

EAST SUSSEX FIRE AUTHORITY

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| Panel | Scrutiny and Audit |
| Date | 11 November 2021 |
| Title of Report | 2020/21 Annual report of East Sussex Fire and Rescue Service's (ESFRS) Local Firefighters' Pension Board |
| By | John Olliver, Payroll, Pensions & HR Assurance Manager |
| Lead Officer | Interim Assistant Director People Services |

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| Background Papers | Local Firefighters' Pension Board meetings held on 23 July 2020, 11 February 2021 and 8 October 2021 |
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| Appendices | None |
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Implications

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| CORPORATE RISK | | LEGAL | |
| ENVIRONMENTAL | | POLICY | |
| FINANCIAL | ✓ | POLITICAL | |
| HEALTH & SAFETY | | OTHER (please specify) | |
| HUMAN RESOURCES | ✓ | CORE BRIEF | |
| EQUALITY IMPACT ASSESSMENT | | | |

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| PURPOSE OF REPORT | To inform the Panel of the matters considered by the Pension Board during 2019/20. |
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| EXECUTIVE SUMMARY | The Board has met on three occasions during this year and considered reports on matters such as: |
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1. Terms of Reference (TOR) for the Pension Board
2. Policies and guides for the board and the Firefighters Pension Scheme (FPS)
3. Current issues and updates relating to the Authority's FPS

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| RECOMMENDATION | The Panel is asked to note the annual report of the Firefighters' Pension Board for 2020/21. |
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1. **MEETINGS AND ATTENDANCE**

1.1 The three Board meetings were held in July 2020, February 2021 and October 2021.

| Board Member | Expected Attendance | Actual Attendance | % Attendance |
|--|----------------------------|--------------------------|---------------------|
| Mr Andrews (Fire Leaders' Association) | 1 | 1 | 100% |
| Mr Matthews (Fire Leaders Association) | 2 | 2 | 100% |
| Mr Goodchild (Retained Firefighters' Union) | 3 | 0 | 0% |
| Mr Herbert (Fire Brigades' Union) | 2 | 1 | 50% |
| Mr Oakman (Fire Brigades' Union) | 3 | 0 | 0% |
| Mr Lloyd (Fire Officers' Association) | 3 | 3 | 100% |
| Cllr Hamilton | 3 | 3 | 100% |
| Cllr Tutt | 3 | 3 | 100% |
| Cllr West | 3 | 3 | 100% |
| Cllr Taylor | 1 | 1 | 100% |
| Cllr Theobald | 1 | 1 | 100% |
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2. **JULY 2020 PENSION BOARD MEETING**

2.1 Change of FPS Pensioner Payroll and Administration Provider

The Board noted that the move of the Authority's FPS Administration and Pensioner Payroll from Orbis to West Yorkshire Pension Fund (WYPF) completed on 01 April 2020.

2.2 Pensioners Tax Coding Issues

The tax code issues which had occurred due to errors in the final payroll run had been resolved, however, the Board queried whether the problems had originated from Orbis. The Assistant Director People Services (ADPS) commented that past difficulties had partly occurred as there had been no clear definition of responsibilities with Orbis as the relationship had evolved from East Sussex County Council involvement with pension administration. There was now a clear user/provider between East Sussex Fire & Rescue Service (ESFRS) and WYPF. The Chair asked that a log of issues with Orbis be retained.

2.3 Scheme Sanction Charge

The Pensions Advisor (PA) confirmed that investigations on Scheme Sanction Charges that Orbis had incorrectly deducted from members' retirement lump sums were ongoing and WYPF would be reviewing the records of the 99 members affected. The Chair asked about the Limitation Act and whether the Authority had not a legal obligation but moral obligation to consider cases further back than six years and check whether they had disadvantaged. The Assistant Director

Resources/Treasurer (ADR/T) explained that it was not a straightforward process and therefore they would be looking at those cases within the 6 year period initially. He that asked the Board allow these investigations to be complete before taking a view as to whether investigation of earlier cases would be appropriate. The Chair also asked about the timeline and whether there was appropriate resources. The ADPS confirmed that discussions on resources would be taken up with WYPF and the PA outside of the meeting. The Chair asked that the Board be kept informed of progress in this matter.

2.4 Norman 'V' Cheshire – Pensionable Pay Ruling

It was noted that it may not be possible to contact the remaining eight members. The Board was satisfied that all efforts had been made to trace those affected.

2.5 Data Issues – GMP Reconciliation and Data Quality Review

This was still being dealt with on a daily basis, however, since transferring to WYPF data quality had improved. The Board asked about the volume of errors and whether they were a cause for concern. The ADR/T reminded the Board that the Guaranteed Minimum Pension reconciliation was a national exercise involving issues with HMRC records. With regard to local data quality, an audit was carried out whilst with Orbis and although some issues were sector wide, there were some issues which should've been identified by previous pension administrators and managers. Current staff were dealing with the issues appropriately.

2.6 Sargeant Employment Tribunal

This matter was still outgoing. Guidance and advice from the Local Government Association was being followed.

RESOLVED: That the Board:

1. noted the Authority's current pension issues, actions taken to resolve them and actions awaiting completion;
2. noted the required actions detailed in the LGA/SAB's FPS monthly bulletins and the Authority's response;
3. requested a further update on the Scheme Sanction Charge investigations, including whether cases which were beyond the Limitation Act should be considered; and
4. requested that officers consider whether additional resources were required to carry out Scheme Sanction Charge investigations.

2.7 Firefighter Pension Schemes Administration Update

The Board received a report from the West Yorkshire Pension Fund (WYPF) which provided an update on the administrative and pensioner payroll status and latest operational data. The Board welcomed Yunus Gajra from WYPF to the meeting who highlighted some elements of the report. It was noted that the WYPF office was

open and staff were working from home and extra measures had been put in place in order to safeguard members against potential pension scams. With regard to the Scheme Sanction Charge investigations, it was hoped that the work would be completed in the next week or 2. Quarterly client meetings with ESFRS were being held and a report on the Key Performance Indicators were appended to the report.

The Board asked about progress being made with producing the Annual Benefit Statements and noted that the annual return from Orbis was still awaited. It was expected to be received by the end of the following week. The Pensions Regulator had allowed a 3 month extension to deadline given the pandemic circumstances.

3. FEBRUARY 2021 PENSION BOARD MEETING

3.1 Delays in issuing 2019/2020 annual benefit statements (ABS)

The Board noted that the 2020 ABS had now been completed. As payroll information was now being provided on a monthly basis officers were confident that there would not be the same issues encountered when producing the 2021 ABS. The Board asked whether there had been any additional costs incurred by East Sussex Fire & Rescue Service (ESFRS) as a result of East Sussex County Council (ESCC) failing to provide the information and were informed that the issues had not caused a significant amount of additional effort of ESFRS part. The Chief Fire Officer (CFO) added that have had a number of complaints about late ABS but she was encouraged by improvements.

3.2 Breach Reported to The Pensions Regulator (TPR) in Relation to Delays to ABS

The Board noted that TPR had confirmed that there would not be any action taken against the scheme. The Pensions Advisor (PA) had formally confirmed that to TPR that all ABS had been had now been delivered.

3.3 Sargeant Employment Tribunal – Remedy – Update

The ADR/T highlighted that there were 3 elements to the financial implications of the ruling:

- Additional liabilities with regard to employer contributions as result of the GAD re-evaluation
- Any claims against injury or hurt feelings (non-financial implications of the decision)
- The cost of administration

With regard to the cost of administration, it was noted that the West Yorkshire Pension Fund (WYPF) did have some leeway in the current budget and therefore it was hoped that there would not be a significant financial impact as result of additional administration required to process 'immediate detriment' cases.

The Board asked whether the implications of the Sargeant tribunal should be assessed as a significant risk on the risk register. The ADR/T agreed that the impact

of the McCloud/Sargeant and the O'Brien judgements should be added to the risk register.

The CFO added that there may be some additional litigation and additional legal costs as a result of the ruling. The Monitoring Officer was liaising via the LGA Lawyers Network in terms of legal implications for the Authority.

3.4 ESFRS Risk Register – Firefighters Pension Scheme(s)

The Board commented that the format of the risk register was different to what they were used to seeing and did not have the scoring mechanism with the two stage mitigating actions. The ADPS agreed that the current format did not align to corporate standard and confirmed that a new version was being developed which would be complete for the next Pension Board meeting.

3.5 The Pensions Regulator (TPR) Public Service Governance & Administration Survey 2020

It was noted that the Chair had provided comments on the survey response. The Board agreed that there would be a need for some training following the May local elections.

RESOLVED: That the Board noted the Authority's current pension issues, actions taken to resolve them and actions awaiting completion.

3.6 Firefighter Pension Schemes' Administration Update

The Pension board received the report of the West Yorkshire Pension Fund (WYPF) which presented them with an update on the matters including Member and administration issues, key performance indicators (KPIs) and work in progress.

The Board received a verbal update on the public service pension age discrimination remedy. It was noted that the Treasury had published its response to the consultation, however changes to legislation were required to action the remedy. WYPF confirmed that every active scheme member had now been transferred onto the 2015 CARE scheme. There was still a need to rectify age discrimination both going forward and retrospectively. The LGA would be issuing communications which would be published on the member website to ensure a consistent message to scheme members. The Board asked about the extent of the concern and were informed that in terms of immediate detriment this affected about 70 scheme members. WYPF added that the initial remedy would apply to claimant and non-claimants but there had been no change in regulations which would allow an immediate detriment calculation.

4. OCTOBER 2021 PENSION BOARD MEETING

4.1 Assistant Director People Services

The Board is asked to note that from July 2021, Doug Marshall replaced Hannah Scott-Youldon as Interim Assistant Director People Services, until the end of 2021.

This was following Hannah's transfer to the role of Assistant Director Operational Support & Resilience. Julie King was appointed as the new Assistant Director People Services, but it is anticipated she will remain in her current role covering Assistant Director of Safer Communities until around January 2021.

4.2 ESFRS Risk Register – Firefighters Pension Scheme(s)

A Risk Register has been developed in order to identify risks and ensure controls are in place to mitigate against those risks in the administration of the ESFRS Firefighter Pension Scheme(s).

4.3 Public Service Governance and Administration survey 2020 published by the Pensions Regulator (TPR)

ESFRS participated in the Public Service Governance and Administration survey 2020 for the Pensions Regulator in consultation with Councillor Tutt as the Chair of ESFA.

As part of the annual Governance and Administration survey published by the Pensions Regulator (TPR), TPR measures six processes as key indicators of public service pension scheme performance.

The Local Government Association (LGA) have refreshed their six key processes factsheet to reflect the most recent results and give guidance to FRAs and their Local Pension Boards (LPBs) to improve understanding and compliance in the next survey.

4.4 Annual Benefit Statements (ABS) 2021

ESFRS Firefighter Pension Scheme Annual Benefit Statements were produced on time by the end of August 2021. They were made available through West Yorkshire Pension Funds (WYPFs) employee portal.

4.5 Age Discrimination Remedy Following the McCloud Sargeant Employment Tribunal

On 4 February 2021 the government published the outcome of its consultation on changes to the reformed 2015 public service pension schemes in order to remove the unlawful age discrimination found by the Courts in relation to the 'transitional protection' arrangements.

The main change proposed to rectify retrospective discrimination gives members a choice of receiving final salary (legacy) benefits or CARE (reformed) benefits for the period 1 April 2015 to 31 March 2022, or their date of leaving if earlier. This period will be known as the remedy period.

The second part of the remedy is to remove future discrimination from the schemes by providing that all members, including formerly protected members, will move to the reformed scheme (FPS 2015) from 1 April 2022.

4.6 Age Discrimination Remedy – Immediate Detriment (ID) Cases

There are a number of urgent and pressing cases (known as “immediate detriment” cases). Immediate Detriment cases are where firefighters who belonged to the legacy pension schemes were obliged to transfer to the FPS 2015 scheme and are now looking to retire and take pension benefits.

Some of those are urgently seeking ill Health Retirement pensions and believe that those pensions would be significantly better if the terms of the pre-2015 legacy final salary FPS applied to them.

4.7 Internal Audit – Pension Administration 2020/21

After carrying out a review of Pensions Administration 2020/21, the internal auditors, provided their report which stated the following *‘Based on the audit work we have undertaken, we are providing an opinion of Reasonable Assurance. Reasonable Assurance is provided in respect of Pensions Admin (2020/21). This opinion means that most controls are in place and are operating as expected to manage key risks to the achievement of system or service objectives.’*

There were two potential risk items identified relating to Risk Management and controls in place relating to the correct filing and identification of work previously carried out to rectify Issues that had arisen. Actions were agreed to rectify these by 31 May 2021 by the Pensions, Payroll & HR Assurance Manager. These actions have been and are continuing to be implemented and carried out on an ongoing basis.

4.8 Firefighters’ Pension Scheme (FPS) - Modified 2006 Scheme Members Incorrect Taper Dates & Contributions due to ESCC Payroll Error

Earlier in 2021, following a query from a member it was discovered that 15 members who had elected membership of the Modified 2006 Scheme in 2015 had not been treated correctly by ESCC Payroll.

Due to an oversight, they had continued to be treated incorrectly as standard members of the FPS 2006 and therefore the employee and employer contributions that have been deducted since late 2015 have been too low.

These cases need to be investigated and put right. Both the member and ESFRS will owe additional pension contributions.

4.9 Guaranteed Minimum Pension (GMP) Reconciliation & Rectification Project

Before the pensions administration work was transferred to West Yorkshire Pension Fund (WYPF) in April 2020, the previous administrators, Orbis, under the shared service arrangements had commissioned Mercers, a 3rd party supplier to carry out the necessary GMP Reconciliation work for Surrey and East Sussex County Councils in relation to those employees in the Local Government Pension Scheme (LGPS) and in relation to those employees in the ESFRS Firefighter’s Pension Schemes.

The project now needs to move on to the stage of reconciling if the GMPs in the two sets of data match or not. If they don't decisions need to be made about proceeding to rectify the pensioner records and they need to be rectified.

ESFRS are proposing that the balance of the work be completed in its entirety by WYPF and are currently in 1st stage discussions with WYPF on reasonable timescales for completion of this work alongside the work already underway in relation to Age Discrimination Remedy and the expected 2nd Employee Options exercise.

5. CONCLUSION

- 5.1 Over the past 12 months both ESFRS and WYPF have been working hard bedding in the new pension administration processes, whilst balancing the extensive efforts required to understand and plan for the corrective actions arising from McCloud/Sargeant.
- 5.2 We are very pleased to report that the Annual Benefit Statements were produced according to the agreed timetable this year.
- 5.3 All other FPS related work which remain open are still being dealt with and monitored by the Authority's PA.