

ROYAL BERKSHIRE FIRE AUTHORITY REPORT



COMMITTEE	AUDIT AND GOVERNANCE COMMITTEE
DATE OF MEETING	28 JULY 2022
SUBJECT	LOCAL PENSIONS BOARD – ANNUAL REPORT
LEAD OFFICER	LINCOLN BALL – CHAIR OF LOCAL PENSIONS BOARD
LEAD MEMBER	N/A
EXEMPT INFORMATION	NONE
ACTION	NOTE

1. EXECUTIVE SUMMARY

1.1. This annual report updates the Audit and Governance Committee with:

- The 2021-22 pension schemes' administrator's performance figures;
- The recent activities of the Local Pensions Board (for all firefighter pension schemes);
- Relevant aspects of firefighters' pensions administration; and
- An overview of current national issues.

1.2. The Local Pensions Board considers the performance of the local firefighter Pensions administrator as broadly to a good standard. There are a few areas where targets are not met with ongoing interaction to address this, although overall performance against targets is at 94.7%.

1.3. Complexity in relation to the administration of firefighters' pension schemes has increased further over the past twelve months and this has a commensurate impact on the Scheme Manager's current risks.

1.4. National issues continue to dominate firefighters pensions and in particular:

- The mechanism to provide remedy for the age discrimination created by the introduction of the 2015 pension scheme. Amongst the issues are:
 - New legislation has been introduced that finally closed the 1992 and 2006 Firefighters Pension Schemes (legacy schemes) for future accrual from 31 March 2022.
 - An absence of national guidance (Home Office and HM Treasury) on how to deal with what are termed 'immediate detriment' cases.

2. RECOMMENDATION

That Audit and Governance Committee:

- 2.1 **NOTE** the contents of the report.

3. REPORT

Background

- 3.1 The Public Service Pensions Act 2013 makes it a legal requirement to have a Local Pensions Board for the various public sector pensions.
- 3.2 Firefighter pensions in RBFRS are administered by a contractor, West Yorkshire Pension Fund, who work with team members in the RBFRS Human Resources department.
- 3.3 The Fire Authority itself is the current Scheme Manager for the Firefighters Pension Scheme with the Local Pensions Board existing to assist the Fire Authority in its role as Scheme Manager.
- 3.4 The Board consists of four members: two management representatives (Lucy Greenway and Mark Arkwell) and two scheme member representatives (Lincoln Ball and Steve Collins). The Chairmanship of the Board rotates between the management and the member representatives. Currently Lincoln is the Chair and Lucy the vice-Chair. Lincoln has remained on the Local Pensions Board following his retirement from service in February 2022.
- 3.5 Given the significant knowledge requirements, all members strive to provide a minimum four-year term.
- 3.6 Additionally, to retain knowledge and aid succession, the board members plan for the replacement of its members to be staggered rather than losing all or most of its members at the same time.
- 3.7 The Board reports to this Committee twice per year, one of which incorporates an April to March annual report. The last report to the Committee was on 24 January 2022.

Local Pensions Board Activity

- 3.8 The Board has met on four occasions since the last Annual Report (July 2021), although the most recent meeting in June 2022 was inquorate. At the board meetings reports are received from the responsible managers in the Human Resources department.
- 3.9 Between formal meetings the board members keep in contact as issues arise and where necessary will meet informally.
- 3.10 The board's documents such as the risk register, terms of reference, role description and performance monitoring document are regularly reviewed.
- 3.11 Since the last report to the Committee, the Pensions Board has not been made aware of any potential breaches that needed to be reported to the Pensions Regulator.
- 3.12 The Board has continued to scrutinise the performance of the Pensions Administrator. As West Yorkshire Pension Fund also provides services to other Fire and Rescue Services, the Board has been able to compare the level of service provided to RBFRS against that provided to other authorities.

- 3.13 Members of the Board undertake a variety of activities including attending regional meetings, assisting with surveys and audits and undertaking development activities.
- 3.14 Members of the Board work closely with the managers in the Human Resources department and have assisted in the completion of surveys.

Annual Report Information

- 3.15 The Annual Report covers the period 1 April 2021 – 31 Mar 2022.
- 3.16 The Board has maintained scrutiny in relation to the administrator's key performance indicators (KPIs).
- 3.17 Overall the administrators managed 286 discrete activities over the twelve-month period (compared with 418 over the previous twelve-months). The performance target was achieved on 271 of those activities, equating to 94.6% of activities (compared with 95.7% in the previous annual report period).
- 3.18 These activities are summarised in the table below:

Activity	No of Cases	Target met as %	Target % Compared with 2020-21
Age 55 Increase to Pension	10	98%	-2%
Change of Address	32	100%	Same
Change of Bank Details	6	96%	+29%
Death in Retirement	8	83%	-17%
Deferred Benefits Into Payment of Lump Sum	2	100%	Same
Deferred Benefits Set Up on Leaving	30	66%	-8%
Divorce Settlement Pension sharing order implemented	1	100%	Same
General Payroll Changes	55	100%	Same
Initial letter Death in Retirement	8	100%	+11%
Pension Estimate	29	97%	+2%
Retirement Actual	15	100%	Same
Set Up New Spouse Pension	3	100%	+30%
Spouse Potential	3	33%	-42%
Transfer In Quote	1	100%	+7%
Update Member Details	83	100%	Same

Table 1: Pensions Administrator Performance 2021-22

- 3.19 Overall, whilst there were fewer discrete tasks undertaken by the Pensions Administrator, the performance in relation to the targets was relatively steady dropping by 0.9% points.
- 3.20 As previously reported to the Audit and Governance Committee, the reasons for KPIs periodically being below their target is addressed through contract meetings or sometimes the administrators will provide a reason in their monthly report to the service or quarterly bulletin to their clients. Broadly, things are tending to take longer as the issues are becoming more complicated given the current landscape. The Pensions Board is satisfied that adequate arrangements are in place to address administrative queries.
- 3.21 In April 2022 all existing employees who were in the 1992 or 2006 pension schemes were compulsorily transferred into the 2015 scheme with their legacy rights protected (i.e. pension accrual, links to final salary and retirement age).
- 3.22 **Membership of Pension Schemes:**

Pension Scheme	Mar-22	Apr-21	Change
1992 – Active Members	12	22	-10
2006 – Active Members	2	2	0
2006 – RDS Active Members	1	2	-1
2015 – Active Members	405	382	+23
2015 – RDS Active Members	5	6	-1

Table 2: Active members of the various firefighter pension schemes, March 2022 and April 2021

- 3.23 It should also be noted that over half of the active pension members in the 2015 scheme in the table above also will have protected rights (including age discrimination remedy rights) in the legacy schemes.

Other Significant Issues

- 3.24 Significant national issues remain in relation to Firefighters Pensions.
- 3.24.1 Changes are being made into law through the Public Service Pensions and Judicial Offices Act, which came into force on 1 April 2022, removing the discrimination found in the McCloud/ Sargeant case by closing legacy schemes and ensuring all members are treated as members of the reformed career average scheme from 1 April 2022.
- 3.24.2 The secondary legislation will address the retrospective remedy, move all members' service back into the legacy final salary scheme for the remedy period (1 April 2015 – 31 March 2022) and allow a choice of benefits for this period. This aspect is both technical and complex and will be subject to consultation in 2022. This legislation is expected to be in place by 1 October 2023 and will be both resource consuming and complex to administer.
- 3.24.3 A number of Scheme Managers, of which Royal Berkshire Fire Authority is one, have determined that given the relative risks and despite the absence of national guidance, the decisions and judgements of the Employment Appeal

Tribunal and Court of Appeal should be implemented for pension scheme members who are about to retire.

- 3.24.4 On 8 October 2021, the Local Government Association (LGA) and Fire Bridges Union (FBU) reached agreement on the Memorandum of Understanding (MoU) and Framework for dealing with Immediate Detriment cases. Management Committee resolved to partially adopt the Framework for Category 1 individuals only, on the basis that not doing so, would create significant issues for the health and wellbeing of individuals, for employee relations and risk costly legal action. For those who are already in receipt of benefits (Category 2 members) the Fire Authority determined that until the impact of the tax issues for the individuals, employers and scheme managers has been clarified, these would not be processed at this time.
- 3.24.6 Resolving the O'Brien/Matthews legal case about how retained duty system staff should be given access to buy back previous pension service. Effectively, this case will enable retained and former retained firefighters to backdate their pension contributions to before 01 July 2000 (the previous cap on pensionable service that could be brought back in the modified pension scheme options exercise). RBFRS continue to prepare for action associated with implementing these matters and is working with the LGA on this prior to changes in legislation. The Local Pensions Board is monitoring activity.
- 3.24.7 Following what has been referred to as a 'perverse outcome', legislation relating to the 'cost cap' mechanism was introduced earlier in 2022 that waived any requirement to amend contribution or benefit rates arising from the recent 2016 valuation. The Government was of the opinion that the mechanism it had introduced was not working as intended and felt it needed to protect taxpayers from volatility. HM Government then stated it would seek to incorporate the costs of remedying the age discrimination from within the cost control mechanism which is still awaiting a 2020 valuation exercise expected to be completed by 2024. In turn this desire to 'fund' the age discrimination through future increased contributions (or decreased benefits) has led to legal challenge to HM Government from a number of public sector trade unions, including from the Fire and Rescue Service.

4. CONTRIBUTION TO STRATEGIC COMMITMENTS

- 4.1 Commitment 5 – We will ensure that Royal Berkshire Fire and Rescue Service provides good value for money.

5. FINANCIAL IMPLICATIONS

- 5.1 The Fire Authority currently makes an allowance of £104 per meeting available to each Local Pensions Board member. However, not all board members currently choose to receive this allowance.
- 5.2 The Terms of Reference provide for:
- All reasonable expenses incurred by board members to be reimbursed upon production of a valid expenses claim.
 - Adequate resources for the board to fulfil its role including the provision of legal advice and training. The board will seek approval from the HHR&LD for such expenditure.

6. LEGAL IMPLICATIONS

- 6.1 The provision of the Local Pensions Board is a requirement of the Public Service Pensions Act 2013.
- 6.2 The Court of Appeal judged in December 2018 that the way in which the transitional provisions of the 2015 pension scheme were implemented amounted to unlawful age discrimination and this has led to the relevant sections of the legislation being overridden by that legal judgement which was clarified by a further judgement made by the Employment Appeal Tribunal on 12 February 2021.
- 6.3 The Public Service Pensions and Judicial Offices Act, which came into force on 1 April 2022, removing the discrimination found in the McCloud/ Sargeant case by closing legacy schemes and ensuring all members are treated as members of the reformed career average scheme from 1 April 2022.
- 6.4 The secondary legislation will address the retrospective remedy, move all members' service back into the legacy final salary scheme for the remedy period (1 April 2015 – 31 March 2022) and allow a choice of benefits for this period. This legislation is expected to be in place by 1 October 2023 and will be both resource consuming and complex.

7. EQUALITY DIVERSITY AND INCLUSION IMPLICATIONS

- 7.1 The public sector equality duty requires public bodies to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.
- 7.2 The current national issues in relation to firefighter pensions relate directly to age discrimination and the Equality Act 2010 and as such Royal Berkshire Fire Authority's actions and procedures to address these matters also directly relate to being assured that the law is applied.
- 7.3 To reduce the risk of discrimination, the resolutions made by the Fire Authority at its meetings of 17 February 2021, 7 December 2021 (Management Committee) and 28 April 2022 gave effect to the Employment Appeal Tribunal judgement for individuals about to retire who meet the eligibility criteria regardless of whether they are a claimant or non-claimant. Currently in RBFPS this applies only to pension scheme members who have retired since February 2021 with members retiring on the 2015 scheme before that (back to 1 April 2015) yet to have their cases resolved.
- 7.4 There are no additional equality and diversity implications considered in relation to this report

8. RISK IMPLICATIONS

- 8.1 If there is a failure to comply with the requirements of The Public Service Pensions Act 2013, The Police and Firefighters' Pension Schemes (Amendment) Regulations 2022 and related regulations which may become increasingly likely given the legal determinations, current guidance and complexity with relation to the pension schemes then we can expect that there will be an increase in reports of potential breaches of the legislation, administrative errors, complaints and further legal proceedings leading to

reputational and financial loss which are significant given the Fire Authority's strategic commitments.

- 8.2 If local pension board members, who are lay members, possess insufficient knowledge of the various firefighter pensions issues, which is possible given the complexity of the firefighters pensions legislation and guidance, then we can expect that the oversight and assurance provided to the Fire Authority will be negatively affected which is significant given this is a legal requirement of the Public Sector Pensions Act 2013.
- 8.3 The Board maintains a risk register which is reviewed regularly. The five main identified risks are related to: oversight, performance monitoring, knowledge, loss of knowledge and conflicts of interest. All risks are managed and are being monitored with only one risk (knowledge) needing more treatment.

9. CONSISTENCY WITH DUTY TO COLLABORATE

- 9.1 The legislation enables the establishment of joint boards with others. This is not a matter being pursued currently within Royal Berkshire Fire and Rescue Service.

10. PRINCIPAL CONSULTATION

- 10.1 The Chief Fire Officer has been consulted on the contents of this report.
10.2 The Chief Finance Officer has been consulted on the contents of this report.
10.3 The Monitoring Officer has been consulted and on the contents of this report.

11. BACKGROUND PAPERS

- 11.1 None.

12. APPENDICES

- 12.1 None.

13. CONTACT DETAILS

- 13.1 Lincoln Ball, RBFRS Pensions Board Chair, 07541 263386,
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