards those who have already retired should remain paused (category 2).
15. The CFO and the Scheme Manager regularly review the approach in the light of national developments and communications, attempting to steer a reasonable and balanced course that takes account of the benefits and risks of different courses of action. The view is that the current approach remains the most appropriate, although the Treasury position/advice that services should not implement any immediate detriment remedy prior to legislation being in place is acknowledged. This was noted by the CFA at its meeting on 15 June 2022.

16. The Board is however asked to note that Fire Authorities are taking differing approaches; some continuing to offer an immediate detriment remedy to upcoming retirements and those who have already retired; others the former, but not the latter; and others neither. Anecdotally, the most common approach was (and remains) to offer a remedy to personnel approaching retirement, as in Leicestershire.
17. The Public Service Pensions and Judicial Offices Act 2022 took effect on 1 April 2022, as expected. The remaining protected members still in their legacy scheme moved into the 2015 scheme on 1 April 2022, so all active members are now in the 2015 scheme.
18. Retrospective remedy for members who had already retired (category 2) will not be implemented nationally until further legislation is enacted, which is expected from October 2023.
19. Nonetheless, a lot of work is required of the Finance and HR teams and the scheme administrator (West Yorkshire Pension Fund) to prepare for the expected impact of the October 2023 legislation.
20. Work is also required in respect of the second options exercise for retained firefighters employed between 2000 and 2006, who may have been disadvantaged by being treated differently to wholetime firefighters. This is referred to as the Matthews case. The LGA is coordinating a national scoping exercise.
21. The Board is asked to note that an employee of LFRS has been selected as one of a number of potential test claimants for the purposes of an injury to feelings award in the remedy proceedings. This is essentially a claim for compensation for the upset, distress or anxiety that firefighters might have suffered as a result of discrimination. For example, the impact of being unsure about retirement age, benefits, and the options that might be available.
22. The LGA has developed a spreadsheet intended to provide FRAs with a basic estimate of their financial exposure from immediate detriment. The Scheme Manager will be looking at this.
23. A national factsheet has been produced to provide scheme members with information about the timeframes associated with the remedy. Scheme Administrators are encouraged to send this to impacted members with their 2021/22 benefit statement.

#### Risk Register

24. Good governance requires that an appropriate Risk Register is in place and is regularly reviewed. It is also a requirement of the Pensions Regulator's code of practice on the governance and administration of public service pension schemes.
25. The Risk Register consists of relevant risks considering both the administration of pensions by LFRS staff and its relationship and work undertaken by WYPF as scheme

administrator. The register is attached as Appendix 1 to this report and the matrix as Appendix 2.

26. Each risk is scored as it currently is with existing actions/controls, and then further management actions/controls are identified which should have the effect of reducing the risk score.
27. The risks are essentially unchanged since the previous report. The implementation of the national age discrimination remedy judgements remains a key risk, and as noted above an LFRS employee is named in a recent national 'injury to feelings' claim.

### General Sector Update

28. The LGA monthly Firefighters' pensions update bulletins focus on the administration of the scheme, immediate detriment, the retained firefighters second options exercise and wider pensions updates. Some key points are reflected earlier in this report. The bulletins can be found at <https://www.fpsregs.org/>.

### **Report Implications/Impact**

#### 29. Legal (including crime and disorder)

This report has been written to inform Members of the latest legal developments relating to the Firefighters' Pension Scheme and how the service is working on resolving the current situation.

The Public Service Pensions Act 2013 introduced a framework for the governance and administration of public service pension schemes. This report aims to fulfil the requirement for Members to assist the Scheme Manager in ensuring that effective administration arrangements are in place.

#### 30. Financial (including value for money, benefits and efficiencies)

A number of financial risks continue to present themselves, including actions taken proving to not be entirely correct or with unresolved and/or unforeseen consequences. If no action had been taken, or continues to be taken, the CFA could be subject to legal proceedings, which would incur costs.

There is also a potential financial liability on the Authority and/or retiring members, for example tax costs of breaching annual allowances pending the intended changes to tax regulations.

Payments made under the Immediate Detriment Framework will either be a scheme payment and therefore from the pension fund account, or an employer payment which cannot be met from the pension fund account and will fall to the Authority to fund. The funding for personal tax liabilities ahead of changes to tax legislation is however a particular risk, and could fall to the CFA to fund.

31. Risk (including corporate and operational, health and safety and any impact on the continuity of service delivery)

The CFA continues to face a number of risks associated with the management of pensions and the implementation of the remedy.

32. Staff, Service Users and Stakeholders (including the Equality Impact Assessment)

An equality impact assessment has not been carried out, as the Service is trying to correct inequalities as identified by court proceedings and judgements.

33. Environmental

There are no environmental implications arising from this report.

34. Impact upon “Our Plan” Objectives

There are no specific impacts, although a general impact on all ‘People’ related elements of the plan.

**Appendices**

Appendix 1 – Risk register

Appendix 2 – Risk matrix

**Officer to Contact**

Colin Sharpe, Deputy Director of Finance, Leicester City Council

[colin.sharpe@leicester.gov.uk](mailto:colin.sharpe@leicester.gov.uk)

0116 454 4081