

Hampshire Fire and Rescue Authority**Finance and General Purposes Committee****10 May 2016****Discretionary Policies****Report by the Chief Officer**

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1 Summary

1.1 This report deals with several discretionary policy related areas:

- The HFRA Discretionary Powers policy in relation to the Firefighters' Pension Scheme (FPS) and what discretions the scheme manager may exercise;
- Continual Professional Development (CPD) payments and whether they should be pensionable;
- The intervals at which ill health retirement reviews should take place and potential for an ill health retirement policy;
- Whether an injury allowance policy for employees should be established in accordance with the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011, it is for the authority to determine if one should be provided; and
- Whether a re-engagement policy needs to be re-established, giving consideration to a recent ombudsman case where individuals who have Protected Pension Age (PPA) and the potential tax implications on re-engagement.

1.2 This report lays out the decisions that the Finance and General Purposes (F&GP) Committee needs to make. As the Scheme Manager on behalf of the Hampshire Fire and Rescue Authority (HFRA) the F&GP Committee needs to consider its position in respect of the pension position relating to each of the points mentioned above.

2 Recommendations

The Committee approve, the following proposals:

- 2.1 A draft FPS Discretionary Policy be produced with reference to the Scheme Managers Discretions document as published by the Local Government Association (LGA) and be brought back to a future meeting of the Committee for approval.
- 2.2 CPD payments to continue as pensionable payments.
- 2.3 A HFRA FPS ill health retirement policy to be developed and brought back to a future meeting of the Committee for approval.
- 2.4 A new re-engagement policy to be developed, which maintains the current

position that staff, will not be re-engaged following retirement, except in exceptional circumstances driven by business need. The policy is to comply with the set draft policy parameters as outlined in Appendix B, and should include any tax implications as a result of Protected Pension Age (PPA). The draft policy will be brought back to a future meeting of the Committee for approval.

- 2.5 That pension payments are abated in the exceptional situation that an individual is re-employed where they are a member of the 1992/2006 FPS.
- 2.6 Not to have a discretionary injury benefit scheme under the Local Government (Discretionary Payment) (Injury Allowances) Regulations 2011 at this time and to publish a written statement to this effect. This policy is to be reviewed periodically.
- 2.7 To conduct injury award reviews for the Firefighters Pension Scheme Compensation (England) Order 2006, in conjunction with ill health retirement reviews, at the appropriate interval determined by the policy once established.

3 Introduction and background

Discretionary Powers Policy

- 3.1 The current HFRA discretionary powers policy is currently only applicable to Local Government Pension Scheme (LGPS) members. There is no discretionary powers policy in place for members of the FPS. The FPS sets out a number of discretionary powers, which the Authority may seek to exercise.
- 3.2 The LGA has identified in its [Scheme Manager Discretions](#) (Firefighters Pension) document that sets out 52 instances where there is a scheme manager obligation and where a scheme manager 'may' exercise a discretionary power, of which the LGA identifies 3 that require immediate consideration.
 1. Delegation (Regulation 5)
 2. Pensionable Pay (Regulations 17) (this relates to CPD payments)
 3. Contributions during absence from work (Regulation 111)

Point 2 is has been considered within this report. Point 1 &3 are to be considered as part of the ongoing development of a FPS discretionary powers policy.

- 3.3 The new FPS discretionary policy should be combined with the HFRA LGPS discretionary policy to make it one policy document. First deliberation would be given to the 3 discretionary powers identified by the LGA that require immediate consideration. Once the FPS discretionary powers policy is developed it will be submitted at a later date to the F&GP Committee meeting for further consideration and recommendation.

4 Continued Professional Development Payments

- 4.1 The Firefighters Pension Scheme (England) Regulations 2014 (regulation 17 (1) (d)), Pensionable Pay, states for the purpose of calculating a members pension the members pensionable pay includes, *'the amount paid to the member for continued professional development which the scheme manager determines is pensionable'*.

It is for the scheme manager to determine whether CPD payments are to be pensionable.

- 4.2 The CPD scheme is designed to recognise and reward experienced employees who are able to demonstrate continual professional development over and above that required at 'competent' level under each of the national standards. Payments date back to 1 July 2007, and are deemed pensionable subject to acceptance by the respective pension scheme regulators.
- 4.3 The Firefighters Pension Scheme 1992 and the Firefighters Pension Scheme 2006 have always treated CPD payments as pensionable. The firefighters pension scheme regulations (2014) regulation 17 now gives the authority a specific discretion as to whether the payments should be pensionable. It has been established that CPD payments have always been paid as a pensionable payment to employees in all of the FPSs within HFRA.
- 4.4 There are currently 560 members who are in receipt of CPD payments, totalling £238,430.03, with 953 members who could benefit from the payment. The CPD payments are paid at £618 or pro-rata for part-time and retained duty system employees. The employer pension contribution rate is 14.3%. Based on assumed 100% pay out of the CPD payments the expected employer pension cost would be £58,023.23 on top of the £238, 430.03 paid to members.
- 4.5 The number of employees in the scheme is expected to increase, potentially rising to 1120 by 2020. Increasing the potential employer contributions to £68,190.98, based on all 1120 being paid £618. This does not allow for any increase in CPD payments or for adjustments for those payments that are pro-rata. The majority of these costs will not be new costs, as most of the members would have transitioned from the 1992 or 2006 schemes where CPD payments are already pensionable.
- 4.6 On the basis that employees are already receiving CPD payments as a pensionable benefit having either transitioned from the 1992 or 2006 pension schemes or as result of being a new member to the 2014 pension scheme, and the potential impact on employee engagement, it is recommended CPD payments continue to be pensionable, aligning with existing practice for the 1992 and 2006 pension schemes and as has applied for the 2015 scheme.

5 Ill-health retirement reviews

- 5.1 The Firefighters' Pension Scheme (England) Regulations 2014 (regulation 65), provides an ill-health pension in the event a member is incapable of undertaking regular employment. The ill-health pension is a payment made up of either a lower tier ill-health pension or the lower tier ill-health and the higher tier ill-health pension.
- 5.2 Regulation 68, review of ill-health award or early payment of retirement pension states, where a member has been in receipt of an ill-health award, and is for less than 10 years, and the member is under deferred pension age, the scheme manager must consider, at such intervals as it is considers appropriate whether the individual has become capable.
- 5.3 The consequences of the review will be to determine if the individual (regulation 69) who is receipt of a higher tier ill-health pension has become capable of undertaking regular employment. If, on such review they have become capable the higher tier

ill-health pension payment will cease and they will continue to receive the lower tier ill-health pension. Where an individual who is in receipt of the lower tier ill-health pension has become capable of performing the duties appropriate to the role from which they retired on the grounds of ill-health the payment will cease. Appendix A sets out the detail of regulation 68 and 69.

- 5.4 For those individuals who are no longer entitled to the lower tier of ill-health pension, the employer will need to make an offer of employment to a role from which the member retired from on the grounds of ill-health. Should no offer be made, the lower tier ill-health pension will continue in payment. At present there is no formal HFRA ill-health policy in place, although ill-health pensions are currently granted. There is however no ill-health reviews being undertaken.
- 5.5 It is proposed the further work is undertaken with Occupational Health to determine the appropriate review interval and to scope the full financial implication of implementing a review interval. Although research has shown that some fire authorities are conducting ill-health reviews within the first 5 years of ill-health retirement.
- 5.6 It is recommended that a HFRA ill-health retirement policy is put in place and that such policy includes:
- a review interval that will be determined following further investigation;
 - an offer of employment is made subject to a suitable role (in the same role from which they retired) being available, should no role exist the member will continue to receive the lower tier ill-health pension;
 - where the role is declined, a deferred member's account is established under regulation 48 (account established after ill-health award ceases to be payable); and
 - where a deferred members pensions being paid early ceases to be entitled to ill-health pension, the members accounts will be adjusted under regulation 47 (adjustment of account after early payment of deferred pension ceases).
 - where a member has currently been in receipt of an ill-health award for more than 10 years and the member is under deferred pension age they will not be subject to review, in line with regulation 68.
- 5.7 A draft policy will be produced and brought back to a future meeting of the Committee for approval.

6 Re-engagement Policy

- 6.1 There is no published re-engagement policy apart from a few lines within the [Exit Policy](#), stating the re-employment option is currently under review and unavailable at present. Generally the current position is not to re-engage staff. Only in exceptional circumstances driven by business need would a request be considered.
- 6.2 It should be noted, where a pensioner who was previously a member of either the 1992 or 2006 Firefighters Pension Scheme, obtained re-employment, they may be subject to abatement of pension with an authority in any capacity. Pensions accrued under the 2015 scheme will not be subject to abatement, in line with Lord Hutton's recommendation, the greater use of flexible retirement and removal of abatement rule is in the context of employees having later retirement ages and a career average pension scheme.

6.2.1 The purpose of abatement is:

- to safeguard public expenditure by restricting the total remuneration made from public funds for those who have not genuinely retired from a public service career.
- on propriety grounds: to avoid accusations of favouritism or even corruption if public servants were allowed to receive both pay and pension from public funds whilst remaining in public service, particularly if they remain in the same job
- to ensure value for money is achieved and that public funding targeted through expenditure and tax relief at long-term retirement provision is focussed on retirement or preparation for retirement, rather than being used during part of an employees working life.

6.3 It is proposed that pension payments are to be abated on the principle that the annual rate of pay and rate of pension payable does not exceed the annual rate of pay received prior to retirement where a pensioner who was previously a member of either the 1992 or 2006 Firefighters Pension Scheme.

6.5 It is for authorities to have procedures in place to identify pension members that are re-employed. Authorities should be aware of whether the individual has previously been employed by a fire and rescue authority. As such (Appendix B) it is recommended that a new re-engagement policy is put in place that maintains the current position, where staff will not normally be re-engaged, however the policy will set out the parameters for exceptional re-employment, including any tax implications as a result of PPA.

6.6 **Protected Pension Age**

A recent Ombudsman determination [PO-7096](#), where the Pension Ombudsman decided that an employer of a member with PPA for the purpose of the pensions tax regime should have provided information to that member about the possible adverse tax consequences of becoming re-employed after starting to receive their pension. The complaint was brought against the Police & Crime Commissioner in relation to the Police Pension Scheme, although it is significant for all employers participating in schemes where members can take benefits earlier than the current normal minimum pension age of 55.

6.7 Under the Finance Act 2004, the minimum pension age rose from 50 to 55, it resulted in the concept of PPA, which was introduced in order to avoid detriment to a member whose scheme rules already gave the right to take benefits earlier than 55 (provided they have 25 or more years of pensionable service). Benefits paid in such circumstances will be treated as authorised payment for the purpose of pension tax rules. A key condition in relation to PPA is re-employment after taking benefits. A member cannot become re-employed with the same or connected employer unless one of two conditions is met:

- 1 There has been at least a six month break in employment.
- 2 There has been at least one month break in employment and either the new employment is materially different from the previous employment or the scheme rules provide for abatement, that is, reduction of the members pension to reflect his earnings.

6.8 Where an individual who has retired with a PPA is subsequently re-employed by an FRA before they have reached age 55 and neither condition is met, the member will

lose their PPA, and all pension benefits paid to them from the date of retirement until age 55 will be treated as unauthorised payments and as a result they will become liable for substantial tax charges (at least 40% of the value of payments made).

- 6.9 It is for all FRAs to have a policy in place to ensure re-employment conditions are met where an officer has retired under the age of 55. Scheme managers need to ensure information on important tax changes are provided to employees who may or are affected, not just in relation to PPA, also with regards to possible tax charges relating to lifetime allowances and annual allowances. It is proposed that in the exceptional situation that an individual is re-employed from HFRA or another fire and rescue authority a procedure is in place to determine if any abatement of pension is necessary and whether the individual is likely to be impacted by any tax implications as result of PPA (Appendix B).

7 Injury Allowance Policy

- 7.1 There are two injury allowance regulations that applies to HRFA employees, the Local Government (Discretionary Payment) (Injury Allowances) Regulations 2011 and The Firefighters Pension Scheme Compensation (England) Order 2006. There is currently no local policy in place for either regulation; the report seeks to address this gap.
- 7.2 The Local Government (Discretionary Payment) (Injury Allowances) Regulations 2011, requires local government employers to publish a written statement (and to keep that statement under review) as to whether they intend to adopt a discretionary injury benefit scheme. The provision is to remove any confusion as to whether an employer participates in an injury benefit allowance arrangement. The regulations apply only to employers listed in Schedule 2 of the Local Government Pension Scheme (Administration) Regulations 2008.
- 7.3 In formulating and reviewing a discretionary injury benefit policy the employer must:
- (a) have regard to the extent to which the exercise of its discretionary powers (in accordance with the policy), unless properly limited, could lead to a serious loss of confidence in the public service; and
 - (b) be satisfied that the policy is workable, affordable and reasonable having regard to the foreseeable costs.
- 7.4 By implementing a discretionary injury benefit scheme, the cost of any payment is not to be met out of any pension fund; the employer (authority) will be responsible for all costs associated with it. Initial research into what other HFRA have in place has indicated they do not have a discretionary injury benefit scheme in place. In addition regular and retained firefighters are covered by compensation under the Firefighters Pension Scheme Compensation (England) Order 2006.
- 7.5 It is proposed that a written statement is published confirming that HFRA does not have an Injury Allowance Policy set up at this time and that this position will be reviewed periodically.
- 7.6 The Firefighters Pension Scheme Compensation (England) Order 2006 applies only to regular and retained firefighters and is a separate form of injury award from the Local Government (Discretionary Payment) (Injury Allowances) Regulations. The regulations may, subject to certain conditions, provide compensation in the

event of an injury in the exercise of his/her duties as a regular firefighter. The regulations set out the compensation scheme in relation to injury award and a duty related compensation payment.

- 7.7 A fire and rescue authority will review injury awards paid to firefighters to consider whether the degree of disablement has substantially altered or the disablement occasioned by the qualifying injury has ceased. The reviews will take place at intervals decided by the authority; they have a discretion to decide that a particular case need not be reviewed if 5 years have passed since the injury award first became payable.
- 7.8 It is proposed HFRA conduct injury award reviews for the Firefighters Pension Scheme Compensation (England) Order 2006, in conjunction with ill health retirement reviews, at the appropriate interval determined by the policy once established, as the two reviews will be linked.

8 Risk analysis

- 8.1 Not complying with the obligations to have specific measures or policies in place to address each of the areas set out above would effect a situation of non compliance with the relevant regulations. Furthermore by having no or little guidance for members on areas such as ill-health retirement reviews or, injury allowance false expectations and/or ambiguity over what HFRA practices are in place could arise. By not having a policy and process in place for re-engagement with particular reference to the potential tax implications for members with PPA, HFRA could be exposed to claims by members to the Pension Ombudsman in some circumstances.

9 People Impact Assessment

- 9.1 The proposals in this report are considered compatible with the provisions of the equality and human rights legislation. An equality impact assessment is to be completed alongside further policy development work that is to be completed.
- 9.2 In relation to the CPD payment recommendation the equality impact assessment remains the same as it is current practice, although if the recommendation was not supported an equality impact assessment would need to be undertaken.

10 Conclusion

- 10.1 This report sets out information relating to the current regulations as appertaining to the duties of the F&GP Committee in its role as Pension Scheme Manager. The recommendations provide the Committee with a number of key issues upon which it needs to establish policy in respect of pensions. These areas of policy relate to discretionary powers, ill-health retirement reviews and, re-engagement policy. It notes the need to provide an injury allowance written statement to document the fact that HFRA has polices and practices in place to help ensure compliance and procedural adherence where required. Furthermore, the paper identifies that where polices need to be developed and implemented, the timeframe for these is at least 6 months to allow time for suitable engagement, analysis and research of the subject areas concerned. As part of the development of the recommended policies, the trade unions will be engaged with as appropriate.

11 Background papers

11.1 The following documents disclose the facts or matters on which this report, or an important part of it, is based and has been relied upon to a material extent in the preparation of the report:

- [The Firefighters' Pension Scheme \(England\) Regulations 2014](#)
- [The Firefighters' Pension Scheme \(England\) Order 2006](#)
- The Local Government Association [Scheme Manager Discretions](#) (The Firefighters' Pension Scheme (England) Regulations 2014)
- [The Local Government \(Discretionary Payments\) \(Injury Allowances\) Regulations 2011](#)
- [The Firefighters Pension Scheme Compensation \(England\) Order 2006](#)
- Pension Ombudsman [PO-7096](#)
- [Amendments to the Firefighters' Pension Scheme \(1992\) and New Firefighters' Pension Scheme \(2006\)](#) – Summary of Responses to the consultation. June 2013. (Abatement s74)
- LGPC [Bulletin 88S](#) – December 2011 Injury Allowances
- [Explanatory Memorandum](#) to the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011
- [Exit Policy](#)

Ill-health retirement reviews

The firefighters pension scheme regulations (2014) (regulation 68) review of ill-health award or early payment of retirement pension sets out:

(1) Where a member (P) has been in receipt of an ill-health award under regulation 65 (entitlement to lower tier ill-health pension and higher tier ill-health pension) for less than 10 years, and is under deferred pension age, the scheme manager must consider, at such intervals as it considers appropriate, whether P has become capable

- (a) of performing any duty appropriate to the role from which P retired on grounds of ill-health; and
- (b) of undertaking regular employment

(2) The scheme manager must consider, at such intervals as it considers appropriate before the member reaches deferred pension age, in relation to a pensioner member who was a deferred member and whose pension is being paid early by virtue of regulation 67 (early payment of retirement pension to a deferred member), whether the member has become capable of undertaking regular employment.

The consequences of the review (regulation 69)

(1) If, on such consideration as is mentioned in regulation 68(1), the scheme manager determines (a) that a member (H) who is in receipt of a higher tier ill-health pension has become capable of undertaking regular employment, H's entitlement to that pension must cease with immediate effect.

(2) Subject to paragraph (3), a lower tier ill-health pension must continue to be paid to a member who ceases to be entitled to a higher tier ill-health pension.

(3) If –

- (a) on such consideration as is mentioned in regulation 68(1), the scheme manager determines that a member (L) who is in receipt of a lower tier ill-health pension has become capable of performing the duties appropriate to the role from which L retired on grounds of ill-health; and
- (b) the employer makes L an offer of employment in that role L's entitlement to a lower tier ill-health pension must cease whether L accepts or declines the offer.

(4) The employer must by written notice when making a paragraph (3)(b) offer specify a date by which, if the member has not accepted the offer, the member will be taken to have declined it.

(5) A lower tier ill-health pension cease to be payable on the earlier of the following dates –

- (a) the date on which a member re-enters scheme employment pursuant to the a paragraph (3)(b) offer; or

(6) Where a member declines a paragraph (3)(b) offer, a deferred member's account must be established under regulation 48 (account established after ill-health award ceases to be payable) from the date on which that member's ill-health award cease to be payable in accordance with paragraph (5)

(7) If, on such consideration as is mentioned in regulation 68(2), the scheme manager has obtained the Independent Qualified Medical Practitioner's (IQMP) opinion which states that a deferred member (P) whose deferred pension is being paid early has become capable of undertaking regular employment, P's entitlement to early payment of the pension must cease with immediate effect and P's deferred member's account must be adjusted under regulation 47 (adjustment of account after early payment of deferred pension ceases).

Draft Re-Engagement Policy Parameters

The current position is that staff will not to be re-engaged following retirement. Only in exceptional circumstances driven by business need would a request be considered. In those exceptional situations certain policy parameters must be met.

The Chief Fire Officer shall have the delegated authority to approve requests for retirement and re-engagement, following the approval of a business case by the Workforce Directors. The following will be taken into account:

- Financial benefit to the authority
- Impact on Terms and Conditions of service including any potential redundancy costs due to continuous service
- Skill shortages within the authority and staffing requirements
- Skills of the firefighter, suitability for the post
- Health & Fitness of the firefighter
- Absence record of the firefighter
- Ability of firefighter to maintain competency
- Rates of pay (to be the same as other firefighters in the authority employed at the role re-engaged)

Where Firefighters are re-engaged following retirement, the following will apply:

1. Pension payments to be abated on the principle that the annual rate of pay and rate of pension payable does not exceed the annual rate of pay received prior to retirement where a pensioner who was previously a member of either the 1992 or 2006 Firefighters Pension Scheme.
 - 1.1 Under Part 9, rule 3 of the New Firefighters Pension Scheme 2006, a FRA responsible for paying a pension can reduce it, or withdraw it altogether, during any time where a retired member is re-employed in any capacity by any FRA
 - 1.2 Under Rule K4 of the Firefighters Pension Scheme 1992 where a FRA responsible for paying a pension can reduce it, or withdraw it altogether, during any time where a retired member is re-employed.
2. Procedures are in place to identify pension members that have been re-employed, and whether the individual has previously been employed by a fire and rescue authority.

Protected Pension Age (PPA)

3. From the 6 April 2010, an individual who retires with a PPA and who subsequently takes up employment will lose that protection if they are re-employed with the same or connected employer unless one of two conditions are met:
 - 1 There has been at least a six month break in employment.
 - 2 There has been at least one month break in employment and either the new employment is materially different from the previous employment or the scheme rules provide for abatement, that is, reduction of the members pension to reflect his earnings.