

Hampshire Fire and Rescue Authority**Firefighters' Pension Board****Item 8****21 November 2016****Pension Issues Log****Report by Chief Finance Officer**

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1 Summary

1.1 The updated Pension Issues Log is attached to this report at Appendix 1. There are 11 open issues and 1 new issue has been added since the last meeting.

1.2 Two issues have been closed. The closed issues are:

- Issue 19: HFRS Cyclical Re-enrolment-arrangement has been put in place.
- Issue 20: Communication the impact of the change in Temporary Promotion (TP) rules with affected firefighters through briefing sessions and email.

2 Recommendations

2.1 That the contents of this report are noted and a decision is made whether the delay in issuing the Annual Benefit Statements to regular firefighters is reported to the Pensions Regulator as a technical breach.

3 Pension Issues Log

3.1 The open issues have been updated in the “progress” box to reflect the latest position only, historic updates have been removed, but are of course available on previous agendas. There are 1 red and 2 amber issues:

3.2 Issue 5 (Red): This relates to the change in rules regarding the treatment of Temporary Promotion (TP) that became effective on 1 July 2013, but which was not identified as an Issue within the HFRA until February 2016.

3.3 A separate agenda item deals with this issue in more detail.

3.4 Issue 17 (Amber): This relates to firefighters who have more than one contract of employment with the HFRS and wish to retire from their main employment

based on a Protected Pension Age (PPA), whilst continuing with their other employment. In such circumstances and to avoid a significant tax penalty specific conditions need to be met including a "break in service" from all employments of at least 1 calendar month (or may be 6 months depending on the circumstances). All affected firefighters are to be written to advising them of the process to be followed. This will be completed by end December 2016.

- 3.5 Issue 22 (Amber): The Annual Benefit Statements (ABS) should have been issued to employees by 31 October 2016 latest. The delay means that the HFRA are technically in breach of the Pension Regulator requirements.
- 3.6 Whilst this is a technical breach the HFRA will need to consider whether the internal breach is sufficiently serious to report to the Pension Regulator given that there is accepted latitude for a delay given that this is the first year that the new rules apply.

Pensions Issues Log - HFRS - 15th November 2016

Issue Number	Pension Group	Pension issue	Description / Impact	Progress	Project Manager (use drop down)	Target Completion Date	Status
5	HFRS	Impact on pension tax liability of temporary promotions	Assessment of alternatives methods (Additional Pension Benefits (APB)) to limit or remove tax liability when moving into temporary promotions. Regulations changed in July 2013 – policy development required.	In February 2016 the HFRA Finance and General Purposes Committee agreed that any temporary promotions that existed on (or had been granted from 1 July 2013) will be treated as pensionable Additional Pension Benefits (APBs) up until 1 April 2015 when the new scheme provisions apply and temporary promotions are non-pensionable. A letter has been sent to inform affected staff of the process and its potential implications. A paper is being considered by the HR Committee in Nov 2016.	Rob Carr	Dec 2016	RED
22	HFRS	Annual Benefit Statements	The Annual Benefit Statements (ABS) should have been issued to employees by 31st October 16 latest. The delay means that the HFRA are technically in breach of the Pension Regulator requirements.	A Pension Breach has been reported to TPR on Monday 14th November for the two schemes, 1992 and 2015 registered on the Exchange Portal. TPR has also been notified that this applies to the 2006 Scheme albeit TPR has still to set this up on the portal. We still do not have a confirmed date for the issue of the ABS, although 31st Dec 16 has been recorded as a long-stop.	Rob Carr	31 December 2016	RED
17	HFRS	Communication to members	All FRAs should have a re-employment policy in place and ensure that the re-employment conditions are met on re-employment of an officer who has retired under the age of 55, including those who have a concurrent retained employment.	This relates to firefighters who have more than one contract of employment with the HFRS and wish to retire from their main employment based on a Protected Pension Age (PPA), whilst continuing with their other employment. In such circumstances and to avoid a significant tax penalty specific conditions need to be met including a "break in service" from all employments of at least 1 calendar month (or may be 6 months depending on the circumstances). All affected firefighters are to be written to advising them of the process to be followed.	Jonathan Hurford-Potter	Dec 2016	AMBER
24	HFRS	Protected Pension Age (PPA) and Unauthorised Payments	In 2010/2011 HMRC advised HFRS that 4 firefighters who retired and did not have a break of one calendar month before reemployment had received "unauthorised payments" which would need to be repaid by both employer and employee.	The case with HMRC has been ongoing since 2012, but we now have a ruling. HMRC have requested payment and offered a compromise arrangement. HFRS have agreed to settle the employees liability as well as employer. We have written to the 4 firefighters seeking approval from them to allow us to engage with HMRC on their behalf to resolve this. If they refuse then HMRC will seek recovery from the individuals themselves.	Jonathan Hurford-Potter	01 January 2017	AMBER
3	HFRS	Employment tribunal claims regarding transitional protections	Fire Brigades Union have started the process of a legal challenge on the transitional protections in the 2015 pension scheme regulations, in respect of potential discrimination.	Some national issues about the way in which the ET cases are going to be dealt with, which seems to have now settled down. Data return provided to Bevan Brittan for HFRS. Initial hearings have now been held and Bevan Brittan may need to seek further submissions from HFRS'.	Rob Carr	Continuing	GREEN
4	HFRS	Change to pensionable status of training allowance and Additional Responsibility Allowances (ARAs).	Assessment and implementation of allowances becoming pensionable (Related to Norman case). Provision allowed for in accounts.	Pensionable or non-pensionable Allowances: Following the Norman v Cheshire High Court Case (2011) and the introduction of the 2015 Firefighters pension scheme, all Fire and Rescue Services are required to decide whether or not Training Allowances and Additional Responsibility Allowances are pensionable or not. No central guidance is being provided and it is for each local service to determine, looking at 6 specific factors. A working group has now been formed to look at the detail of this for Hampshire Fire and Rescue and agree a plan of action to address. A contingent liability in the region of £59,000 has been identified, if any of the Allowances are considered to be pensionable.	Sandy Gregory	Mar 2017	GREEN
7	HFRS	Re-engagement Policy	Review of re-engagement policy	Whilst the general position is not to re-engage staff, it was agreed that a policy would be drafted which sets out parameters that must be met in the exceptional situations where there is a business need to re-engage and to set out the potential tax implications for those with Protected Pension Age (PPA). This will be included in the formal policy paper going to the F&GC in March 17.	Sandy Gregory	Mar 2017	GREEN

Pensions Issues Log - HFRS - 15th November 2016

Issue Number	Pension Group	Pension issue	Description / Impact	Progress	Project Manager (use drop down)	Target Completion Date	Status
8	HFRS	HFRS Discretionary Powers Policy	<p>Review and revision of HFRS discretionary powers required in light of the following issues:</p> <p>Regulation [18(1d)] provides for CPD payments to be pensionable on the determination of the employer.</p> <p>NJC collective agreement as per NJC circular 03/07 appendix A http://www.local.gov.uk/c/document_library/get_file?uuid=3cbb554c-6964-49b3-a254-6116ff09cb03&groupId=10180</p> <p>The need to establish process for independent review of individual member's medical circumstances following IHR to ensure that the level of ill health pension awarded is still appropriate.</p> <p>The need to establish injury allowance policy for HFRS confirming whether or not the Authority provides an injury allowance for employees in accordance with the Local Government (Discretionary Payments) (Injury Allowances) Regulations 2011.</p>	The HFRA Finance & General Purposes Committee (F&GP) accepted a number of recommendations contained in a paper dated 10th May 16. These are attached as an annex to the Pension Board papers. A full Discretionary Policy will be tabled for the March 2017 S&G Committee for approval following consultation with unions and other relevant parties. An Ill-Health Retirement and Review Policy will be tabled for the March 2017 S&G Committee for approval following consultation with unions and other relevant parties.	Sandy Gregory	31 March 2017	GREEN
21	HFRS	Record Keeping Requirements	TPR are looking for a commitment by Fire Pensions to create a record keeping plan	Nick Weaver, Head of Pensions Administration is preparing a Record Keeping plan that may be adopted by each of the 3 Services.	Nick Weaver	31 March 2017	GREEN
23	HFRS	Temporary Promotion (TP) treated as pensionable under 2015 (CARE) scheme	At the Pension Board Members workshop held on Friday 11th November 16 Clair Alcock indicated that there was a view that TP within the 2015 (CARE) scheme should be treated as pensionable.	The view of the Scheme Administrator is that HFRA applied the change in TP rules in accordance with the regulations. If there is a now a question mark over how the change in rules has been interpreted then this should be determined nationally, rather than each FRA having to seek it own legal advice and come up with a view. This should be passed to the Scheme Advisory Board for guidance.	Jonathan Hurford-Potter	TBC	GREEN
25	HFRS	Process for managing RDS buy-back on retirement	RDS firefighters who elected to "buy back" service using either payroll deductions or direct debit will need to pay any outstanding balance due at the point of retirement.	Payroll in conjunction with Pensions Administration to ensure that suitable controls are in place to ensure that any balance of money due is recovered at the point of termination.	Gemma McNamara	01 January 2017	GREEN

Pensions Issues Log - HFRS - 15th November 2016

Issue Number	Pension Group	Pension issue	Description / Impact	Progress	Project Manager (use drop down)	Target Completion Date	Status
9a	HFRS	Refund of Pension Contributions where more than 30 years paid PRIOR to 50th Birthday.	The Government has agreed to introduce an employee contributions holiday for members of the 1992 Firefighters' Pension Scheme who accrue the maximum 30 years' pensionable service prior to age 50. This will apply from the point of accruing maximum service in the Scheme until the member's 50th birthday. This change will be applied retrospectively to 1 December 2006. Any affected scheme members who continue in employment beyond their 50 th birthday will need to either resume paying contributions until retirement, or choose to opt out of the pension scheme, at which point their pension will be deferred.	Pension Holiday for firefighters still in service. So far 3 firefighters are affected and a manual process has been established to flag and un-flag their pay records to stop and re-start pension contributions pre and post 50 years in accordance with the rules. A check of firefighters who have transferred-in service is now being undertaken to ensure that nobody has been omitted.	Rob Carr	Dec 16	GREEN
9b	HFRS	Refund of Pension Contributions where more than 30 years paid PRIOR to 50th Birthday.	The Government has agreed to introduce an employee contributions holiday for members of the 1992 Firefighters' Pension Scheme who accrue the maximum 30 years' pensionable service prior to age 50. This will apply from the point of accruing maximum service in the Scheme until the member's 50th birthday. This change will be applied retrospectively to 1 December 2006. Any affected scheme members who continue in employment beyond their 50 th birthday will need to either resume paying contributions until retirement, or choose to opt out of the pension scheme, at which point their pension will be deferred.	Repayment of excess pension contributions to retired firefighters: Fire Pensions are maintaining a list of Fire Personnel who believe that they are affected by the change of policy. Will only be applicable to personnel who joined BEFORE their 20th birthday and who were continuously employed to aged 50. Routine Notice issued to firefighters and list of retired names being compiled. Payroll are currently checking the records of all retired personnel to come up with a master list. It is intended to write to all retired personnel at the end of Nov. 16 to confirm whether or not they have a valid claim. Rob Carr has agreed Finance will assist in calculating the refunds due using the Home Office calculator.	Jonathan Hurford-Potter	01 March 2017	GREEN
1	HFRS	RDS Less Favourable Treatment – purchase of retrospective membership	RDS members given option to purchase retrospective membership of a modified pension scheme. The past service employer costs will be reflected in increases in future employer contribution rates.	Work has been completed. Personnel who elected to pay by lump sum need to do so by 7th November 16. There were 168 that initially elected to join the MNFPS that we received details for. 10 of which declined the offer and 1 (xxxxx xxxxxx) that is due to pay by LS (but hasn't yet) – who I've given an extension to. As at today we have:- Pensioners – 56; Deceased – 2 (2 beneficiaries); Deferred – 41; Actives – 59 (15 now in 2015 scheme)	Claire Neale	Nov 16	COMPLETE
6	HFRS	GMP Reconciliation exercise	April 2016 – State pension provision moving from two tiers to single tier. All schemes will need to do a GMP reconciliation – not a legal requirement (no secondary legislation issued yet) but an 'expectation' from Pensions Regulator and HMRC.	HMRC data has been received by Pension Services and initial queries raised with them in terms of variances in the data. All queries have now been resolved.	Nick Weaver	In line with Govt timescales	COMPLETE

Hampshire Fire and Rescue Authority

Firefighters' Pension Board

Item 7

21 November 2016

Training Needs Analysis (TNA)

Report by Chief Finance Officer

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1 Summary

- 1.1 The creation of a Fire Pensions Board is an integral part of the required Governance regime. With the recent changes to Board membership it is important to ensure that all members are adequately trained to fulfil their responsibilities as a Board Member.
- 1.2 Accordingly current Board Members were invited to complete a Training Needs Analysis (TNA)

2 Recommendations

- 2.1 That the Board notes the self-assessment summary of knowledge and experience appended to this Report as Appendix 1.
- 2.2 Endorses the intention of the HFRA to identify suitable training opportunities over the next 6 months so that Board members have the requisite skills required to play a full and effective part as a Board Member.

3 Introduction and background

- 3.1 Following the recent appointment of 3 new Pension Board Members we now have a fully established Board.
- 3.2 The 6 Board Members were invited to complete a Training Needs Analysis (TNA) in order to obtain an assessment of individual and collective training needs. The following table summarises the TNA returns and identifies that apart from the Chair of the Scheme Advisory Board, Malcolm Eastwood there is a significant training need.
- 3.3 This TNA was, however, completed before the Pension Board Member training day which is taking place on the 11 November 2016 and Board Members will be invited to “refresh their data” after this event in order to inform the required training.

Ref	Familiar (✓)	Almost (?)	Unsure (X)	Topic
A	Background and Understanding of the Legislative Framework of the Fire pension scheme			
A1	1	1	4	Differences between public service pension schemes like the Fire Pension Scheme (FPS) and private sector trust- based schemes
A2	1	0	5	Role of the Independent Public Service Pensions Commission (IPSPC) and its recommendations
A3	1	0	5	Key provisions of the 2013 Pension Act
A4	1	1	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	1	0	5	An overview of local authority law and how Administering Authorities are constituted and operate
A6	1	2	3	Scheme and connected scheme rules overview (including the Regulations)
A7	1	4	1	The Firefighter Pension Scheme 1992
A8	1	2	3	The Firefighter Pension Scheme 2006 and main changes from the 1992 scheme
A9	1	0	5	The Firefighters Pension Fund
A10	1	0	5	The Firefighters Compensation Scheme
A11	1	1	4	Firefighters (Modified) Pension Scheme
A12	1	3	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	1	1	4	Automatic Enrolment (Pensions Act 2008)
B2	1	1	4	Contracting out (Pension Schemes Act 1993)
B3	2	3	1	Data protection (Data Protection Act 1998)
B4	1	5	0	Employment legislation including anti- discrimination, equal treatment, family related leave and redundancy rights
B5	2	4	0	Freedom of Information (Freedom of Information Act 2000)
B6	1	1	4	Pensions sharing on divorce (Welfare Reform and Pensions Act 1999)
B7	1	2	3	Tax (Finance Act 2004)
C	Role and responsibilities of the Local Pension Board			
C1	2	1	3	Role of the Local Pension Board
C2	2	1	3	Conduct and conflicts
C3	1	1	3	Reporting of breaches
C4	1	1	3	Knowledge and understanding

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

J3	2	1	3	Information Commissioner
J4	1	1	4	Pensions Advisory Service
J5	2	2	2	Pensions Ombudsman
J6	2	1	3	The Pensions Regulator (including powers in relation to Local Pension Boards)

Hampshire Fire and Rescue Authority

Firefighters' Pension Board

Item 9

21 November 2016

Temporary Promotions

Report by Chief Finance Officer

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1 Summary

1.1 The Human Resources (HR) Committee will be meeting on the 22 November 2016 to consider a paper and recommendations regarding the retrospective treatment of Temporary Promotions (TP) for serving and retired firefighters. The HR report is attached to this report as Appendix A.

2 Recommendation

2.1 That the Board notes the recommendations contained within the HR committee report which, subject to approval or modification, will be presented to the Full Authority for consideration on the 8 December 2016.

3 Introduction and background

3.1 Last year it was identified that there was a change in the pension regulations that altered the pensionable status of earnings when firefighters were on TP. A decision was therefore made by F&GP Committee in February 2016 to retrospectively confirm that TPs would remain pensionable, but the benefits would be accrued as an Additional Pension Benefit (APB) in line with the regulations, rather than counting towards final salary pension benefits.

3.2 Following investigations initiated by the Hampshire Firefighter's Pension Board it came to light that the regulations around the pension treatment of temporary promotions were changed in July 2013 after the Government recognised the tax problems being caused for some Firefighters and because of the financial strain on the national pension scheme. At this time all Fire Authorities were required to make a decision about whether or not temporary promotions would be treated as pensionable.

3.3 If the Authority decided they were pensionable then ALL future pension contributions made by Firefighters when on temporary promotion have to be treated as an Additional Pension Benefit (APB). APB's are treated separately for tax purposes in that they count against annual allowances as an absolute sum

rather than through a calculation relating to final salary and defined benefits. This helps to significantly reduce any tax liability and some pension benefit is earned irrespective of whether or not the temporary promotion ends. However, since the extra salary whilst on TP does not count within the final salary pension benefits, the overall benefits are not as great if the firefighter is within 3 years of retirement.

3.4 If the Authority decided that temporary promotions were not pensionable then no additional contributions were due from the individual on the additional salary they earned but no pension benefit or tax liability was created.

3.5 F&GP Committee, in its role as Scheme Manager at the time, agreed that TPs would be pensionable as this was in line with the previous regulations and it was felt that firefighters should gain some pension benefit whilst working at the higher levels.

3.6 Since that decision was made, significant work has been undertaken to identify those firefighters that are affected by this and then extract the necessary information to enable the revised tax and pension benefit calculations to be undertaken.

3.7 The paper identifies the number of firefighters affected and allocates each to one of 3 Cohorts:

- Retired firefighters who have incorrectly benefitted from a higher final salary based pension since July 2013 (defined as Cohort 1).
- Active firefighters who could retire within three years of the date they were notified of the change in the regulations which is 5 August 2016 (defined as Cohort 2).
- Active firefighters whose retirement date is later than three years of the date they were notified of the change in the regulations which is 5 August 2016 (defined as Cohort 3).

3.8 The recommendations relate to the treatment of each Cohort and the associated financial consequences.

Hampshire Fire and Rescue Authority**Human Resources Committee****Item 6****22 November 2016****Temporary Promotions****Report by Chief Finance Officer**

Contact: Rob Carr - Telephone: 01962 847508 - email: rob.carr@hants.gov.uk

1 Summary

- 1.1 Temporary Promotions (TPs) have been used extensively within the Service over the last few years as a means of actively managing the workforce reductions arising out of the savings programmes that have been implemented.
- 1.2 Last year it was identified that there was a change in the pension regulations that altered the pensionable status of earnings when firefighters were on TP. A decision was therefore made by F&GP Committee in February 2016 to retrospectively confirm that TPs would remain pensionable, but the benefits would be accrued as an Additional Pension Benefit (APB) in line with the regulations, rather than counting towards final salary pension benefits.
- 1.3 Since that time, significant work has been undertaken to identify all those affected by this change, to extract the detailed pay information from SAP and to start working through the complex tax and pension benefit calculations for each individual.
- 1.4 Those firefighters affected by the change were written to over the summer and following a number of queries, separate briefing sessions have been arranged to answer their concerns. Understandably many of the Firefighters are concerned about the potential impact of this change on their future pension benefits, particularly those that may have already started their retirement planning.
- 1.5 Furthermore, those firefighters who have retired since July 2013 will already be receiving pension benefits based on a final salary position, which is technically incorrect, and understandably there is significant concern that this change will impact on their current benefits.
- 1.6 Separately to this issue, the Service had already instigated a review of the TPs that currently exist since some of them have been in place for some time and the original reasons for the temporary nature of the arrangement are not necessarily valid. Changes to the status of these individuals will also have a knock on impact on their pension benefits, but the two issues are being treated totally independently.
- 1.7 The purpose of this report is to seek decisions in respect of the pension treatment of Temporary Promotions in light of the legal, financial and moral considerations

that surround them.

2 Recommendations

- 2.1 That, subject to approval by the Full Authority of the maximum financial costs at (d) below, the Human Resources Committee:
- a) Agrees that for all firefighters in Cohort 1 (as defined in paragraph 4.1 below), all service post July 2013 during which they were temporarily promoted will be treated as substantive service for the purposes of the calculation of their pension benefits only.
 - b) Agrees that for all firefighters in Cohort 2 (as defined in paragraph 4.1 below), all service post July 2013 during which they were temporarily promoted will be treated as substantive service for the purposes of the calculation of their pension benefits only.
 - c) Agrees that all firefighters in Cohort 3 (as defined in paragraph 4.1) will be treated under the new pension regulations and will earn benefits as an Additional Pension Benefit only for any qualifying periods of temporary promotion after July 2013.
 - d) Agrees to recommend to the Full Authority that the maximum financial cost of £256,000 one-off and £35,600 recurring, that could arise as a result of the decisions made at a) and b) be approved and included in HFRA's budget.
 - e) Agrees to delegate to the Chief Officer in consultation with the Chairman of the Authority and the Chief Financial Officer any future decisions in respect of Firefighters who are identified as meeting the principles for protection as set out in this report as long as they remain within the overall financial approvals set out in recommendation d).

3 Background

- 3.1 Following investigations initiated by the Hampshire Firefighter's Pension Board it came to light that the regulations around the pension treatment of temporary promotions were changed in July 2013 after the Government recognised the tax problems being caused for some Firefighters and because of the financial strain on the national pension scheme. At this time all Fire Authorities were required to make a decision about whether or not temporary promotions would be treated as pensionable.
- 3.2 If the Authority decided they were pensionable then ALL future pension contributions made by Firefighters when on temporary promotion have to be treated as an Additional Pension Benefit (APB). APB's are treated separately for tax purposes in that they count against annual allowances as an absolute sum rather than through a calculation relating to final salary and defined benefits. This helps to significantly reduce any tax liability and some pension benefit is earned irrespective of whether or not the temporary promotion ends. However, since the extra salary whilst on TP does not count within the final salary pension benefits, the overall benefits are not as great if the firefighter is within 3 years of retirement.
- 3.3 If the Authority decided that temporary promotions were not pensionable then no

additional contributions were due from the individual on the additional salary they earned but no pension benefit or tax liability was created.

- 3.4 F&GP Committee, in its role as Scheme Manager at the time, agreed that TPs would be pensionable as this was in line with the previous regulations and it was felt that firefighters should gain some pension benefit whilst working at the higher levels.
- 3.5 Since that decision was made, significant work has been undertaken to identify those firefighters that are affected by this and then extract the necessary information to enable the revised tax and pension benefit calculations to be undertaken. It was not possible for this information to be extracted through a single report, and therefore each record had to be identified manually and the data extracted manually, which involved weeks of manual effort, for the pensions administration team in the IBC.
- 3.6 Unfortunately, this coincided with essential and very labour intensive year end activity around pensions, which for 2016 was particularly complicated since it is a valuation year for the LGPS and the first year of the new CARE scheme for Police and Fire. As a result, the extraction work was deliberately delayed until after the essential year end activity was completed.
- 3.7 In early August, affected firefighters were written to, in order to explain the change in the pension regulations and the potential impact on them and to explain that detailed calculations around their tax and pension benefit position needed to be carried out for the preceding three years.
- 3.8 This included a total of 6 firefighters who had retired since the change in regulations came into force. These Firefighters are already being paid benefits, including periods of post July 2013 temporary promotion on the basis of the final salary scheme, which is incorrect.
- 3.9 Following receipt of the letters, many Firefighters have understandably raised concerns about the potential impact on their eventual pension benefits and further information and briefings have been carried out. The impact on individual Firefighters can be significant and decisions therefore need to be made in respect of the different groups of staff and this is explored in more detail in the next section.

4. Impact on Staff Groups

- 4.1 The impact on the various staff groups is very different, some of which are positive and others which are negative. The different groups for the purposes of this report can be defined as :
 - Retired firefighters who have incorrectly benefitted from a higher final salary based pension since July 2013 (defined as Cohort 1).
 - Active firefighters who could retire within three years of the date they were notified of the change in the regulations which is 5 August 2016 (defined as Cohort 2).
 - Active firefighters whose retirement date is later than three years of the date they were notified of the change in the regulations which is 5 August 2016

(defined as Cohort 3).

- 4.2 Temporary Promotions within the 2015 scheme are not pensionable at all, therefore, for Firefighters who have or are due to transition to the 2015 pension scheme, their temporary promotion for the purposes of earning pension benefits will have already ended on 31 March 2015 or their taper date. Whilst this is an added complication, it still means that they fit within one of the groups defined above and do not need to be treated differently for these purposes.
- 4.3 Furthermore, when the regulations were changed in July 2013, any Firefighter who was already on a TP before 1 July 2013, had their pension rights protected as long as there was no break in the period of their TP. There are a number of Firefighters originally identified in each of the Cohorts above that fall in to this category and in essence their pension benefits are already protected by the new regulations and they do not therefore need to be considered in this report. **This significant level of protection afforded to Firefighters at the time is a key determinant in considering the options and recommendations in this report.**
- 4.4 There are now 183 Firefighters who fall into one of the 3 Cohorts outlined in paragraph 4.1, for which decisions now need to be made. The impact on each of the groups of **strictly following the regulations** without any further decisions is described below :
- 4.5 **Retired Firefighters (Cohort 1 - 6 Firefighters in total)**
- Would probably receive a tax rebate if they had previously paid a tax charge for exceeding their annual allowance or if they paid a tax charge on their commuted lump sum.
 - Would lose the extra annual pension benefit derived from their higher final salary position
 - Would gain an Additional Pension Benefit (but at a much lower rate than what they had lost)
 - Would have been overpaid on their lump sum which would need to be recovered.
- 4.6 Of the 6 firefighters affected, 2 actually gain small increases (less than £10 a year) in their annual pension due to the timings of their TPs in relation to their final retirement dates. Of the remaining 4, the average pension loss per year is around £2,200 with a lump sum loss of around £18,000. However, the highest loss is nearly £3,700 a year and a lump sum loss of £24,500.
- 4.7 Clearly this will have a significant personal impact on the firefighters affected and therefore potential solutions for this group and the implications are discussed in Section 6.
- 4.8 **Firefighters within 3 years of retirement (Cohort 2 – 30 Firefighters in total)**
- 4.9 Virtually all of the Firefighters within Cohort's 1 and 2 were originally within (or are fully protected within) the 1992 Pension Scheme, this means they have a Normal Retirement Date of 55, can retire at 30 years service or can retire at age 50 if they have 25 years service. Cohort 2 therefore includes all Firefighters that fit this description together with any other Firefighter who could technically retire within the

next three years.

4.10 For these firefighters, they :

- Would probably receive a tax rebate if they had previously paid a tax charge for exceeding their annual allowance.
- Be paid in line with the new regulations which would mean a lower annual pension and lump sum compared to what would have been reported to them on previous Annual Benefit Statements.

4.11 This assumes that these firefighters do not secure a substantive position at a similar pay level prior to their retirement (as part of a separate process), discussed further in Section 5.

4.12 **Firefighters greater than three years away from retirement (Cohort 3 – 147 Firefighters in total)**

4.13 This obviously represents the greater proportion of those affected and of these Firefighters 121 had already moved into the 2015 Scheme by 5 August 2016, or will taper into the 2015 Scheme over the next few years and will no longer earn any pension benefits for their TPs. For these staff it would mean they :

- Would probably receive a tax rebate if they had previously paid a tax charge for exceeding their annual allowance.
- Will retain the benefit of the Annual Pension Benefit they have earned before entering the 2015 scheme once they do retire.
- Will not be in any disadvantaged position in respect of their normal annual pension or lump sum

4.14 For this group of staff, the old regulations disadvantage them if they returned to their substantive role greater than three years away from retirement as they effectively paid additional pension contributions but received no benefit at all. Under the new regulations they at least retain the APB they have earned which forms part of their final pension benefits.

5 Review of Temporary Promotions

5.1 This report highlights the extensive use that HFRS has made of Temporary Promotions over the last 4 to 5 years as an effective way of helping to manage changes in the levels of staffing as a result of the reductions in Government funding.

5.2 Whilst this is a sound basis for continuing with Temporary Promotions it has been highlighted recently that there are TPs that have been in place for many many years. Indeed one of the 6 retired firefighters had been on a TP for nearly 6 years. In some areas it is felt that the original reasons for appointing on a temporary basis may no longer be valid.

5.3 The Service recognised this as an issue and therefore instigated a top down review of all TPs with a view to assessing whether or not there was a case for them to

remain a TP or perhaps should be converted to a substantive position. This review was commissioned entirely separately from the pension issues that were uncovered in respect of TPs and the decision making for both items is and will remain completely separate going forward.

- 5.4 However, from a pension perspective, if any of the firefighters currently on a Temporary Promotion were to gain a substantive role at the higher pay grade (either through this review or future promotion) then they would benefit from the higher salary feeding into their final salary pension benefits in line with the normal regulations and would no longer feature in one of the Cohorts outlined in the section above.
- 5.5 Since this exercise and the decisions arising from it are focussed on a Firefighter's employment position rather than their pension position, this would be deemed as normal employment practice and there is therefore no adverse impact created by these actions on the national firefighters pension scheme. (NB – it is not legitimate for HFRA to decide to convert temporary promotions to permanent ones, just to protect individual firefighters' pensions).

6. Options for Affected Firefighters

- 6.1 Section 4 outlined the impact of rigidly applying the new regulations to the different Cohorts that have been identified. For Cohort 1 they would be in the position of having their actual pension benefits (which they are currently receiving) reduced and part of their lump sum would need to be repaid. For Cohort 2 future pension benefits would not be paid at the level indicated to those Firefighters in their Annual Pension Benefit Statements. Both of these Cohorts could therefore claim an actual or perceived loss of income as a result of the failure of HFRA to properly implement this change in regulations.
- 6.2 For Cohort 3 they would not have been in a position to benefit from their higher salary position in their pension benefits and in fact will be better off under the new regulations as they will retain their APB earned whilst on TP (up until the point they enter the 2015 scheme).
- 6.3 It is therefore only the position of Cohorts 1 and 2 that need to be considered in terms of decision making around how their periods of TP will be treated for pension purposes.
- 6.4 By law, HFRA can only pay pension and other benefits in line with the regulations that are in force at the time. In this instance, the Authority has failed to recognise and implement a change in regulations, that at the point they are enforced would have a major impact on the financial standing of 35 retired and active Firefighters.
- 6.5 At the present time, the benefits being paid to the 6 retired firefighters are outside of the pension scheme rules and this needs to be regularised, together with making decisions in respect of those Firefighters in Cohort 2 and their future benefits. The Authority therefore has 2 choices :
- Option 1 - Reduce the pension benefits of the retired firefighters in line with the regulations and seek reimbursement of the overpaid amounts and pay any future benefits in line with the regulations.
 - Option 2 - Make the decision to treat Temporary Promotions after July 2013

as substantive, solely for the purposes of calculating pension benefits, leaving existing and future pension benefits in the position they are currently in or were expected to be in at the point of retirement (to be clear no appointments to substantive roles would be made under this option it would purely feed through for pension benefit purposes).

- 6.6 The key determinant in considering how to treat the Firefighters in Cohorts 1 and 2 is outlined in Paragraph 4.3. This explains that at the point the regulations changed, the regulations themselves contained a provision that protected the pension position of any Firefighter who was already on a Temporary promotion prior to the 1 July 2013. It would therefore seem only right that this same protection is afforded to Firefighters in Cohorts 1 and 2 at the point that they were notified of the change in regulations which is 5 August 2016 and as a result, HFRA should honour that position for those Firefighters, which is fully in line with the spirit of the legislation itself.
- 6.7 On top of this position, there are strong moral arguments that would support Option 2 in favour of Option 1, not to mention the potential unrest in the workforce, together with the reputational damage of pursuing option 1.
- 6.8 A further important consideration is to work through the potential outcome of pursuing Option 1. Clearly in each of the cases where the Firefighters will have suffered a significant actual or perceived financial loss through no fault of their own, it is almost certain that they will pursue this as a complaint against HFRA.
- 6.9 Complaints in respect of pension issues, follow a prescribed process as follows :
1. The complaint is initially investigated by the employer and a response given.
 2. If the claimant is not satisfied with this response they have the option of entering stage 1 of the local Internal Dispute Resolution Process (IDRP), which will independently review the facts of the case and come to a conclusion. (The stage 1 reviewer for HFRA is the Head of Finance).
 3. Again, if the claimant is not satisfied with the outcome they can move to stage 2 of the IDRP where the overall case together with the stage 1 decision is further independently reviewed. (The stage 2 reviewer for HFRA is the Director of Professional Services).
 4. Following this, the final place of appeal would be with the Pension Ombudsman and their decision is final and legally binding on HFRA. (NB firefighters would also be able to bring civil claims in the civil courts, regardless of the IDRP/Ombudsman processes).
- 6.10 In considering complaints of this nature, there are three key questions that would normally be asked by the Pensions Ombudsman (and are therefore always relevant in considering the complaint as part of the IDRP process) :
- What information was provided to the employee about their future benefits
 - What expectation did this give to the employee about the level of their future benefits

- What opportunity did the employee have to question whether or not the information that had been provided to them was incorrect in the context of their complaint.
- 6.11 In this particular case, the answers to those key questions for both Cohorts 1 and 2 are :
- Previous Annual Benefit Statements (or specific retirement estimates) since the firefighter was on Temporary Promotion would have consistently shown pension benefit projections at the higher level.
 - The expectation was therefore set for the firefighter that these benefits would be payable to them on retirement
 - Given that the error has occurred following a change in regulations that was missed by the employer, it is not reasonable to assume that the employee was in a position to question whether or not their benefits were incorrect.
- 6.12 Whilst in this report we are clearly not able to prejudge or fetter the discretion of the decision maker within a formal process, it is possible that the IDR process itself or the Pension Ombudsman would find in the favour of the employee, depending on the facts of each case.
- 6.13 The likely redress is that the firefighter would be returned to the pension position that they were previously in (or would have been in) so that they suffered no loss, in effect bringing us to the same conclusion as Option 2 but with significant additional upset and stress for the Firefighters concerned. There would also be a significant administrative burden and cost on the Authority and potentially the Pension Ombudsman, together with the repercussions for industrial relations within the Service.
- 6.14 There are also several other factors that would support the pursuit of Option 2, some of which were raised by affected Firefighters at a briefing meeting and a subsequent engagement session that were both held during October :
- Firefighters in Cohorts 1 and 2 have either already made decisions about their retirements or will have started planning for their retirement within the next three years. Therefore to make such a change now will affect those plans, which is contrary to the normal protections given when any changes are made to pension regulations.
 - Firefighters were not aware of the change in regulations which could have influenced their decision as to whether to apply for a Temporary Promotion in the first place.
 - Changes to regulations are usually implemented over a long period of time, but the current situation means that there is no lead in time for this change, which has taken some decision making options away from Firefighters.
 - There is a strong moral argument to suggest that HFRA should honour the pension position for these Firefighters since the events that led to this position are completely outside of their control.
- 6.15 Given all of these factors, but in particular the argument set out in paragraph 6.6, the conclusion therefore is that Option 2 should be pursued for Cohorts 1 and 2 and

the recommendations in this report seek approval to agree this course of action, which does have financial implications for the Authority which are outlined in Section 7.

7. Financial Consequences

- 7.1 The Firefighters Pension Scheme is an unfunded national scheme administered and governed by the Home Office (although local administration in terms of pension processing is carried out by Hampshire Pension Services).
- 7.2 The unfunded nature of the scheme means that each year pension contributions are collected from employees and employers and are paid into the national scheme and local payments in respect of pensions are reimbursed from the same scheme. There is no pension fund as such in the same way as LGPS, payments into and out of the scheme are accounted for on an annual basis.
- 7.3 A key principle of the scheme is that payments made in line with the regulations can be charged to the national scheme, but the financial consequences of local decisions or the use of discretionary powers contained within the scheme must be paid for locally. Members may recall a significant issue with the payment of injury pensions some years ago, where Authorities were making local decisions about injury pension awards, but charging the costs to the national scheme, which was not in line with the regulations and had a significant financial impact on a number of authorities including HFRA.
- 7.4 In the case of the retired Firefighters, the Authority is currently paying pension benefits in excess of those allowed by the regulations and are charging those to the national scheme, which is not allowed.
- 7.5 Under the two options outlined in paragraph 6.5, if we were to pursue Option 1 and then through a Pension Ombudsman decision we were instructed to continue to pay the higher amounts, these could still not be charged to the national scheme since they are payments outside of what is allowed by the regulations.
- 7.6 Under Option 2, the same principle would apply and this would be treated as a local decision for which the Authority must bear the financial consequences. Given that both options may lead to the same outcome for Cohorts 1 and 2 (i.e. that they retain their existing or potential future benefits) then there is arguably no way that the Authority can avoid the financial consequences of this error.
- 7.7 The cost to the Authority will effectively fall into two parts as shown in the table below :

	Lump Sum £	Annual Pension £
Cohort 1 (actual costs)	71,000	10,700
Cohort 2 (estimated maximum cost)*	185,000	25,000
Total	256,000	35,700

- 7.8 The lump sum amount for Cohort 2 is between £115,000 and up to a maximum of

£185,000. This reflects the fact that those staff who could retire at 25 years service and 50 years of age may decide to leave their retirement until they reach 55 years of age or 30 years service which attracts a higher lump sum commutation factor (but does not significantly impact on the annual pension amount).

- 7.9 In addition to the differing options for retirement timing, which will impact on the final figures, there are also a number of ways in which the costs for Cohort 2 could be reduced, mainly through the Firefighter gaining a promotion to a substantive position prior to them retiring or them leaving the service and deferring their pension. The figures above should therefore be viewed very much as maximum cost figures at this stage.
- 7.10 The repayment of the one off lump sum amount would need to be drawn from reserves in the current year or funded from savings in the current budget and the ongoing cost of the annual pension amount will need to be added to the budget for 2017/18 onwards. This report recommends the approval of the financial costs in the above table to the Full Authority on 8 December 2016.
- 7.11 Given the significant complexities of this issue, it is possible that new cases or new information may be uncovered that would impact on the make up of the Cohorts or on the individual financial calculations. This report therefore seeks delegated authority to the Chief Officer in consultation with the Chairman and Chief Financial Officer to deal with these new cases or new information in line with the principles set out in this report as long as they can be contained within the overall cost envelopes outlined in paragraph 7.7.

8. Risk Assessment

8.1 Rationale for the Decisions

These are set out in detail in Section 6 and conclude that the selection of either option in paragraph 6.5 may lead to the same outcome, which is that the Firefighters pension position will be protected and the Authority will have to pick up the costs over and above what is allowed to be charged to the national scheme.

8.2 Legal Risks

All of the proposals and options in this report are consistent and comply with the regulations in respect of the firefighters pension scheme. The ability to make local decisions in respect of employment and pension benefits is embedded in the regulations and informal discussions with the Home Office have confirmed this, along with the financial implications outlined in this report. Whilst there is the potential for age related rules relating to pension entitlements to cause age discrimination, this is likely to be justifiable and therefore lawful where proposals mirror the age related impacts of the scheme rules.

The justification for the proposed decision is in line with the spirit of the regulations that were introduced in July 2013 albeit that these are being applied later in the case of HFRA due to the fact that the original regulation change was not identified at the time.

There is the potential for legal challenge from firefighters who feel that they have lost benefits that they had previously had a legitimate expectation of receiving but there is a prescribed route for dealing with such a complaint. However, a decision from the Pension Ombudsman does still not prevent an employee from pursuing a

separate Employment Tribunal or civil case through the civil courts.

8.3 Financial Risk

The recommendations in this report create financial consequences for the Authority but at the same time de-risk the potential for any future unexpected costs arising, including the costs and officer time associated with dealing with IDRPs claims, industrial relation issues or legal cases if we were to opt to not apply a local discretion for Cohorts 1 and 2.

8.4 Reputational Risk

Clearly the circumstances that led to this position do not reflect well on the Authority and the financial impact of the error is also a significant issue. However, the recommendation in this report to protect the Firefighter's pension position reflects well on the Authority as an employer and removes a potentially difficult position with a large number of staff and the Representative Bodies.

9. **Conclusion**

- 9.1 This matter is extremely complex and very emotive for those Firefighters that it affects but the overwhelming evidence within the report supports the recommended course of action which is to protect the pension rights of those employees who were not notified of the change in the Regulations in July 2013 and who would have benefited from higher pension benefits had the change in regulations not taken place.

10 **Supporting our corporate aims and objectives**

- 10.1 Whilst the decision does not directly support our corporate aims and objectives it is consistent with our cultural vision and the way we would expect to treat our employees.

11 **Risk analysis**

- 11.1 A risk analysis is provided at Section 8 of this report.

12 **People impact assessment**

- 12.1 The proposals within this report are considered compatible with the provisions of the equality and human rights legislation and support as far as possible given the context, the organisation's values in looking after our workforce.

13 **Consultation**

- 13.1 In addition to the informal advice received from the Home Office, informal views were sought from the Chairman of HR Committee, the Chief Fire Officer, the Director of Professional Services and the Pension Board, all of which were supportive of the course of action proposed in this report, recognising that the formal decision is purely a matter for HR Committee in its capacity of overseeing employment decisions within the Authority.

13.2 In terms of the affected staff themselves, each Firefighter was written to on 5 August 2016 setting out the issues and the potential impact on their position. This was followed up by a briefing meeting held on 10 October 2016 at which Firefighters were also able to ask questions and during the briefing they asked how their views would be taken into account.

13.3 As a result of this briefing, a further engagement session was arranged for 26 October 2016 and views from affected staff were requested. A summary of the comments and points made are detailed below, together with any relevant comments as they relate to the report content and decisions :

- What protections were afforded to personnel when previous rule changes were made, these should be given to people affected now **(Comment - this is the basis of the argument that is being used in the report)**
- Firefighters have made 'life choices' based on an expectation that TP would remain pensionable and so 'no notice' of a change is unfair. **(Comment – this point is reflected in the decision to protect Firefighters)**
- Previously as there was no differentiation between substantive and TP, firefighters had no concern over their role status – they do now but cannot retrospectively influence this.
- Firefighters have been on TP for long periods based on no fault of their own and would have sought either cessation of their TP, or confirmation in post had they been aware of the rule change in 2013.
- Why 3 Cohorts? – what is the difference between Cohorts 2 and 3 as some firefighters currently allocated to Cohort 3 could benefit from the 25 year rule and retire before age 55? Thus the artificial distinction between Cohort 2 and Cohort 3 is wrong **(Comment - the cohorts were changed as a result of this point).**
- Had we been informed of the 'change in rules' coming into force in July 2013 we could have retired slightly earlier and benefitted from the existing (previous) pension rules.
- As all firefighters made pension contributions based on their TP salary it is unfair that they should have to accept the burden of the change and not the Fire Authority.
- Firefighters manage financial planning over a number of year and not months. You have waited 3 years to inform us of this change and are now 'rushing' implementation over 3 months. **(Comment – the proposed solution protects the position of Firefighters who would lose out irrespective of when the decision was made).**

13.4 Following the engagement session the FBU were approached by some of the Firefighters and the FBU agreed to speak to management about the recommended solution that was being put forward to this Committee to determine the extent to which they may wish to make further representations. Once they had met with management, they were satisfied that the approach being adopted was fair and reasonable.

