

Status of Report: Public

Meeting: Local Pension Board

Date: 12 March 2024

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 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 remains firmly on delivering both remedy and second options. However, there continue to be numerous complexities, with issues arising nationally and 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 (which in some cases stretches back to the 1960s), 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 remains an ongoing challenge in terms of staff availability and skills/ experience. Anecdotally, Leicestershire seems to be in a good position relative to the FRAs nationally, although on the ground things continue to feel very pressured with a lot of priority work still to do.

7. Government has confirmed that the presently accepted claims for 'Injury to Feelings' compensation, arising from the age discrimination, will be paid nationally. The Board may recall this relates to compensation for anger, distress, anxiety etc. and for any out-of-pocket losses. However, the accepted claims do not cover all personnel who may feel aggrieved, therefore further legal proceedings remain a distinct possibility.
8. The connection deadline for the new national Pensions Dashboard is 31 October 2026. An updated 'staging timeline' will be set out in guidance, with Fire schemes expected to connect in the summer of 2025, 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. The Pensions Regulator has published the results of the 2022/23 governance and administration survey. This measures six processes as key indicators of public pension scheme performance. Some 67% of fire schemes reported having all six processes in place, a reduction from 74% in 2021. The Scheme Manager will review a factsheet published by the Regulator to identify any particular areas for development locally. The Regulator has also produced a new General Code intended to provide one set of clear, consistent expectations on scheme governance and administration; this was laid in Parliament in January.
10. There has been one breach for the period to 1 November 2023 to 29 February 2024 to draw to the Board's attention. This relates to the 'warm up' letters sent in December 2023 to former retained personnel expected to be eligible for the Matthews second options exercise, and which have been returned as no longer at the address. The Board's attention is further drawn to the increasing risk of delays to the national timetable for implementing the age discrimination remedy.
11. The Scheme Manager has not made any individual decisions since the November meeting of the Board.
12. The risk register has been reviewed and updated and is attached at Appendix B.

Background

Local Management and Administration

13. The local management and administration of the scheme continues. The Finance and HR teams continue to process day to day pensions work.
14. Aside from the day-to-day work, the team has continued to focus 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.

15. A significant exercise in December 2023 was sending out the Matthews second options 'warm up' letters to 372 former and current retained personnel. January and February have seen the team working on the responses.
16. The Government Actuary's Department (GAD) has made available the second version of online calculators to determine retrospective employee contributions, interest and tax. This version includes support for members who purchased service under the Matthews first options exercise in 2014. Later iterations will continue to address identified issues, add functionality and increase the scope of cases that can be processed. However, some specific circumstances require manual calculations and/or specialist advice; officers will need to ensure these are identified and not processed via the calculator.
17. 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 remain a key risk area. Two finance team members remain dedicated to the operation, with more senior colleagues providing guidance, oversight and review. Overtime is again being worked, to speed up data gathering and input. The Scheme Manager is taking an enhanced overview role, with greater focus on some of the detail, following the recent departure of the Finance Manager.
18. As previously reported, the data collection task has not been 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. Some questions regarding the availability of transferred records have arisen more recently.
19. Remedy datasets relating to each affected firefighter have recently been completed and supplied to WYPF. The remedy focus is now on completing the GAD calculators, working through the categories.
20. 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 reportable breaches have been identified for the period 1 November 2023 to 29 February 2024. However, the Board's attention is drawn to a less significant breach relating to the 'warm up' letters sent in December 2023 to former retained personnel expected to be eligible for the Matthews second options exercise, and which have been returned as no longer at the address. This constitutes a breach as these individuals did not receive the notification by the deadline of 31 December 2023. As at the time of writing the report, six such letters had been returned, out of 372 sent. In reality, the actual number may well prove to be higher.
21. The Scheme Manager has not taken any individual decisions since the last Board meeting. However, the Board is asked to note there are ongoing determinations of the relevant employment start date for former retained personnel in the Matthews second options exercise, where older records no longer exist or are inconclusive.

Regional and national updates and communications

22. 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. The Regional Adviser recently spent a day at Birstall HQ working through Matthews second options responses with the Scheme Manager and the team.
23. Staff also attend meetings with WYPF as the scheme administrator. A tailored monthly client report is received, which provides useful general administrative information, local scheme statistics and enables any specific issues to be picked up and addressed. The January 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 receive an update from the WYPF representative.
24. The Regional Adviser and WYPF presented an online 'roadshow' for scheme members across the three FRAs on 13 November. This covered the fine detail of the Sargeant/McCloud remedy, retirement options and a short introduction to the Matthews second options buy-back exercise. The event was recorded and made available online, along with a detailed presentation on the Matthews second options exercise.
25. The LGA is moving to national quarterly training and update sessions for LPB members, replacing the offer for each FRA to receive annual training. Details have recently been published and Board members are encouraged to attend.
26. The Board may also be interested to note that the LGA has recently coordinated a periodic data collection for the Home Office on firefighters who have opted out of pension scheme membership; and the team has submitted the first iteration of a new quarterly return tracking the progress of the Matthews second options exercise for the Home Office and GAD. In addition, HMRC has requested data regards the Matthews first options exercise in 2014, for national insurance adjustment purposes. The status of this exercise is less than clear, and further details have been requested from HMRC.

Age Discrimination remedy (Sargeant / McCloud)

27. By way of a recap, 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. 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. Locally, circa 570 personnel are in scope.
28. 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.

29. 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).
30. 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.
31. 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.
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.
33. The LGA 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 and beneficiaries will need to receive an RSS before they can make their immediate choice and receive any higher pension payments. The Board is, however, asked to note that the earlier parts of this timetable are now expected to slip, due to more recent national complexities. The implications for a specific local case are also under review.
34. These complexities fall into three main areas. Firstly, HMRC and Treasury recently and unexpectedly announced that the interest owed to scheme members by FRAs on remedy payments would be subject in part to tax at the Unauthorised Payment rate of 40%, rather than the individual's personal tax rate, which for around half of affected people is 20%. This has led to a pause in the processing of remedy payments, whilst the implications are explored nationally by LGA. Secondly, RSS statements generally are becoming more complex, delaying them being made available for administrators to use. Thirdly, software updates for the administrators are subject to ongoing delays.
35. The Board will appreciate that the longer the RSSs and remedy payments are delayed, the greater the risk of complaints to the Pensions Ombudsman, fresh legal action against FRAs, and an increase in dissatisfaction generally that will further detract from the orderly processing of Remedy and Matthews second options. Whilst in law the Scheme Manager has until 31 March 2025 to issue an RSS, in practice FRAs are expected by the regulatory

bodies to issue affected individuals with their RSS and to then progress to the Remedy payment in a timely manner, for example as set out in the indicative table.

36. 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 enables members to exercise their remedy choice. This seems to be working well.
37. Looking ahead, all active and deferred members (i.e. not yet receiving a pension) 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.

Matthews On-call Second Options Exercise

38. As the Board will recall, the Matthews Second Options Exercise enables on-call/retained firefighters in scope to purchase pension entitlement as a special/modified 2006 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 identified some 370 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 by the Service.
41. This current Second Options exercise is therefore proving to be a very significant data collection and estimation exercise. Individual pay records do not exist until more recently, with the precise dates varying. Old pay scales are not complete. There are also many complexities, for example around service breaks, on-call staff who were also (or became) wholtime, interaction and aggregation with the Sargeant / McCloud remedy, and the impact of past local working practices. 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.

42. To raise awareness, posters were displayed in fire stations, current personnel were asked to inform past employees whom they may know to contact the Service, and a dedicated pensions email account was created.
43. The Service sent letters to the latest recorded address of all 370 current and former personnel thought to be eligible ahead of the Christmas and New Year holiday, a significant task. The letters followed the national template with some small local variation, the national information booklet was enclosed, and a link to the aforementioned Regional Pensions Adviser's recorded presentation was included. Individuals were asked to return a form stating whether they wish to receive a quote outlining how much it will cost to purchase their backdated service and an indicative estimate of the pension that this will buy. Positive responses trigger more detailed timelines within an overall 18-month implementation period.
44. At the time of writing this report (late February), 80 expressions of interest had been received. These have been acknowledged and the team is now in the process of reviewing each record and providing a more detailed response and seeking any clarifications required. As noted above, the Regional Pensions Adviser has worked through a selection of responses with the Scheme Manager and the team, to develop the approach and to promote consistency across the three FRAs. It has become apparent that the choices are not well understood by many of the recipients, for example individuals have expressed an interest in converting 1992 scheme service despite never having been employed wholtime. This was a known risk given the format and content of the letters, however, it was felt unwise to depart too far from the national template. The team has received a lot of telephone and email enquiries since the New Year, with many being from widows, as expected.
45. Some four personnel have declined the offer, four letters have been returned as the individual is deceased and six have been returned as no longer at the address (again, this was all to be expected).
46. The response levels are in line with neighbouring FRAs. Nonetheless, they total only circa 100 compared to the 370 sent. Plans are therefore in hand across the three FRAs to engage the services of a tracing agency, starting with a more basic level approach and then followed by enhanced tracing methods where necessary. Address verification will enable further letters to be sent with a greater level of confidence. Further general awareness raising is being considered. The Service will then be confident it can demonstrate that best endeavours are being deployed to contact all potentially eligible personnel, as required by the Regulations.
47. Consideration is also being given with regional and national colleagues as to how to then prioritise the detailed work, once the circumstances and intentions of each individual response are clear – 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.

48. The Board is also asked to note that further national guidance and decision making will be needed regards eligibility – two areas, for example, are aggregation with 1992 scheme service and benefits for spouses or other relatives of deceased members over and above the current eligibility provisions.

Risk Register

49. 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.

50. The Register, attached as Appendix B to this report, has been reviewed and updated to reflect the enhanced risks to timelines from national issues.

51. The Board is also asked to note that WYPF has informed FRAs that it has not been required to make any changes to its administration service as a result of Bradford Council's well-publicised financial challenges, so there should be no impact on the administration service provided (WYPF being a part of the City of Bradford Council).

General Sector Updates

52. 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

53. 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.

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

Remedy and compensation 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, although as national complexities and uncertainties increase, the risk of an employer payment becoming necessary is undoubtedly rising.

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. Some Government funding is received towards these costs.

Stuart McAvoy, Head of Finance, Leicester City Council

55. 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.

56. 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.

57. Environmental

There are no environmental implications arising from this report.

58. 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, January 2024

Appendix B – Risk Register

Background Papers

Previous Local Pension Board agendas.

Officer to Contact

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