

Status of Report: Public

Meeting: Local Pension Board

Date: 16 November 2023

Subject: Scheme Manager's Report

Report by: The Scheme Manager

Author: Colin Sharpe, Scheme Manager

For: Discussion

Purpose

1. To provide an update on the management of the Firefighters' Pension Scheme.

Recommendation

2. The Local Pension Board is asked to:
 - a) Note this update and make any comments to the Chief Fire and Rescue Officer, Scheme Manager and/or the CFA.

Executive Summary

3. The Board has previously received updates on the Sargeant/McCloud age discrimination remedy process and the Matthews second options exercise for on-call firefighters.
4. National regulations for both took effect from 1 October 2023, with an 18-month implementation period. Therefore, the focus is now firmly on delivering both remedy and second options. However, there are numerous complexities, with questions of detail continuing to emerge that cannot be resolved locally.
5. Sargeant/McCloud relates to age discrimination held to have arisen from the transitional protection arrangements upon the introduction of the 2015 scheme; whilst Matthews second options relates to certain former and current on-call firefighters who will now be able to buy back 2006 scheme membership from the start of their service, as part time workers.
6. The Finance and HR teams continue to process day to day pensions work and the gathering of significant volumes of data relating to both the remedy and second options. This is required so that the Scheme Administrator, West Yorkshire Pension Fund (WYPF), can process the necessary pensions adjustments and so that full time and on-call firefighters can be properly and accurately informed of the financial implications of the choices open to them. This is an ongoing challenge in terms of staff availability and skills/ experience.

7. There have been no recent updates regards the national 'Injury to Feelings' awards, arising from the age discrimination; the Service continues to expect to process payments when instructed to do so. Members may recall this relates to compensation for anger, distress, anxiety etc. and for any out-of-pocket losses.
8. The timeline for the new national Pensions Dashboard has been extended, with the Government announcing a fresh connection deadline of 31 October 2026. An updated 'staging timeline' will be set out in guidance. This will determine when fire pension schemes are required to connect, which in practice is primarily a task for WYPF as administrator. The dashboard is intended to enable people to find summary details of all their pensions in one place. Further details can be found at <https://www.pensionsdashboardsprogramme.org.uk/>.
9. No breaches have been identified for the period to 31 October 2023.
10. The Scheme Manager has made a number of individual decisions over recent months, which are summarised in the report.
11. The risk register has been reviewed and updated and is attached at Appendix B.

Background

Local Management and Administration

12. The local management and administration of the scheme continues. The Finance and HR teams continue to process day to day pensions work.
13. Aside from the day-to-day work, the team has been focussed on gathering of past pay data relating to the age discrimination remedy (Sargeant/McCloud) and the on-call firefighters second options exercise (Matthews). This is required so that WYPF can process the necessary pension adjustments and so that full time and on-call firefighters can be properly and accurately informed of the financial implications of the choices open to them. Further details are provided later in the report.
14. More recently, the Government Actuary's Department (GAD) has made available the first versions of online calculators to determine retrospective employee contributions, interest and tax. Later iterations will add functionality and increase the scope of cases that can be processed. However, some specific circumstances will require manual calculations and/or specialist advice; officers will need to ensure these are identified and not processed via the calculator. It has also come to light that some of the data required by the GAD calculator will require a revisiting of records already trawled for remedy.
15. Data gathering and analysis therefore remains a substantial task. Even at the more basic level, some knowledge of fire pensions and payroll is required. Staffing resources generally, reliance on a handful of key individuals and the availability of national tools remains a key risk area:

- Supplementing the existing small LFRS team resources has not proved straightforward. Temporary staffing support has been difficult to come by. Two finance team members are, however, now dedicated to the task, with more senior colleagues providing guidance, oversight and review. Overtime has been worked across the finance team, to speed up data gathering and input.
- The data collection task is not helped by the change of payroll provider and pension administrator in 2020. This has limited the automation of data extraction, necessitating manual trawling of pay, pension and tax records.

16. Datasets for remedy have been prioritised and supplied to WYPF as they are completed and checked, with progress updates provided. The team expects to have supplied all the requested remedy data to WYPF by the end of November. The focus will then move onto completing the GAD calculators and progressing the Matthews Second Options.

17. The Pensions Act 2004 requires that The Pensions Regulator 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 31 October 2023.

18. The Scheme Manager has taken a number of individual decisions over recent months. These have included acceding to a request to extend the repayment period for retained buy-back where deductions from pay had ceased for an extended period due to a payroll error; approving protected pay at a previous higher pay rate for a member's final salary link purposes in the 1992 scheme, in line with scheme regulations; and considering applications to transfer-in from a non-occupational scheme after more than one year had passed since joining the Fire scheme.

Regional and national updates and communications

19. Meetings continue to be held with the Regional Adviser and with colleagues at Derbyshire and Nottinghamshire. Staff attend the LGA 'coffee mornings', where general updates are provided, together with a focus on particular topics.

20. The Scheme Manager attended the LGA national Firefighter Pensions AGM and Annual Conference in September. There were updates from a range of speakers/organisations, together with workshops on remedy communications and the Matthews second options exercise. The presentations can be found within the online report at <https://www.fpsregs.org/index.php/events/fire-pensions-annual-conference>

21. Staff also attend meetings with WYPF as the scheme administrator. A tailored monthly client report is received, which provides useful general administrative information and enables any specific issues to be picked up and addressed. The October report is attached as Appendix A. There are no particular concerns to highlight, although the pressure on administrators and the need to prioritise work is evident. The Board will also note the WYPF Administrator's report to this Board elsewhere on the agenda.

22. Pension Board members were invited to an LGA-led training session on 30 August, alongside colleagues from Derbyshire and Nottinghamshire. A comprehensive slide pack was circulated afterwards.
23. The LGA has commissioned a brief introductory video to help active and deferred members understand the timescales around remedy. This can be viewed at <https://fpsmember.org/remedy/active-and-deferred-member-remedy-video>
24. The Regional Adviser and WYPF will present an online 'roadshow' for scheme members across the three FRAs on 13 November. This will cover the fine detail of the Sargeant/McCloud remedy, retirement options and a short introduction to the Matthews second options buy-back exercise. The event will be recorded, so can be accessed later. A detailed presentation on Matthews will be made available to on-call personnel soon afterwards.

Age Discrimination remedy (Sargeant / McCloud)

25. Following an employment tribunal and subsequent appeals, the transitional protections related to the 2015 Firefighters' Pension Scheme were found to be age discriminatory. In essence, younger members transferred to the 2015 scheme on 1 April 2015, and did not benefit from the protection afforded to older members who remained in their final salary legacy scheme for a further period until retiring or transferring later into the 2015 scheme.
26. LFRS suspended 'tapering' the remaining (older) members from their legacy 1992/2006 scheme into the 2015 scheme in April 2021. These members who then retired by March 2022 did so in the scheme which was the most beneficial to them, usually their legacy scheme. Hence, no remedy is now required for these.
27. All members who had not tapered and had not retired at 31 March 2022 became active members of the 2015 scheme on 1 April 2022, by default. The 2015 scheme then became the only active scheme, so all serving personnel are now in the 2015 scheme (unless they have opted out completely).
28. As expected, new Regulations came into effect on 1 October 2023. These both allow and require the age discrimination remedy to be properly addressed, including mitigating previous tax complexities and risks.
29. Those scheme members who retired after being transferred into the 2015 scheme (i.e. before tapering was suspended) are now entitled to the immediate detriment remedy – as they may have been better off retiring under their legacy final salary scheme (1992 or 2006) than the 2015 scheme. They can now choose to revert to their legacy scheme for the remedy period (April 2015 – March 2022), with their pension benefits adjusted accordingly. These are known as 'immediate choice' members.
30. The Regulations also enable members retiring from 1 October 2023 onwards to decide whether to retire in the 2015 scheme or their legacy scheme for service to March 2022. These are known as 'deferred choice' members. For on-going pension management purposes, such members must be rolled back into their relevant legacy scheme for service

to 31 March 2022. When coming up to retirement, they will choose whether to do so in the legacy scheme or the 2015 scheme for the remedy period, which will be informed by their circumstances at that future time.

31. Locally, circa 570 cases are in scope of remedy. Of these, the pay data extraction and input for 500 have been completed and have been sent to WYPF (or soon will be); 60 are work in progress, aiming to complete this month; and work on 10 has not yet started. Further data work will now be needed to populate the GAD tax and contributions calculator, as referred to earlier.
32. The Regulations specify the provision of Remedial Service Statements (RSS), which set out the pension benefits payable under the legacy scheme and under the 2015 scheme. The LGA has issued an indicative timetable for sending out an RSS to pensioner members who retired on or before 30 September 2023 and have service within the remedy period (immediate choice pensioners). This can be seen in a table at <https://fpsmember.org/remedy/what-remedy>. These members will need to receive an RSS before they can make their immediate choice and receive any higher pension payments.
33. WYPF has also set a priority order for processing the data returns from FRAs, starting with those retired / immediate choice members whose pensions have been affected by being transferred into the 2015 scheme (35 locally), deceased members (2 locally) and active members aged 50 or 55 plus who may be closer to considering retirement (127 locally).
34. It is, however, important to note that the Scheme Manager has until 31 March 2025 to issue an RSS, notwithstanding the intended priority rankings.
35. Members who retire from 1 October 2023 should be provided with an RSS ahead of retirement. This will illustrate their options to choose to receive either their legacy final salary benefits or reformed FPS 2015 benefits for the remedy period. However, as the national RSS is not yet available, for the moment WYPF is providing a remedy retirement pack that together with information from the Service should enable members to exercise their remedy choice. The first retirement in Leicestershire is early November.
36. All active and deferred members will receive a combined Annual Benefit Statement / Remediable Service Statement (ABS/RSS) by 1 April 2025; however, where possible, the LGA expects these will be provided by 31 August 2024 (the deadline for the next ABS). The ABS/RSS will provide members with the current value of both their legacy final salary benefits and their reformed FPS 2015 benefits for the remedy period; as well as projected benefits to normal pension age for active members. This joint statement should become the norm for future years.
37. The Chief Fire and Rescue Officer, Scheme Manager and Monitoring Officer have sought Counsel's opinion on the Regulations in relation to a specific Leicestershire immediate choice case in which legal proceedings have been issued but are stayed pending resolution of the procedural steps referred to above which are necessary to achieve a remedy. This continues to progress and the next procedural steps are presently under consideration.

Matthews On-call Second Options Exercise

38. In summary, the Matthews Second Options Exercise enables on-call firefighters in scope 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 from their start date up to 7 April 2000 and/or continuous service from 5 April 2006. This arises from national judgments around the entitlements of part time workers.
39. The earlier and more limited First Options exercise was in 2014. On-call firefighters employed on any date between 1 July 2000 and 5 April 2006 were given the opportunity to become members of a specially modified version of the 2006 pension scheme from July 2000. This had broadly similar benefits to the 1992 scheme.
40. The Service has identified some 360 current and former on-call personnel who are believed to be eligible for the Second Options exercise, mainly using data from the first options exercise. Of these, 70% started from 1990 onwards. The earliest start date stretches back to 1965. Some 300 are no longer employed. In short, the Service essentially knows who is eligible but does not have all the up-to-date contact details.
41. This current Second Options exercise is therefore proving to be a very significant data collection exercise. Individual pay records do not exist until more recently, with the precise dates varying. Pay scales only go back so far. The present contact details for former on-call staff who may be eligible may not be held.
42. There are also many complexities, e.g. around service breaks, on-call staff who were also (or became) wholetime, interaction with Sargeant / McCloud remedy, and the impact of local working practices at the time. Where a member is impacted by both remedy and second options, the latter must be resolved first as it applies only to March 2015, to provide the correct starting point for remedy from April 2015. This applies to circa 100 personnel locally.
43. To raise awareness of the forthcoming process, posters have been displayed in fire stations, current personnel have been asked to inform past employees whom they may know to contact the Service, and a dedicated pensions email account has been set up which has received some expressions of interest.
44. The Service will send letters to the latest recorded address of all current and former personnel thought to be eligible in early December 2023. They will be asked whether they wish to receive a quote outlining how much it will cost to purchase the backdated service and an indicative estimate of the pension that this will buy. This will trigger more detailed timelines within an overall 18-month implementation period.
45. Where letters are returned undelivered or by the present householder, without a forwarding address, a tracing service will be employed early in 2024.

46. Consideration is being given with regional and national colleagues as to how to then prioritise the detailed work – for example, those already over pensionable age (active or deferred), who would be immediately owed pension arrears if they choose to buy back; those who are also in scope of Sergeant/McCloud; Ill Health Retirements; those below pension age, etc.

Risk Register

47. Good governance requires that a 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.

48. The Register presented has been reviewed and updated to reflect the legislation effective from 1 October 2023. It can be found at Appendix B.

General Sector Updates

49. General sector updates can be accessed on monthly basis from two sources:

- The LGA monthly Firefighters' pensions update bulletins, which focus on the administration of the scheme, the age discrimination remedy, the on-call firefighters second options exercise and wider national pensions updates. The bulletins can be found at <https://www.fpsregs.org/>.
- The Administrator's monthly report which is circulated to the Board, with the latest report attached at Appendix A.

Report Implications/Impact

50. 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.

The *McCloud* remedy has been implemented through primary legislation in Part 1 of the [Public Service Pensions and Judicial Offices Act 2022](#) and scheme regulations have put in place the necessary technical arrangements for implementing the remedy.¹ These regulations came into effect on 1 October 2023.

¹ Firefighters' Pensions (Remediable Service) Regulations 2023

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

Remedy payments 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 Service aims to avoid the latter.

Whilst employees will pay additional backdated contributions or receive refunds as the case may be, this will not apply to the Service as the employer. Rather, the future pension cost implications upon the notional 'fund' nationally will be included in future revaluations, which is expected to increase the employer contribution rate. The next revision to employer rates is due from April 2024, based on the most recent 2020 valuation. The Government has committed to fund FRAs for any increase in 2024/25 only, at this stage. Higher employer rates are potentially a risk to FRA budgets nationally from 2025/26.

Additional day-to-day costs are being incurred meeting the requirements detailed in this report, for example staffing, systems and legal support.

Stuart McAvoy, Head of Finance, Leicester City Council

52. 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 Sargeant/McCloud age discrimination remedy and the Matthews on-call Second Options Exercise.

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

An equality impact assessment has not been carried out, as the Service is seeking to correct inequalities as identified by court proceedings and judgments, and latterly set out in legislation effective from 1 October 2023.

54. Environmental

There are no environmental implications arising from this report.

55. Impact upon "Our Plan" Objectives

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

Appendices

Appendix A – WYPF monthly report, October 2023

Appendix B – Risk Register

Background Papers

Previous Local Pension Board agendas.

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