

**Hampshire Fire and Rescue Authority
Fire Pension Board Report**

27 February 2017

Item: 6

Fire Pension Board Status Report – as at 15 February 2017

Report by Chief Financial Officer

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1 Summary

- 1.1 Following the establishment of a stable Pension Board it is proposed that rather than present a detailed Issues Log each meeting it would be better to provide a quarterly employers management report that focusses on the key issues and workstrands.
- 1.2 The intent being to provide the Board with an updated work programme, drawing attention to matters of interest and concern. The Board will have an opportunity to direct and develop subjects that they would like covered going forward, which it is proposed would include the creation of a risk log.
- 1.3 This report, together with attachments, provides the framework for this meeting Agenda.

2 Recommendations

- 2.1 That the Board is invited to note the content of this report, in particular the intention to develop an appropriate work programme for the Board and to highlight any immediate training needs and how best to meet these.

3 The Pension Regulator – Breaches of Law

- 3.1 As agreed at the last Pension Board we self-reported a disclosure breach for the following two schemes:
 - Firefighters' Pension Scheme (FPS 1992) - Hampshire Fire and Rescue Service:
 - Firefighters' Pension Scheme 2015 - Hampshire Fire and Rescue Service (HFRS)
- 3.2 This was because we had failed to meet the 31st August deadline for issuing the Annual Benefit Statements (ABS). The reason for this was due to Civica's inability to provide the software updates to enable accurate and complete statements to be prepared.

3.3 This problem was subsequently rectified and ABS were issued before the end of December 16.

3.4 The number of personnel affected are summarised as follows:

Scheme	Actives	Deferred	Pensioners	comments
1992	220	74	783	
2006	154	376	25	Not yet on TPR system
2006 (Modified)	45	41	56	Not yet on TPR system
2015	961	94	0	

Note: The 2006 Modified Scheme has not been created on The Pension Regulator (TPR) portal and we have a outstanding request for this to be achieved – raised in September 2016. Thus we were unable to report a breach for this scheme.

3.5 The Pension Regulator responded on 3rd January 2017 as follows:

As you are aware, The Pensions Regulator cannot waive the requirements of the Pensions Acts. However, we are a risk-based regulator and, in certain circumstances, we can take a pragmatic approach.

Based on the information you have supplied, the regulator will not take any action against the trustees at the current time for the late production of Annual Benefit Statements being sent out.

Please be aware that, should additional information be reported, we do reserve the right to reconsider this decision.

4 30 Year Pension Contributions – Refund Holiday

4.1 Status report

Retired personnel in scope:			87
Of which:	Repayments processed	25	
	To be submitted to GAD	4	
	Checked and calculation in hand	30	
	Outstanding date or other queries	28	
In-Service personnel in scope:			21
Of which:	Current employees in scope	10	
	Future employees in scope	11	

- 4.2 Payments are calculated using a “repayment calculator” issued by the Government Actuary Department (GAD) which calculates the net payment due (including loss of interest) and the gross amount. The net payment (including interest) is paid to the beneficiary using BACS, subject to them completing an HMRC declaration, which avoids them having to report the payment via the self-assessment tax process. The “grossed-up” element will be paid to HMRC on completion of the exercise and the gross amount will be refunded to the HFRA by the Home Office.
- 4.3 The 28 cases with outstanding queries relate to discrepancy with a date (or dates) on their personnel record. In some cases this relates to transferred in service and individuals have been written to in order to secure “Proof of Entitlement”.
- 4.4 The agreed target completion date is 31st March 2017 and this date should be met, subject to GAD completing a bespoke calculation for any personnel whose eligibility period exceeds 2 years as this is outside the scope of the standard GAD calculator.

5 Unauthorised payment cases

- 5.1 The rules regarding a “Protected Pension Age” for firefighters who elect to retire between 50 and 55 are quite specific regarding continuing employment with a linked employment. Individuals need to retire from their whole-time position and resign from any RDS position (this does not need to be a role within Hampshire). They may seek re-employment in their previous RDS position after a break of one full calendar month.
- 5.2 The brief extract of the change in re-employment conditions is copied below:

In 2010, changes to the Finance Act 2004 changed the normal minimum pension age from 55 to 50. Firefighters (and Police Officers) were given a protected pension age, meaning they could still retire early under the rules BUT that if they were re-employed unless they satisfied the employment conditions the benefits paid to them could become unauthorised payments and they would face a tax bill.

The re-employment conditions are

- 1. the member not re-employed until at least 6 months after they became entitled to their benefits under the scheme*
- 2. the member is re-employed within 6 months but after a break of at least 1 month but the pension scheme is a public service pension scheme and the member's benefits under the scheme include a scheme pension which is liable, until at least attaining age 55, to abatement whilst the member is so employed*

3. *the member is employed within 6 months but after a break of at least 1 month in an employment(s) which is(are) materially different in nature from the employment in which the member was employed immediately before becoming entitled to their benefits.*

5.3 All current firefighters who are in the 1992 scheme and thus may be affected by this ruling have been written to. This is already benefitting two personnel who would have been affected by punitive tax charges had they not been aware of this ruling.

5.4 Feedback received so far has been extremely positive and affected staff have asked whether such advice may be included within the Pre-retirement course agenda. **It is recommended that this proposal is supported.**

5.5 Once an individual reaches the normal minimum pension age of 55, the above restrictions cease to apply.

5.6 There are 4 outstanding “unauthorised payment” cases relating to retirement/re-employment cases dating back to 2010 to 2011. We have now submitted all documentation to enable HMRC to calculate a composite Contract settlement figure. HFRA will be making the settlement on the members’ behalf as at the time of their retirement and re-employment they were not fully informed of the rules by their employer.

5.7 We have a provision within the HFRA accounts to hopefully satisfy this outstanding liability. We expect this to be able to settle this before 31st March 2017.

6 The Pension Regulators’ (TPR) - Self Assessment Tool – Action Plan

6.1 The opportunity to complete TPR self assessment tool was taken and a copy of the report is attached (Appendix A). Overall it is believed we are in a good position and the considerable progress made over the past 12 months underpins this assessment. There are, however, a few areas that require additional work, or are ongoing, and these have been extracted.

Governing your scheme – 2 AMBER	
Question	HFRS position / proposal
Do you have policies and arrangements in place to help pension board members acquire and retain requisite knowledge and understanding.	We have run one Pension Training workshop and the outcome is reflected in the updated TNA (see later report heading). We have commenced running regular “teach-in” sessions after each quarterly board meeting and specific skills gaps will be separately addressed and suitable training arranged.
Do you have a register of interests of equivalent	Proposal is to establish and maintain a register of interests. This is to ensure that a pension board member does not have a conflict of interest that will impact on their ability to fulfil their role.

Managing Risks & Issues – 1 AMBER	
Question	HFRS position / proposal
Do you have a service level agreement, or equivalent, in place with your scheme administrator, whether in house or outsourced?	There is a Service Area Accession Agreement and it is proposed that this is circulated for the Board to confirm that it meets their expectations.

Administration – 1 RED; 4 AMBER	
Question	HFRS position / proposal
RED- Do you have processes in place to monitor scheme records for all membership types on an ongoing basis to ensure they are accurate and complete?	We have examples of errors in individual records that were identified by Internal Audit and has come to light as part of the “Pension Holiday” work. A more robust and enduring process needs to be established. [see Recordkeeping item]
AMBER - Do you have controls in place to ensure that your employer(s) provide timely, accurate and complete data?	Omission of new starters from the Pension Scheme and an absence of a robust process for new starters has influenced this assessment. Work is underway to establish new processes and link to the on-line web pages and searches. . [see Recordkeeping item]
AMBER – When did you last carry out a data review exercise?	This should be carried out at least annually and this should include the accuracy of the member data held, including retired members. And proof of life. . [see Recordkeeping item]
AMBER – Where you have identified poor quality or missing data, do you have an improvement plan to address.	This is linked to the previous three points and will be addressed as the data review and validation is conducted.
AMBER – Have you taken steps to ensure that member communications are clear, accurate and accessible?	We are currently reviewing the Intranet and access to pension information. We have recently held briefings on current subject – TP for example. We have a dedicated fire.pension@hants.gov.uk email and communication to fire personnel has improved considerably over the past 12 months. It might be worthwhile to seek customer feedback on what is working (or not) for them. It is also proposed that regular meetings with the Representative Bodies are introduced to further aid communication and information exchange.

7 Board Member TNA – update following LGA workshop training day in November 2016

7.1 All Board Members have provided an updated TNA which has been consolidated and is attached (Appendix B). Their current assessment (previous ratings shown in brackets) shows a substantial increase in knowledge and awareness following the LGA sponsored workshop.

7.2 In addition to the briefing sessions that are planned to take place after the end of each future Board meeting, it may be that additional external training would be beneficial. Two areas stand-out in the attached TNA summary:

- Tax and contracting out (parts)
- Role of advisors and key persons.

7.3 The Board may wish to take a view on what addition training would be of benefit.

8 RDS Buy-back scheme

8.1 The scheme is now closed and the number of personnel who elected to take up the opportunity is as follows:

- 937 members identified and written to.
- 276 individuals requested individual cost information which was provide in June 2015 with an options form to return by 1 Sept 2015 if they want to proceed.
- 168 accepted.

8.2 Since the last Board meeting and as previously discussed, all RDS members who made a lump sum payment of pension contributions to buy back years have been issued with a Tax Certificate to send to HMRC. This will enable them to obtain tax relief at their highest marginal rate on their pension contributions.

8.3 A similar letter has been issued to the direct debit Cohort but this covers contributions made within the Tax Year 2016/17. Further annual certificates will be required to be issued in future years, or at the point an employee leaves HFRS and has to settle the balance outstanding from any lump sum due.

8.4 The Issue over how this whole process was handled Nationally has been raised with the SAB and at a recent meeting with the Rep. bodies concern was expressed over the communication process that commenced in 2014.

9 2015 CARE Scheme – Temporary Promotion is not pensionable

9.1 At the last Board meeting reference was made to a potential for confusion over the exclusion of TP as a pensionable emolument within the 2015 CARE scheme. It was agreed that the Employer would write to the LGA (copy SAB) seeking clarification of the rules.

9.2 An email was sent on 19th December 2016 and the response received from the LGA was:

Thank you for your email. As you correctly state there are a number of interpretations as to whether temporary promotion should be interpreted as an emolument paid to a member on a temporary basis.

Following the pensionable pay workshop in July, the Scheme Advisory Board recognise that there is an inconsistency of interpretations, and agreed to do some work on this to improve understanding.

This work is continuing, but unfortunately will take some time to resolve. I will continue to provide an update.

9.3 It is not believed any further action is necessary or required until the LGA or SAB provide further direction and clarification and the Board is invited to confirm this.

10 Training Allowance (TA) and Additional Responsibility Allowances (ARAs)

10.1 A paper is being presented to the Standards & Governance Committee on 23 March 17 to consider and approved the recommendations for the treatment of TA and ARA.

10.2 A copy of the latest draft is attached at Appendix C. This paper is still subject to final review regarding the recommendation for two of the ARAs – Dog Handlers and Hazmat. In essence, the following is recommended:

- That the TA becomes a pensionable emolument with effect from 1st April 2017; and
- ARAs in totality remain non-pensionable allowances.

10.3 Board members are invited to note this position and the reasons behind the recommendations.

11 Record Keeping Plan

11.1 The Pension Regulator requires Employers and Pension Administration organisations to develop and maintain an adequate record keeping plan. Work is underway to develop a plan that would be applied consistently across all HCC pension schemes: Fire; Police; LGPS; and Teachers.

11.2 The TPR self-assessment identified areas of weakness that may be linked to record keeping and so this is a key area for improvement.

11.3 The target date for completion of this work is 31st March 2017 and it is intended that the outcome of this work will be presented to the Board at their next meeting.

12 Risk Register

- 12.1 Currently the HRFS does not have a risk register for Fire Pensions. It is proposed that one is developed and Board members are encouraged to actively participate in the identification of risks that should be included based on probability; materiality and likelihood.

13 Web pages / intranet access and content

- 13.1 Work is ongoing to improve both the content and access to the website. It is proposed to have a future (soft) launch event once the relevant changes and enhancements have been made which will include details of the pensions resources now available to firefighters.
- 13.2 There is also a proposal to carry out a staff survey prior to finalising the website so that customer views and feedback is considered as part of this refresh exercise. The Board is asked to consider whether they would endorse such an approach or have any other ideas.
- 13.3 It is intended that the new website will “signpost” staff to who to contact for specific pension queries and to this end the Employer team is being enhanced through the secondment of Claire Neale from the Pension Services team for a period of 2 years.

The Pension Regulators' (TPR) - Self Assessment Tool – Action Plan

Public Service Self Assessment Tool

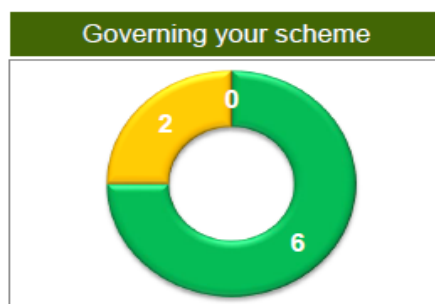
Results

Using this report

In this report we have provided an indicative risk rating for each answer you selected, alongside some guidance and links to additional information. This report does not provide an assessment of compliance with the law – it indicates areas that might be of particular concern and where you may wish to focus. You should seek legal advice where required.

To minimise the risk of non-compliance with the law, you should conduct a comprehensive review of your scheme against the requirements set out in the legislation and the guidance provided in our code of practice. Statistics refer to findings from TPR's 2015 survey into the Governance and Administration of Public Service Schemes.

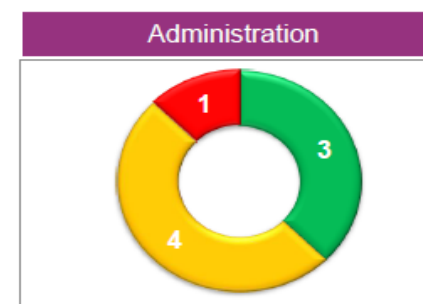
A summary of your results



Percentage of questions answered: 100%



Percentage of questions answered: 100%



Percentage of questions answered: 100%

Results - Governing your scheme

Question 1 - Have you clearly defined and recorded the roles and responsibilities of the pension board?		
Your Answer:	Yes	Green
Feedback:	You should keep roles and responsibilities under review, in particular considering any changes to scheme regulations or working arrangements (eg where certain functions are delegated by the scheme manager). Roles and responsibilities should be made clear during the board member appointment process, so they are clear about what is expected of them and what the role entails. You should also ensure these are communicated and understood by relevant parties such as the administrator, members or in the case of local government pension schemes, the pension committee, eg by publishing them alongside other pension board information.	
Question 2 - Have you published information about the pension board and ensured it is kept up to date?		
Your Answer:	Yes – we publish information to legal requirements and provide additional information about the pension board and board business	Green
Feedback:	Our code of practice sets out examples of additional information you may wish to consider publishing if you don't already do so. You should monitor all published data to ensure it remains accurate and complete. You should also ensure that the information is suitably accessible – it should be available to all scheme members and all staff who are eligible to be automatically enrolled into the scheme without them needing to ask for it. Further information is on our website.	
Useful Links:	Code of Practice 14: Publishing information about schemes Website: Publishing scheme information	

Question 3 - Do you have policies and arrangements in place to help pension board members acquire and retain the requisite knowledge and understanding?

Your Answer:	In development	Amber
Feedback:	Board members must have the required knowledge and understanding so they can perform their role properly. Four in five public service schemes have put in place policies and arrangements for acquiring and retaining knowledge and understanding – this key process helps board members meet their legal obligations. Further practical guidance on knowledge and understanding is available in our code.	
Useful Links:	Code of Practice 14: Knowledge and understanding required by pension board members	

Question 4 - Do you use the following for your pension board?
a) Training Plans

Your Answer:	Yes	Green
Feedback:	Board members should regularly review their skills, knowledge and competencies to identify gaps and weaknesses, and should invest sufficient time in their learning and development. Many schemes use pension board training plans to help board members acquire and retain knowledge and understanding. If you don't already do so, you may wish to consider the use of individual training plans as the training needed may vary according to each member's role and expertise. Further information is in our code and our quick guide to personal development.	

b) Individual training needs analysis		
Your Answer:	Yes	Green
Feedback:	Using individual training needs analysis can help board members identify specific individual training needs. Training is an important part of the pension board members' role and they should invest sufficient time in their learning and development alongside their other responsibilities and duties. Board members should keep their skills, knowledge and competencies under regular review to identify gaps and weaknesses for further training.	
c) Training log		
Your Answer:	Yes	Green
Feedback:	Many schemes use training logs to help board members track their learning. They help you demonstrate steps you have taken to comply with legal requirements. You should regularly review the training log to ensure that risks associated with knowledge gaps are being mitigated. Board members should keep their skills, knowledge and competencies under regular review to identify gaps and weaknesses for further training.	
Useful Links:	Code of Practice 14: Knowledge and understanding required by pension board members Quick guide to personal development Template: Assessing your Learning Needs	

Question 5 - Do you have a conflicts policy and procedure for pension board members?

Your Answer:	Yes	Green
Feedback:	Nine in ten public service schemes have put conflicts policies and procedures in place for board members. These help identify, monitor and manage any interests that have the potential to become conflicts. You should review the policy and procedures regularly to ensure they remain fit for purpose.	
Useful Links:	Code of Practice 14: Conflicts of interest and representation	

Question 6 - Do you have a register of interests (or equivalent)?

Your Answer:	In development	Amber
Feedback:	Conflicts of interest in pension board members are prohibited. The scheme manager must be satisfied that a pension board member doesn't have any conflicts of interest. A register is used by three quarters of public service schemes, and provides a simple and effective means of recording and monitoring interests that have the potential to become conflicts. Further information is in our code.	
Useful Links:	Code of Practice 14: Conflicts of interest and representation	

Results - Managing risks and issues

Question 1 - Do you have procedures in place for assessing and managing risk?		
Your Answer:	Yes	Green
Feedback:	You should review your processes regularly to ensure they remain effective and fit for purpose. Seven in ten public service schemes aim to review the effectiveness of their risk management and internal controls systems at least annually. Our code provides practical guidance on risk management to consider in your review.	
Useful Links:	Code of Practice 14: Managing risks Checklist: Internal Controls	

Question 2 - Do you have a risk register?		
Your Answer:	Yes	Green
Feedback:	You should review risks regularly. Three in five public service schemes assess risks at least every quarter. The risk register, and any other internal controls you put in place, should be kept under review to ensure that they remain effective and fit for purpose.	
Useful Links:	Code of Practice 14: Managing risks Example Risk Register	

Question 3 - Where you have outsourced services, do you ensure that providers demonstrate that they have internal controls in place?

Your Answer:	We don't use outsourced services	N/A
Feedback:	Not applicable.	
Useful Links:	Code of Practice 14: Managing risks	

Question 4 - Do you have a service level agreement, or equivalent, in place with your scheme administrators, whether in house or outsourced?

Your Answer:	No	Amber
Feedback:	The administration of the scheme is where a larger proportion of the scheme manager's duties are carried out – it is vital that you pay attention to the way your scheme is administered. You need to be confident that your administrator is delivering its services and take steps to address poor performance. Seven in ten public service schemes report having a documented service level agreement in place with their scheme administrator – this enables them to measure the timeliness, quality and accuracy of administration. Our code provides further guidance on internal controls.	
Useful Links:	Code of Practice 14: Managing risks	

Question 5 - Are your internal dispute resolution arrangements clearly communicated to members and others?

Your Answer:	Yes	Green
Feedback:	You should consider using a variety of ways to communicate your arrangements to members, for example in joining booklets, benefit letters or decision letters. Schemes should also make their arrangements accessible to potential applicants, for example by publishing them on a scheme website, as some public service schemes do. You should ensure that the effectiveness of the arrangements is assessed regularly. Further information on internal dispute resolution is available in our code.	
Useful Links:	Code of Practice 14: Internal dispute resolution	

Question 6 - Do you have procedures in place to identify, assess and report breaches of the law?

Your Answer:	Yes	Green
Feedback:	You should review your procedures regularly so they remain effective and fit for purpose. Some pension boards have made breach monitoring a standing agenda item, where they review all breaches (whether significantly material or not) to track progress and ensure issues are addressed. If a breach does occur and you think it is of material significance to us, you should report it to us as soon as possible. Don't wait for the issue to be resolved. Our code details information you should include in a report.	
Useful Links:	Code of Practice 14: Reporting breaches of the law	

Results - Administration

Question 1 - Do you have a process in place to ensure that information is provided to TPR as required (eg through the scheme return)?		
Your Answer:	Yes	Green
Feedback:	You must provide us with certain information and keep this information up to date, and complete a scheme return when asked. To help you meet your legal obligations, you should provide us with a 'scheme contact' via our online portal Exchange and make sure this information is kept up to date in light of role changes. Larger schemes may wish to provide several people with access to Exchange.	
Useful Links:	Website: Reporting requirements Exchange	

Question 2 - Do you have processes in place to monitor scheme records for all membership types on an ongoing basis and ensure they are accurate and complete?		
Your Answer:	No	Red
Feedback:	Scheme managers must ensure that certain data is complete and accurate. This applies equally in respect of active, deferred, pensioner members and beneficiaries. Failure to maintain complete and accurate records can affect your ability to carry out basic functions. Four in five schemes have put in place record-keeping policies and procedures for all types of members and beneficiaries. You should establish or review your record-keeping processes immediately. Guidance can be found in our code and on our website.	
Useful Links:	Code of Practice 14: Scheme record-keeping Website: Types of records to keep	

Question 3 - Do you have controls in place to ensure that your employer(s) provides timely, accurate and complete data?

Your Answer:	In development	Amber
Feedback:	Scheme managers must keep records of specific member data. Most of this information will come from your employer(s) so you should ensure that employers have processes in place to provide you with the right data at the right time and in the right format. Poor data can create significant issues, even in single employer schemes. Some schemes provide specific training to employers on data requirements. Further information can be found in our code and our guide to issuing annual benefit statements.	
Useful Links:	Code of Practice 14: Scheme record-keeping Quick guide to issuing annual benefit statements	

Question 4 - When did you last carry out a data review exercise?

Your Answer:	Don't know	Amber
Feedback:	A data review is a key action we would expect a well run scheme to undertake at least annually. A review enables you to identify gaps and data quality issues, and take action to resolve these. Nine in ten public service schemes plan to review their data at least once a year. The Record Keeping Regulations set out records scheme managers are required to keep and you should measure your data against these requirements. Your review should include an assessment of the accuracy and completeness of the member data held. Further information can be found in our code and on our website.	
Useful Links:	Code of Practice 14: Scheme record-keeping Website: Types of records to keep	

Question 5 - Where you have identified poor quality or missing data, do you have an improvement plan to address issues?

Your Answer:	In development	Amber
Feedback:	You should continually review your data and carry out a data review exercise at least once a year. You should then ensure the necessary steps are taken to resolve any issues identified. A data improvement plan is a key tool we expect schemes to use to address issues of poor quality or missing data. Your plan should have specific data improvement measures that you can monitor and an end date within a reasonable timeframe when the scheme will have complete and accurate data.	

Question 6 - Do you have processes in place for monitoring scheme contributions, resolving issues and assessing whether to report payment failures to TPR?

Your Answer:	Yes	Green
Feedback:	You should review your processes regularly to ensure they remain effective and fit for purpose. Guidance can be found in our code and our Managing contributions checklist.	
Useful Links:	Code of practice 14: Maintaining contributions Checklist: Managing contributions	

Question 7 - Have you reviewed your processes for issuing annual benefit statements to ensure they are fit for purpose?

Your Answer:	Yes	Green
Feedback:	You should proactively address issues that arose in the previous year and ensure remedial work is completed before the next cycle. You should also consider reporting on the lessons learnt, for example to the pension board, employers or members. Some best practice examples to consider for future reviews are included in our guide to issuing annual benefit statements.	
Useful Links:	Quick guide to issuing annual benefit statements	

Question 8 - Have you taken steps to ensure that member communications are clear, accurate and easily accessible?

Your Answer:	In progress	Amber
Feedback:	Good communications are key to members being able to engage with their pension provision, and effectively plan for retirement. You should design and deliver communications that are clear and simple to understand, as well as being accurate and easily accessible. Avoid jargon where possible, explain technical terms clearly and make sure you're consistent in the language you use. There are a number of ways you can find out about members' information needs and their views on your communications – you should choose methods appropriate to the size of your scheme and available resources. Examples include speaking to employee representatives on the pension boards, listening in on calls to the administrator, undertaking member surveys or even organising focus groups.	

Appendix B

Board Member TNA – December 2016

Ref	Familiar (✓)	Almost (?)	Unsure (X)	Topic
A	Background and Understanding of the Legislative Framework of the Fire pension scheme			
A1	5(1)	1(1)	0(4)	Differences between public service pension schemes like the Fire Pension Scheme (FPS) and private sector trust- based schemes
A2	1	3(0)	2(5)	Role of the Independent Public Service Pensions Commission (IPSPC) and its recommendations
A3	1	4(0)	1(5)	Key provisions of the 2013 Pension Act
A4	4(1)	2(1)	0(4)	The structure of the scheme and the main bodies involved including the Responsible Authority, the Scheme Manager, the Scheme Advisory Board, the Local Pension Board and the Scheme employers
A5	4(1)	0	2(5)	An overview of local authority law and how Administering Authorities are constituted and operate
A6	1	5(2)	0(3)	Scheme and connected scheme rules overview (including the Regulations)
A7	4(1)	2(4)	0(1)	The Firefighter Pension Scheme 1992
A8	3(1)	3(2)	0(3)	The Firefighter Pension Scheme 2006 and main changes from the 1992 scheme
A9	2(1)	3(0)	1(5)	The Firefighters Pension Fund
A10	2(1)	2(0)	2(5)	The Firefighters Compensation Scheme
A11	3(1)	3(1)	0(4)	Firefighters (Modified) Pension Scheme
A12	3(1)	3	0(2)	The Firefighters Pension Scheme 2015
B	General pensions legislation applicable to the FPS - An overview of wider legislation relevant to the FPS including:			
B1	3(1)	2(1)	1(4)	Automatic Enrolment (Pensions Act 2008)
B2	3(1)	1(1)	2(4)	Contracting out (Pension Schemes Act 1993)
B3	3(2)	3(3)	0(1)	Data protection (Data Protection Act 1998)
B4	4(1)	2(5)	0	Employment legislation including anti- discrimination, equal treatment, family related leave and redundancy rights
B5	3(2)	3(4)	0	Freedom of Information (Freedom of Information Act 2000)
B6	2(1)	2(1)	2(4)	Pensions sharing on divorce (Welfare Reform and Pensions Act 1999)
B7	1	3(2)	2(3)	Tax (Finance Act 2004)
C	Role and responsibilities of the Local Pension Board			
C1	6(2)	0(10)	0(3)	Role of the Local Pension Board
C2	3(2)	3(1)	0(3)	Conduct and conflicts
C3	4(1)	2(1)	0(3)	Reporting of breaches

C4	2(1)	4(1)	0(3)	Knowledge and understanding
D	Role and responsibilities of the Scheme Manager			
D1	5(1)	1(2)	0(3)	Membership and eligibility
D2	5(1)	1(3)	0(2)	Benefits and the payment of benefits
D3	1	5(3)	0(2)	Decisions and discretions
D4	2(1)	4(2)	0(3)	Disclosure of information
D5	4(1)	2(3)	0(2)	Record keeping
D6	2(1)	4(2)	0(3)	Internal controls
D7	4(1)	2(3)	0(2)	Internal dispute resolution
D8	3(1)	3(2)	0(3)	Reporting of breaches
D9	2(1)	4(2)	0(3)	Statements, reports and accounts
E	Funding and Investment			
E1	1(0)	2(2)	3(4)	Requirement for triennial and other valuations
F	Role and responsibilities of Scheme Employers			
F1	3(1)	3(2)	0(3)	Automatic Enrolment & Opting Out
F2	3(1)	3(3)	0(2)	Deduction and payment of contributions
F3	1(0)	3(2)	2(4)	Special contributions
F4		5(2)	1(4)	Employer decisions and discretions
F5	1(1)	1(1)	4(4)	TUPE and outsourcing (including Fair Deal and the Best Value Authorities Staff Transfers (Pensions) Directions 2007)
G	Tax and Contracting Out			
G1		4(1)	2(5)	Finance Act 2004
G2	2(1)	4(3)	0(2)	Role of HMRC
G3	1	3(0)	2(5)	Registration
G4	3(1)	2(0)	1(5)	Role of 'scheme administrator'
G5	5(1)	0(3)	1(2)	Tax relief on contributions
G6	4(1)	1(2)	1(3)	Taxation of benefits
G7	2(1)	4(3)	0(2)	Annual and lifetime allowances
G8		5(1)	1(5)	Member protections (primary, enhanced, IP etc.)
G9	2(1)	3(3)	1(2)	National Insurance
G10	2(1)	3(1)	1(4)	Contracting out (Pensions Scheme Act 1993)
G11	2(1)	2(1)	2(4)	Impact of abolition of contracting out in 2016
H	Role of advisors and key persons			
H1	4(1)	2(1)	0(4)	Officers of the Fire and Rescue Authority
H2	4(1)	2(2)	0(3)	Auditor
H3	4(1)	2(2)	0(3)	Lawyers
H4	3(1)		3(5)	Administrators – in house v. third party
H5	2(1)	2(0)	2(5)	Procurement of services
H6	3(1)	1(0)	2(5)	Contracts with third parties
J	Key Bodies connected to the Scheme - an understanding of the roles and powers of:			
J1	2(1)	4(1)	0(4)	Courts
J2	2(1)	4(3)	0(2)	HMRC
J3	3(2)	2(1)	1(3)	Information Commissioner
J4	1	5(1)	0(4)	Pensions Advisory Service

J5	4(2)	2(2)	0(2)	Pensions Ombudsman
J6	4(2)	2(1)	0(3)	The Pensions Regulator (including powers in relation to Local Pension Boards)

Training Allowance (TA) and Additional Responsibility Allowances (ARAs)

Hampshire Fire and Rescue Authority	
Committee: Standards and Governance	
Date:	23 March 2017
Item:	Pensionable Allowances (Additional Duty / Training)
Report of:	Melanie Swain, Strategic HR Adviser - Specialist

Contact: Melanie Swain, Strategic HR Adviser HR Tel: 023 80 383337

1 Summary

- 1.1 As a result of an earlier legal case - Norman V Cheshire Fire and Rescue Services 2011, all Fire and Rescue Authorities (FRA) have been reviewing their local allowances to confirm whether or not their current pensionable or non-pensionable status should change.
- 1.2 In 2016, the Local Government Association (LGA) advised that there is not a 'one-size-fits-all' solution for all FRAs across the country and each service should reach its own conclusion looking at contracts of employment, local policies and custom and practice.
- 1.3 HFRA has previously reviewed all of its allowances except 'Additional Responsibility Allowances' and the '10% Training Allowance'. This Paper deals with these last remaining allowances.

2 Recommendations

- 2.1 That the **10% Training Allowance**, paid as a percentage of basic pay, changes from non-pensionable to pensionable with effect from 1st April 2017
- 2.2 That all **Additional Duty Responsibility Allowances** continue to be paid as non-pensionable.

3 Introduction and background

- 3.1 The legal case 'Norman v Cheshire Fire and Rescue Service' surrounded the issue of pensionable pay and the interpretation of Rule G1 of the 1992 Firefighters' Pension Scheme. The case was heard in October 2011 and the Judgment made public December 2011.
- 3.2 The case was raised by Mr Norman, a firefighter with Cheshire FRA. Mr Norman retired in 2008 and said that his pension should have been higher and that his day-crewing allowance and RDS payment should have been pensionable.
- 3.3 However, in October 2007, the terms and conditions of pay for retained officers in Cheshire FRA changed and Mr Norman believed that he lost out in pension pay as a result. Cheshire FRA chose not to appeal against the decision.

- 3.4 The outcome of the case was that, under Rule G1, the consolidated pay received by Firefighters working the Day Crewing system in Cheshire fell within the meaning of pensionable pay. In addition, the decision also said that flexible duty pay payable to Officers working the Flexible Duty System and London Weighting is pensionable.
- 3.5 The judge referred to an earlier case and stated that the Blackburne Rules should be considered when determining which allowances should be pensionable.
- 3.5 As a result of this case, FRAs across the country have subsequently been reviewing their own allowances paid to Firefighters to determine whether they should be pensionable or not, using the Blackburne Principles.

A number of Fire Authorities chose not to look at the matter until central advice was provided by the Local Government Association. In 2016, a workshop was held for Authorities but the conclusion was that it was for individual fire authorities to determine their own rules recognising local precedent and application.

4 The Blackburne Principles*

- 4.1 A payment should be deemed pensionable if it is:
- A. a regular payment (not one-off or episodic in nature)
 - B. a payment to which the Firefighter (or other role) is entitled to under the contract of employment
 - C. payable at a rate applicable to the role (is an additional amount calculated as a percentage increase in the individual's salary)
 - D. Is paid in the ordinary course of fulfilling their duties (so not an exceptional payment related to a special event or circumstance)
 - E. Has something of a permanent nature (not only payable if the firefighter is called upon)

See end of report for assessment of allowances against the Blackburne Principles

* From Mr Justice Blackburne in the case of Kent & Medway Towns –v- Pensions Ombudsman & another [2001] OPLR 357

5 Current status of the HFRAs 10% Training Allowance and ARA's

5.1 10% Training Allowance

The allowance is calculated as 10% of the recipient's basic salary and is contractual (referenced in the Statement of Particulars). The training duties carried out are intrinsic to the job role and are non-discretionary. The Allowance is paid to

trained firefighters who carry out the role of Instructor as their substantive post.

There is no reference in the Grey Book¹ to the treatment of a 10% Training Allowance.

¹ The Grey Book is a national set of T&Cs for those eligible to join the Firefighters' Pension Scheme. The Grey Book has not been updated for a number of years and can no longer be relied upon to provide accurate guidance.

5.2 Additional Responsibility Allowances (ARAs)

5.2.1 There is no reference to ARAs within the Statement of Particulars.

5.2.2 There is no automatic entitlement to an ARA.

5.2.3 ARA duties are voluntary and outside the substantive role-map. Unlike the Training Allowance, they are non-compulsory, not part of the written statement of particulars and are not linked to the recipient's basic pay. The payment for a particular 'Additional Responsibility' is fixed, divided into 12 equal instalments and paid monthly.

5.2.4 Additional responsibility duties enable individuals to train in new skills and therefore provides job enrichment to those who volunteer to undertake them.

5.2.5 The service requires a certain number of additional responsibilities to be carried out in any one year, dependent on service need and determined by the Training Department. Invariably more staff volunteer and are trained in additional responsibilities than positions exist during any given year.

5.2.6 It is custom and practice for the staff to take on a responsibility for a fixed period (usually 12 months) before handing over the responsibility to a colleague for the following year. Staff can choose to stop an additional responsibility at any time during the year, if they no longer want to undertake it, and the responsibility simply transfers to a suitably qualified colleague. This process enables all eligible and interested personnel to gain valuable experience.

5.2.7	Amounts payable, subject to authorisation from the Training Team, are as follows:		
	Additional Responsibilities	Monthly	Annual
	FF Instructor	£22.09	£265.00
	2 x FF Instructor qualifications	£33.13	£397.56
	USAR Dog Handlers	£13.75	£165.00
	Fire Investigation Dog Handlers	£13.75	£165.00
	NVQ A1 Assessors	£17.92	£215.00
	NVQ V1 Assessors	£22.09	£265.00
	Hazmat	£22.09	£265.00
	Hazmat & DIM	£26.25	£315.00
	Fire Investigation	£42.92	£515.00
	Co-Responders	£26.25	£315.00
	MIRG	£22.09	£265.00
	Officer in Charge - RDS Stations	£26.25	£315.00

- 5.2.8 The Grey Book states that *"An employee may be paid an allowance or allowances to reward additional skills and responsibilities that are applied and maintained outside the requirements of the role but within the job function. Payments will be based on the requirements of the fire and rescue authority's Integrated Risk Management Plan and may include payment for skills' shortages where these are directly applicable to the delivery of the Integrated Risk Management Plan."*

It goes on to state that *"The maximum payable to any individual employee will be determined locally. Additional responsibility payments are temporary and non-pensionable and may be withdrawn following reasonable notice from the fire and rescue authority"*.

6.0 Discussion and Recommendation

- 6.1 Fire and Rescue Services who have already gone through the process of reviewing all their allowances have implemented changes from different dates and based decisions based on local circumstances and precedent.
- 6.1.1 Given the treatment and status of the 10% Training Allowance, it is recommended that this becomes a pensionable allowance effective 1st April 2017. This would benefit any existing employee who is in receipt of a TA and who has 12 months or greater left to work before retirement.
- 6.1.2 Any existing employee who has less than 12 months remaining would benefit proportionately and would have the opportunity (subject to performance) to continue working until a 12 month period had elapsed after 1st April 2017 so that they would benefit in full from this change in the rules
- 6.1.3 It is recommended that the existing rules continue for ARAs whereby they remain non-pensionable. Any proposal to have made them pensionable would require the whole process of selection and appointment to be reviewed given that there would be a marginal impact on pension calculations.

7.0 Financial implications of any changes

- 7.1 The total estimated cost of the employers pension contribution for the 10% Training Allowance (and ARAs if made pensionable) is as follows:

Allowance	Estimated annual cost	2017/18 Annual Budget	Increased annual cost
ARAs	£25,000	0	£25,000
10% Training Allowance	£23,000	£23,000	0

- 7.2 **10% Training Allowance** - As part of finalising the 2015/16 year end accounts a provision of £51,000 was made for the cost of the 10% Training Allowance back dated to July 2013 in case it was decided to back date the allowance. If the recommendation is agreed the provision will not be required and will form part of the 2016/17 underspend and added to reserves.
- 7.3 **ARAs** - No budget or provision for back-dated payments was made for these allowances as it was previously anticipated that ARAs would continue to be non-pensionable as a result of the nature of how they are arranged. If the Authority

agrees to make ARAs pensionable (although the recommendation is that they should remain non-pensionable), there will need to be a request to carry forward £25,000 of the 2016/17 underspend to pay for the additional employer's pension contributions in 2017/18 and a permanent budget increase requested for the 2018/19 Budget

8 Internal legal advice

- 8.1 Legal advice has been sought from the internal Legal Department. Advice received is as follows:
- 8.2 There is a clear case for the 10% Training Allowance to become pensionable
- 8.3 When looking at the Blackburne Principles, 3 out of the 5 factors do not meet the test to suggest ARAs should be pensionable, however, the fact that there is an agreement between the individual to carry out certain additional responsibilities in return for a payment from the Authority could point to a contractual entitlement and there is perhaps an argument for both sides.
- 8.4 The size of the payments are small, generally £16-25 per month before deductions, and are therefore unlikely to be a compelling reason for individuals to undertake the additional duties.
- 8.4.1 The ARA responsibilities are currently undertaken on a temporary basis (unlike the Training Allowance) and the temporary nature of the arrangement is well understood and accepted across the Service.
- 8.4.2 Currently, the duties are happily shared amongst the staff. To change the payments to pensionable (where there is a strong case to say they could remain non-pensionable) might change the way these are divided up and a more stringent process of selection would have to be implemented.
- 8.4.3 Changing the ARAs to pensionable status, when only undertaken for up-to a year, would add to the complexity within payroll and pensions, including the possibility of splitting pensions and the wider implications of doing this.
- 8.4.5 Unlike the Training Allowance, which is clear cut, it is for the Service to determine how to treat ARAs, moving forward. In any case which is not completely clear cut, there is always the possibility of a legal challenge but given the balancing factors in this case, a decision to keep the ARAs would not be unreasonable.

9.0 People Impact Assessment

- 9.1 The proposals, if agreed, will mean that all those in receipt of the 10% Training Allowance and who are a member of the Firefighter's Pension Scheme, will be required to pay pension contributions on their allowances from 1st April 2017.

10.0 Consultation

- 10.1 The unions have been consulted and their view is

11.0 Background Papers

11.1.1 None

Assessment of current allowances using the Blackburne Principles

	Regular payment (not one-off or episodic)	A payment entitled to under the contract of employment	Payable as a % of base pay)	Paid as part of role map (not exceptional / related to a special event)	Has a perm. nature (not only payable if called upon)
10% Training Allowance	Yes	Yes	Yes	Yes	Yes
FF Instructor					
2 x FF Instructor quals	Payment inc.in mthly pay for up-to a yr.	Not written into contract but may be viewed as contractual for work reg. undertaken during the yr.	No	No - Voluntary - outside of individual's role map	No – usually payable for a max. of one year
USAR Dog Handlers	As above	As above	No	As above	As above
Fire Investig. DogHandlers	As above	As above	No	As above	As above
NVQ A1 Assessors	As above	As above	No	As above	As above
NVQ V1 Assessors	As above	As above	No	As above	As above
Hazmat	As above	As above	No	As above	As above
Hazmat & DIM	As above	As above	No	As above	As above
Fire Investig.	As above	As above	No	As above	As above
Co-Responders	As above	As above	No	As above	As above
MIRG	As above	As above	No	As above	As above
Officer in Charge - RDS Stns.	As above	As above	No	As above	As above