



**Hampshire
& Isle of Wight**

FIRE & RESCUE AUTHORITY

Purpose: Noted

Date: **25 JANUARY 2022**

Title: **FIRE PENSION BOARD STATUS REPORT & RISK REGISTER REVIEW**

Report of Chief Financial Officer

SUMMARY

1. This report provides an update on the development of key items.
2. This report, together with attachments, provides the framework for this meeting agenda.

STATUTORY REPORTING

3. The Accounting for Tax (AFT) for quarter 2 2021/22 was submitted and paid to HMRC on 19 October 2021. The table below shows the breakdown of the payments made.

Type of payment	Number of members	Amount paid
AFT – Tax on refund	1	£34
AFT – Life Time Allowance	1	£11,512
Total paid to HMRC		£11,546

TPR SCHEME RETURNS

4. Each year the Pension Regulator requires pension schemes to complete a scheme return. This includes information about the Board members, the number of members in each scheme and also the data scoring for both the common and scheme specific conditional data that is present and accurate on pension records.

5. The common data score is made up of things like personal data such as name, address, date of birth etc, while the scheme specific data score varies from scheme to scheme and for Fire would include specific things such as membership data including any transfer in details, CPD, temporary promotions etc.
6. The table below shows the scores for year ending 31 March 2020 and the latest year 31 March 2021, which shows that improvements have already been made across most areas. Hampshire Pension Services have a data improvement plan in place which will aim to increase the data scores year on year.

The Pension Regulator Scheme Returns - FIRE Schemes						
Year end	31/03/2020					
TPR Scheme Return	December 2020					
Scheme	Actives	Deferreds	Pensioners	Beneficiaries	Common Data Score	Conditional Data Score
1992 Fire Pension Scheme	53	68	831	136	98%	92%
2006 Fire Pension Scheme	13	411	43	4	88%	98%
2006 Modified Fire Pension Scheme	15	38	73	3	98%	90%
2015 Fire Pension Scheme	1,057	443	5	7	98%	97%
Total	1,138	960	952	150		
Year end	31/03/2021 (Includes all IOW membership numbers and in the data scoring)					
TPR Scheme Return	November 2021					
Scheme	Actives	Deferreds	Pensioners	Beneficiaries	Common Data Score	Conditional Data Score
1992 Fire Pension Scheme	61	70	945	162	98.71%	95.51%
2006 Fire Pension Scheme	11	440	62	7	95.45%	98.00%
2006 Modified Fire Pension Scheme	22	48	100	6	97.73%	93.18%
2015 Fire Pension Scheme	1,209	557	9	8	98.23%	96.77%
Total	1,303	1,115	1,116	183		

COMMUNICATION

7. Since the last Pension Board report, the Employer Pension manager has provided an online presentation at the pre-retirement course and an in person presentation to new trainees.

MEETINGS

8. The Employer Pension Manager has continued to attend the fortnightly “coffee mornings” put on by the LGA. She has also attended the Fire Communications Working group and the Fire Technical group. These are national meetings and hosted by the LGA and continue to be held online.
9. The Employer Pension Manager attended the SE Fire Pensions Officers Group regional meeting. She also attended an online Pensions Conference hosted by Eversheds. The event had various speakers and the TPR single

code of practice was discussed along with what role diversity and inclusion has to play in pensions.

MEMBER PORTAL

10. Members who register for the portal, or who log in, will now not need to enter their security question answer. Instead, they will be sent an email with a onetime passcode. This enhancement will help improve security with the portal logins.
11. During 2022, the portal is expected to have some additional features added which will enable an online verification of ID check. This will be primarily used for pensioners who are sent life certificates for completion. These are sent to help detect and prevent fraud, but it is onerous not only for the member but also comes with a high administrative burden. These online tools will help to simplify and speed up this task. Clearly, not all members will want to use this or be able to use this, so the current paper process will be available as an alternative.
12. There has been a slight increase in members registered for the portal. At the last Board meeting, it was reported that at the 31 August 2021, the total membership registered was at 32.64%.
13. Numbers of those registered are shown in the table below, as at 31 December 2021:

HAMPSHIRE & ISLE OF WIGHT FIRE AND RESCUE SERVICE								
HIWFRA - FPS	Active		Deferred		Pensioner		Totals	
		% of active membership		% of deferred membership		% of pensioner membership		% of total membership
Active	Number		Number		Number		Number	
Registered	648	47.68%	343	28.65%	365	27.44%	1,356	34.89%
Not registered	711	52.32%	854	71.35%	965	72.56%	2,530	65.11%
Total	1,359	100.00%	1,197	100.00%	1,330	100.00%	3,886	100.00%

COMBINED FIRE AUTHORITY

14. There were two issues to be completely resolved following the creation of the Combined Fire Authority and the transfer of all pension data to Hampshire.

HISTORICAL CONTRIBUTION RATES

15. As part of the transfer to the CFA, it came to light that employee pension contribution rates had not been applied correctly to IoW retained firefighters for the period 1 April 2012 to 31 March 2021. The contributions rates applied had been based on the actual part time pay, rather than assessed by using

the whole time equivalent reference pay for a retained firefighter. This meant that these members had not been paying enough pension contributions.

16. After several emails chasing the data necessary to evaluate the scale of the issue, the IWC provided a spreadsheet on 6 January 2021.
17. The spreadsheet shows that there is in total 109 members who have underpaid contributions over some or all of the 9 year period between 1 April 2012 to 31 March 2021. The total amount of underpaid employee pension contributions is £69,506.57 and is split over the various years as shown in the table below:

Year	Number of records	Total amount	Average amount per record
2012/13	44	£1,816.24	£41.28
2013/14	53	£3,832.67	£72.31
2014/15	63	£5,876.57	£93.28
2015/16	81	£5,309.30	£65.55
2016/17	72	£11,045.86	£153.41
2017/18	61	£9,707.47	£159.14
2018/19	66	£9,353.50	£141.72
2019/20	71	£11,770.88	£165.79
2020/21	63	£10,794.08	£171.33
TOTAL		£69,506.57	

18. The value of these missing contributions will need to be paid by HIWFRA to the pension scheme and will have to come from reserves transferred from the IWC.
19. HIWFRA will then need to make a decision about whether none, some or all of these contributions will be collected from individual members. The Board are asked for any comments or views about this issue.

MODIFIED FIRE PENSION SCHEME

20. It was reported to the Board in the report in October 2021, that there were 6 cases that had a material difference. Those that had been underpaid have now had their pensions corrected and the amounts due have been paid to them.
21. There were three cases that needed to either pay back some monies or pay additional monies. They were provided with options and all three have made their choice and payment plans have been set up accordingly.

RISK REVIEW

22. There are a number of items in pension administration and governance which contain elements of risk to varying degrees. Risks are captured through a variety of ways; some are on the risk register, while others are picked up as part of the regular horizon scanning that the Employer Pension Groups do.

RISK REGISTER

23. The board are asked to review the Risk Register and to suggest any amendments. The Risk Register can be found in APPENDIX A.

FRA SELF ASSESSMENT SURVEY

24. In May 2021, the LGA issued a survey to all FRAs regarding their preparedness for McCloud / Sargeant remedy and the Matthews / O'Brien second options exercise.
25. The LGA have now summarised the findings of the surveys, of which there was 100% participation. They have issued a report which can be found on the SAB Board website (<https://www.fpsboard.org/>) under Board publications.
26. The LGA have now issued to each FRA their responses so that these can be benchmarked against the rest of the Fire sector. HIWFRA responses can be found in APPENDIX B.
27. Having compared our answers with the report, it is pleasing to note that we are in a good position and have adequate funding, resources and planning in place.

McCLOUD / SARGEANT AGE DISCRIMINATION REMEDY

28. On 19 July 2021, HM Treasury (HMT) introduced the Public Service Pensions & Judicial Offices Bill (PSP&JO) to the House of Lords. The Bill sets out in law how the government will remove the discrimination identified by the courts in the way that the 2015 reforms were introduced for some members (i.e. remedy).
29. This is the primary legislation which closes final salary schemes for accrual past 31 March 2022 and moves all remaining Fire Pension Scheme members into 2015 Fire Pension Scheme, while ensuring that existing transitional protections such as the final salary link and double accrual are retained.

30. The Home Office launched a consultation on the draft legislation for the PSP&JO Bill on 8 November 2021 with a closing date of 2 January 2022. A response to the consultation was submitted by the Pension Board on behalf of the HIWFRA. The draft legislation is in line with what was expected with only some minor clarification required in a few areas.

McCLOUD REMEDY WORKING GROUP

31. The McCloud Remedy Working Group is made up of cross departmental and cross organisational representatives and has been meeting up monthly to track progress and ensure consistency across the Shared Services Partnership.
32. At the last meeting it was reported to the Board that the group was working on drafting a letter to go to the current Protected members of the Police and Fire Pension Schemes to advise them of the Scheme changes from 1 April 2022.
33. The letters that have been drafted are in line with the letters that have been issued nationally by the Fire communications Working Group. The template can be found in APPENDIX C.
34. The communication plan for this is currently being developed but it is hoped that the letters to this small group of active members will be issued by early February 2022. Engagement and advance notice of this will be discussed with senior management to help facilitate queries.

IMMEDIATE DETRIMENT

35. The Board will recall that on 8 October 2021, the Local Government Association (LGA) and the FBU issued a Joint Statement and published a Memorandum of Understanding (MoU). Its purpose was to provide a framework under which members in scope can receive benefits prior to all remedying legislation being in force, therefore avoiding significant additional numbers of Immediate Detriment (ID) legal claims as a result of the McCloud age discrimination case.
36. On 27 October 2021, HM Revenue and Customs (HMRC) published a policy intention note with regard to new legislation that would be effective from 6 April 2022. This specifically affects retrospective remedy payments where the date of retirement is more than 12 months ago and this triggers the late payment timing condition which makes the payment unauthorised and incurs a 55% tax charge. The new legislation would deem such payments to be authorised for purposes of the McCloud remedy.
37. This caused some issues and these raised questions over funding. The Immediate Detriment Framework (IDF) makes these unauthorised payments as compensation to the member which means that the FRA would

have to pay for this until such time as the legislation was in force. There was an additional concern about whether funding would be provided for payments occurring before 6 April 2022.

38. On 16 November 2021, HIWFRA adopted the IDF and started to accept applications from members. The framework was adopted with the knowledge about the HMRC policy intention.
39. On 29 November 2021, the Home Office then withdrew its informal Immediate Detriment (ID) guidance with immediate effect. HM Treasury (HMT) and HMRC have cited issues with the interpretation of the powers in Section 61 with regard to pension contributions and that they had also not anticipated the extent of the complexities involved with the tax issues (e.g. tax relief and Annual Allowance).
40. Since the MoU was announced on 8 October 2021, the landscape has changed significantly as more information has come to light. This now leaves FRAs in a very precarious position.
41. Any correction to members pension benefits by providing remedy prior to legislation being in force is completely dependent on an interpretation of how Section 61 of the Equality Act 2010 operates. This is based on the view that Section 61 permits pension scheme regulations to be read as though discriminatory provisions do not apply, allowing members in this position to be treated as a member of their legacy scheme.
42. HMT and HMRC have carried out some further work and it now appears that Section 61 may not give all the powers required to operate the remedy smoothly and predictably, without generating significant uncertainty for schemes, and risking significant second or third adjustments for individuals.
43. Because of this, HMT's current view is now that ID cases, including those yet to retire, cannot be processed before legislation is in place without considerable risk, cost, uncertainty and administrative burdens for individuals, schemes and employers.
44. On 14 December 2021, the Chief Finance Officer made the decision to temporarily suspend all work on ID and to stop accepting any new applications. The suspension was noted by the Fire Authority and will remain in place until the next meeting of the Standard's and Governance Committee on 11 March 2022 when they will be able to consider the next steps.
45. The members that had made applications have been written to and advised of the suspension and informed that they would be written to again after the Standards & Governance meeting to update them on the position.

LEGAL OPINION

46. On 17 December 2021, the LGA issued the long awaited legal advice about the IDF. The advice has been issued to nominated contacts and is confidential. The LGA sought advice from Bevan Brittan and also from two QCs.

RISKS FOR THE FIRE AUTHORITY

47. Section 61 permits paying arrears of pension & lump sum for category 2 cases, but does not resolve the issues around tax and contributions.
48. The FRA retains powers to make compensation payments as an employer to members (e.g. interest on contributions, refund of contributions, contribution holiday payments, unauthorised tax charges where lump sum more than 12 months after retirement, additional PAYE paid on arrears of pension etc) but none of these payments will be recompensed by the Home Office.
49. There is no guarantee that further tax liabilities will not arise leading to further claims for compensation. There is no way to establish how much any additional costs would be. These additional claims would not be recompensed by the Home Office.
50. An FRA may use its powers to make compensation payments, but if these are not exercised reasonably and properly, then the FBU could bring claims against the FRA. It is recommended that where the FRA decides to use these powers, then specific legal advice for the individual FRA should be sought on the risks of any threatened claims because the likely outcome will depend on the facts for the specific claim and remedies sought.
51. Although the LGA will continue to work with Bevan Brittan on recovering costs including under the New Burdens doctrine or similar, there is absolutely no guarantee that they will be successful and FRAs should assume that there will be no funding to cover these costs.
52. While FRAs may well want to continue with IDF, there is a real risk that they will be left with an unquantified liability and whilst the FBU could take FRAs to court, the potential impact on their members is also unquantified.

RISKS FOR THE MEMBER

53. Section 61 does not allow contributions that were paid to one scheme to be simply moved to another scheme.
54. Where a member is currently in 2015 scheme and will move back to 1992 scheme, they will have underpaid contributions. HMT now state that any tax liability (i.e. tax relief) may now in the event not be able to be retrospectively

made good by remedying legislation. This means that the member may not be able to claim tax relief.

55. The member may also not be entitled to the tax relief that they received on the contributions that were paid into the 2015 scheme and this may have to be repaid by the member. This could mean that the member will have a personal tax liability of an unknown amount that would be due once the remedying legislation is in place.
56. Members are understandably keen to access their remedied benefits. The issues are extremely complex and there is a real risk that members may make decisions without a full understanding of the potential risks and benefits.
57. The decision about whether to proceed with IDF or not, rests with the Scheme Manager. So although there appears to be no legal reasons why we could not continue with IDF, there are a number of significant risks, both to the member and the HIWFRA which cannot be ignored, accompanied by the clear advice from HMT that Immediate Detriment cases should not now be processed until remedying legislation is in place. The risk of course, of not continuing with IDF means we risk FBU taking HIWFRA to court.
58. The Immediate Detriment situation was complicated before, but now it has just become exceptionally complicated and risky not only for HIWFRA, but also for the members.
59. In view of the issues that there are with IDF, we are seeking a legal opinion. We also understand that the LGA and the FBU are continuing negotiations which may enable FRAs to select parts of the Framework to proceed with, although we have no details on how this will work yet. Whilst this may well reduce or remove a lot of the risk for the FRA, it is unlikely to remove the risk for the member as the issues around Section 61 and the tax relief on contributions will remain. The position is likely to remain unclear for a little longer.
60. It is our opinion that we should continue with the suspension of the IDF and will be recommending its continued suspension to the Standards & Governance Committee. It was hoped that for their meeting on 1 February 2022 (now postponed until 11 March 2022) that a clear decision would be able to be made, but this does not allow sufficient time for legal advice and new guidance from the LGA to be taken into account.
61. It is important to ensure that we now do the right thing for the FRA and members and a rushed decision may not provide the adequate analysis of the guidance, legal advice and proper assessments of the risks. A final decision will therefore now be made at their meeting on 26 May 2022. It would be helpful for the Board to give their views on this and confirm if they support this recommendation.

PROJECT AND COSTINGS

62. The McCloud project in Hampshire Pension Services is currently on track and on budget. The total cost for Police and Fire work on McCloud for quarter 2 of 2021/22 is £9,775.85 and for quarter 3 of 2021/22 is £22,312.57.
63. The costs for quarter 3 were higher due to a lot of work on the Immediate Detriment Framework and also on the consultation of the PSP&JO Bill.
64. The costs have been split according to a percentage of the active membership and a further adjustment is made due to the complexity of Fire Pension Schemes, such as temporary promotions, contribution holidays, CPD payments and pensionable pay.
65. HIWFRA is attributed with 35% of the police and fire costs. The table below shows the estimated and actual costs for the first three quarters of 2021/22.

Fire Pension Schemes - Hampshire and Isle of Wight Fire and Rescue Authority								
2021/22	Estimated Costs			Actual Costs				
Quarter	Resourcing cost for Police and Fire Schemes	% share of costs for HIWFRA	Estimated Costs for HIWFRA	Resourcing cost for Police and Fire Schemes	% share of costs for HIWFRA	Actual Costs for HIWFRA	Difference in actual from estimate	% increase or decrease from estimate
Q1	£ 10,191.49	35.00%	£ 3,567.02	£ 10,904.96	35.00%	£ 3,816.73	£ 249.71	7.00%
Q2	£ 13,714.42	35.00%	£ 4,800.05	£ 9,775.85	35.00%	£ 3,421.55	£ (1,378.50)	-28.72%
Q3	£ 21,691.33	35.00%	£ 7,591.97	£ 22,312.57	35.00%	£ 7,809.40	£ 217.43	2.86%
Q4	£ 22,079.61	34.88%	£ 7,702.37	£ -				
TOTALS	£ 67,676.86		£ 23,661.41	£ 42,993.38		£ 15,047.68	£ (911.35)	

RECOMMENDATION

66. That the content of the report be noted by the HIWFRA Firefighters' Pension Board
67. That the Risk Register as set out in paragraphs 22-23 and Appendix A be approved by the HIWFRA Firefighters' Pension Board
68. That recommendation to support the continued suspension of the Immediate Detriment Framework as set out in paragraphs 46-61 be noted by the HIWFRA Firefighters' Pension Board

APPENDICES ATTACHED

- 69. APPENDIX A – Risk Register
- 70. APPENDIX B – HIWFRA self assessment survey results
- 71. APPENDIX C – Template letter to Protected Scheme members

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