



Firefighter Pension Schemes Local Pension Board Minutes

Date of meeting	Thursday 4th June 2020
Time of meeting	9.30am
Location of meeting	Virtual meeting held on Microsoft Teams

Attendees:

Employer representatives:

Dave Bill, Assistant Chief Fire Officer, Director of Innovation, Risk and Future Development (Chair)
Colette Black, Assistant Chief Executive Officer – People, Culture and Values
Moirra Bruin, Assistant Chief Fire Officer, Director of Operations

Scheme Member representatives:

Alistair Castle, FRSA
Andy Knowles, FBU
Paul Moth, Retired Member Representative

Invited participants:

James Durrant, Pensions Manager
David Golding, Technical Analyst, Essex Pension Fund

Observer:

Roger Hirst, Police Fire and Crime Commissioner and Scheme Advisory Board Employer Representative

Apologies from:

Michael Jerrison, Pensions Support Officer

	Agenda item	Action
1	Welcome, introductions and apologies Dave welcomed all to the meeting. Introductions were made between the Board members and Roger Hirst and Colette Black who was at her first meeting. Michael Jerrison gave his apologies. The meeting was declared as quorate.	

	Agenda item	Action
2	<p>Conflict of interest declarations</p> <p>No further conflicts of interest were declared from existing Board members.</p> <p>New member Paul Moth declared a conflict of interest as he is in receipt of a Fire Service pension. James was to provide Paul with conflicts form at this meeting so that it can be recorded formally on the conflict register. The form will be posted to Paul so he can complete it.</p> <p>Roger Hirst declared a conflict as the scheme manager. Roger stated he was attending as an observer. He is a member of the Fire Pension Scheme Advisory Board and has heard positive feedback about the Essex Local Pension Board.</p>	<p>The form will be posted to Paul so he can complete it.</p>
3	<p>Minutes of last meeting</p> <p>Dave went through the minutes and actions from the last meeting on Thursday 5th March 2020.</p> <p><u>James will ask Clair if those paying by periodical contributions can have the NI refund.</u></p> <p>James has raised a query with Clair Alcock as to whether those who are paying by periodical contributions can have the national insurance refund.</p> <p>To date, no reply has been received from Clair. Dave Bill asked for this to be added to the agenda for the next meeting so that this is not missed.</p> <p><u>James to contact Emily in the Comms team and Dave's p.a. to advertise the tax session more widely.</u></p> <p>The session planned for 30 March 2020 on pension tax at Kelvedon Park was advertised more widely following James contacting the Communications team and Dave Bill's p.a.</p> <p>However, this was postponed as were all other face-to-face meetings due to the coronavirus pandemic. This has been re-arranged for 30 June 2020 and will be held virtually on Microsoft Teams. Details will be sent to the Board, who are welcome to attend.</p> <p><u>James to seek advice from Clair Alcock, whether to pursue the collection of the arrears of contributions</u></p> <p>To be discussed at Agenda Item 6) ii).</p> <p><u>James to process refunds for those affected by being placed in the wrong contribution band</u></p> <p>This is still outstanding but James expects this will be ready shortly.</p>	<p>National Insurance query to be added to the agenda.</p>

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	<p><u>James to email Dave about the induction issue</u></p> <p>James has emailed Dave and has a place on the induction for new whole-time recruits.</p> <p>Colette Black commented that the idea to produce a video for new starters was an excellent one as it can be watched back at any time.</p> <p>No further comments were received and the minutes were agreed as an accurate reflection of the meeting.</p>	
4	<p>Training Item – Hutton Report and the Public Sector Pensions Act 2013</p> <p>James provided the training item on the Hutton Report and the Public Sector Pensions Act 2013.</p> <p>In June 2010, the Independent Public Service Pensions Commission, chaired by Lord Hutton was established by the Government to make recommendations on ‘how public service pensions can be made sustainable and affordable in the long-term, fair to both the public service workforce and the taxpayer, and ensure that they are consistent with the fiscal challenges ahead’.</p> <p>The review encompassed:</p> <ul style="list-style-type: none"> • the growing disparity between public service and private sector pension provision; • the need to ensure that future pension provision is fair across the workforce; • how risk should be shared between the taxpayer and employee; and • wider Government policy intended to encourage adequate saving for retirement and longer working lives. <p>In October 2010, the Commission issued an interim report. Final report was issued on the 10 March 2011 giving 27 recommendations. The recommendations provide a general set of principles for the future structure of public sector pensions without establishing the level of pension provision and cost. The report also recommended that special protections would amount to age discrimination.</p> <p>Each of the 27 recommendations were explained to the Board.</p> <p>The Public Sector Pensions Act 2013 brought forward these recommendations into legislation. Broadly it sets out that the new Firefighter Pension Scheme should:-</p> <ul style="list-style-type: none"> • Be a career average scheme; • Have an Normal Pension Age of 60 (State Pension Age for non-uniform schemes); • Have Scheme Managers, Pension Boards and a Scheme Advisory Board; 	

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	<ul style="list-style-type: none"> • Have an employer cost cap with a method to ensure costs match that cap. • Build-up in the existing scheme should be prevented, except for protected members; • The jurisdiction of the Pension Regulator is extended; • Have an annual requirement to issue benefit information statements to active members. 	
5	<p>Administrative arrangements during COVID-19</p> <p>James updated the Board on the administrative arrangements in place during the Coronavirus crisis.</p> <p>Officers from both Essex Pension Fund and Essex Fire & Rescue Authority have been working from home since mid-March. A skeleton staff are working from Essex Pension Fund's office to process post whilst ensuring social distancing. Customers still can access by phone, e-mail and post. Payments are still being made on time to pensioners and retirees. People who are retiring are given the option to receive information by email or post.</p> <p>Arrangements are in place with the Authority's Finance team to send over information securely to process lump sum payments without the need for hand written signatures.</p> <p>The Firefighters' Pension Scheme is an unfunded scheme which means it is not linked to stock market performance and benefits are set out in statute. FPS members can therefore be assured that both their contributions and their pension, whether in payment or built up to date, will be unaffected.</p> <p>There is a statutory responsibility to issue Annual Benefit Statements (ABS) by 31 August 2020, which as yet has not changed. TPR have confirmed that they "recognise that producing ABS this year could be challenging, and we'll take a pragmatic view about schemes that don't manage it by 31 August" and will be "proportionate and fair when assessing whether to take any action".</p> <p>Statutory responsibility to issue Pension Saving Statements by 6 October 2020. The deadline for pension savings statements is directly related to the requirement to pay any tax charge payable under voluntary scheme pays (VSP) by 31 January 2021. This has been raised with the relevant departments.</p> <p>HMT agreed a temporary relaxation of the Protected Pension Age rules applies across the public sector if people are returning to roles as a result of COVID-19. Where re-employment is directly connected to undertake work related to COVID-19 only the member will not lose their protected pension age and will not be subject to unauthorised payment tax on their pension and lump sum as a result. This relates to the tax position only and does not impact upon general break in service requirements for other purposes. This applies for the period 1 March to 1 June 2020. An extension has been sought but there has been no further update on this at present. David Golding added that the relaxation of the loss of protected pension age rules has been extended to 1 November 2020.</p>	

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<p>There has been no change to the Abatement rules. FPS 1992 and FPS 2006 rules allow for a Fire & Rescue Authority to make a discretionary decision not to abate a pension. However, where that decision is taken the rules require the Fire Authority to pay into the notional pension fund an amount that would be equal to the pension that should be abated. No decision has been made by HM Treasury (HMT) on this. The Local Government Association is exploring with NFCC Finance Committee and Home Office colleagues the potential for a business case to be made to HMT in order for Fire & Rescue Authorities to be funded should they make this discretionary decision in the case of returning firefighters as a result of COVID-19. In the meantime, please be aware that there is still a requirement to fund a decision not to abate.</p> <p>COVID-19 additional activities are to be regarded as part of the core job and are therefore eligible for injury benefits and pension benefits under current arrangements. The extent of additional activities will be kept under review and may therefore increase.</p> <p>Ill health retirements should progress as normal. “During the current COVID-19 crisis, it is important to continue to progress ill health retirement applications. It is also particularly important that assessments remain fair and reasonable, and that should include requesting GP and specialist reports as required. There has never been a requirement for these assessments to be face to face, therefore paperwork reviews, with telephone clarification if needed, is the most appropriate way to progress these.</p> <p>Duradiamond, the current contracted provider of medical appeals, has temporarily suspended appeal hearings for three months. This may have the effect of delaying termination of employment on medical grounds and keep firefighters in employment until the conclusion of the process. This has been raised with the Home Office.</p> <p>Questions have been asked with regards to the qualifying injury status for a firefighter that dies from COVID-19. This matter has been raised with officials at the Home Office who have confirmed that the matter is being discussed with HM Treasury and other Government Departments as a matter of urgency.</p> <p>Eligibility to the scheme when using ‘temporary contracts’. The advice we have received confirms that eligibility to the scheme under the regulations rests on the person being employed as ‘firefighter’ and the employment to not be temporary.</p> <p>“regular firefighter” - in relation to any time on or after 1st October 2004, the expression means a person who is employed—</p> <p>(a) by a fire and rescue authority as a firefighter (whether whole-time or part-time), other than as a retained or volunteer firefighter , and</p> <p>(b) on terms under which he is, or may be, required to engage in fire-fighting or, without a break in continuity of such employment, may be required to perform other duties appropriate to his role as a firefighter (whether instead of, or in addition to, engaging in firefighting) and whose employment is not temporary..</p>	

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6	<p>Pensions Court Cases:-</p> <p>i) “Sargeant” Transitional Protection Remedy</p> <p>James reminded the Board of the background of the Sargeant case.</p> <p>In all the main public service CARE schemes introduced in 2015, those closest to their scheme’s Normal Pension Age (NPA), (when a member could choose to retire with an unreduced pension) given ‘full’ transitional protection, i.e. those within 10 years of their NPA at April 2012 were allowed to remain in their current scheme. In most of these schemes those who were between 10 and 14 years from normal retirement age were given ‘tapered’ transitional protection, meaning they move to the 2015 scheme, at a later date than those members without transitional protection.</p> <p>Two claims were brought; Judges’ pension scheme (the McCloud case), the Firefighters’ pension scheme (the Sargeant case) claiming that transitional arrangements were discriminatory on the basis of age, sex and race.</p> <p>The Court of Appeal determined that transitional protection gave rise to unlawful age discrimination in the judges’ and firefighters’ pension schemes. The position at the previous meeting of the Board on 6th June 2019 was that we were awaiting confirmation as to whether the Supreme Court would allow the Government to appeal. Since then, the Supreme Court refused the Government’s application for permission to appeal, meaning that the Court of Appeal decision stands.</p> <p>On 15 July 2019 the Chief Secretary to the Treasury made a written ministerial statement (HCWS1725) confirming that, as ‘transitional protection’ was offered to members of all the main public service pension schemes, the government believes that the difference in treatment will need to be remedied across all those schemes. A case management hearing was scheduled for 18 December 2019 in the Sargeant case, with a view to setting out the steps to appropriately implement the Court of Appeal decision.</p> <p>The Age discrimination needs to be remedied across the public sector schemes whilst protecting those members who may have been better off in the 2015 scheme. Government are informally engaging with public sector pension advisory boards via a series of technical discussions.</p> <p>The Firefighters Pensions (England) Scheme Advisory Board formed a working group made up of administrators, software providers, National Fire Chief’s Council representatives and senior Fire and Rescue officers, to advise the Home Office.</p> <p>Issues such as costs and practicality will be considered and these discussions will inform the Scheme Advisory Board’s response to the consultation. A draft response will be available at the March 2020 Scheme Advisory Board meeting. HM Treasury’s consultation is expected in the Spring, however the feeling is that this will be delayed until the Summer.</p>	

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<p>James updated the Board on the current proposals presented to him and others and meetings that he has attended. These proposals are subject to change prior to HM Treasury's consultation.</p> <p>The period in the final salary scheme up to 31 March 2015 is to remain unchanged. Next is the CARE Scheme period or 'remedy' Period, where the default position is to put the member back to the final salary scheme for the period they were in the CARE scheme. However, they may choose to be a CARE scheme member for this period. The remedy period ends when the discrimination ends. It is not yet known when this is.</p> <p>Next is the period referred to as the post-remedy period. It may be possible for this period that there will be a new scheme. Details of this are not known as HM Treasury are concentrating on the remedy period; however, this would fit with the Government's objective to reform public sector pensions so that they are affordable. It is possible that this new scheme will be career-average. It is unlikely that there will be protections as these have been proven in the courts to be discriminatory. It is not known whether there will be a final salary link for benefits in the old schemes either. 2023 had been rumoured as the date discrimination ends, however this has not been confirmed by anybody. A full Government consultation has to happen long before any new scheme is introduced.</p> <p>At retirement, the scheme member is paid the total of the three periods mentioned; the final salary period, the CARE/remedy period and the post remedy period.</p> <p>Two options have been put forward as to when the scheme member gets to choose what happens to their CARE/remedy period, 'immediate choice' and 'deferred choice'. Immediate choice means the member, much like in the 2006 options exercise, chooses as soon as possible after remedy has been confirmed. The term immediate is rather misleading as it will take a long time to resolve all the issues and change legislation.</p> <p>The other option of deferred choice is where the member chooses at retirement what they want to happen to their remedy period pension.</p> <p>The Board considered the advantages and disadvantages of both options.</p> <p>Dave Bill asked if ill-health cases and families of deceased members know whether something is coming and suggested that they should be considered. An action was agreed that James will discuss with Glenn McGuinness and also ask other Authorities in the region.</p> <p>Andy Knowles commented that claims have opened up again so the Authority may receive more claimants. Roger Hirst replied that there is the intention that there will be no difference between claimants, therefore there is no need to make a claim. The claims are for financial loss and injury to feelings.</p> <p>Dave Bill asked what about those people who are retiring now and whether they can retire or whether they will need to wait for remedy and if they do have to wait for remedy, are they advised of this. James replied that they can still</p>	<p>James will discuss with Glenn and other FRAs in the region about contacting ill-health retirees and family of deceased members about remedy.</p>

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<p>retire but may only be able to receive their FPS 1992 pension and will have to wait for the pension for the remedy period. James added that it has been a while since an update has been sent to the employees, but suggested that he can produce some FAQs for those retiring in the next couple of years.</p> <p>Roger Hirst said that this was discussed at the Scheme Advisory Board and they have issued a factsheet and guidance. Dave Bill to discuss with James Durrant what can be done so that retirees know something will happen after their retirement regarding remedy.</p> <p>ii) “Booth” Pensionable Pay</p> <p>The following table summarises the outcome of that review:-</p> <table border="1" data-bbox="145 645 1272 965"> <thead> <tr> <th>Pay Element</th> <th>Decision</th> <th>Rationale</th> </tr> </thead> <tbody> <tr> <td>Rent allowance</td> <td>Pensionable (non-pensionable in FPS 92)</td> <td>Permanent Allowance. Non-pensionable in FPS 1992 as not paid in relation to the duties.</td> </tr> <tr> <td>Fuel & light payments</td> <td>Pensionable (non-pensionable in FPS 92)</td> <td>Permanent Allowance. Non-pensionable in FPS 1992 as not paid in relation to the duties.</td> </tr> </tbody> </table> <p>James will seek advice from Clair Alcock, the Firefighter’s Pension Advisor, whether, in light of the Sargeant case, to pursue the collection of the arrears of contributions. For example, if a person who transitioned to the FPS 2015 starts making contributions and then elects to revert to the FPS 1992, those contributions will have to be refunded. It may be better to wait for further information on remedy.</p> <p>Dave asked before proceeding, can James advise the amounts involved. James did not have the information to hand but will provide following the meeting. James agreed to draw up a paper and a recommendation for way forward, to be discussed at the next meeting.</p> <p>Andy Knowles asked for the reason why the allowances are pensionable in the FPS 2006 and FPS 2015 but not for FPS 1992. James replied that the pensionable pay regulations contain different wording. The FPS 2006 and FPS 2015 refer to permanent emoluments, but in the FPS 1992, it must be pay for pay for work done or to be done. Andy asked James if he could provide the information on the Booth case.</p> <p>iii) “O’Brien”</p> <p>The O’Brien case will mean that it is likely that On-Call Firefighters will be able to backdate membership prior to 2000.</p> <p>Issues around pay data, tax relief and national insurance contributions are complicated and will take a long time to resolve. The next step would be a Home Office consultation but there has been nothing further since the last Board meeting.</p>	Pay Element	Decision	Rationale	Rent allowance	Pensionable (non-pensionable in FPS 92)	Permanent Allowance. Non-pensionable in FPS 1992 as not paid in relation to the duties.	Fuel & light payments	Pensionable (non-pensionable in FPS 92)	Permanent Allowance. Non-pensionable in FPS 1992 as not paid in relation to the duties.	<p>Dave to discuss with James what can be done to inform retirees about how remedy affects them.</p> <p>James will provide a paper re: way forward with Booth.</p> <p>James to provide information on the Booth case.</p>
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	The Board noted the position of the O'Brien case.	
7	<p>Work-plan Activities</p> <p>James took the Board through their work-plan activities for June.</p> <p>i) End of year Pension returns – submission / deadline dates</p> <p>The deadline for submitting the return is 30 April 2020. Due to COVID-19 the deadline was extended to 7 May 2020. 1,193 lines of data were sent for 2019-20's return on 7 May 2020.</p> <p>All resulting queries were responded to within 14 working days. The data will be used to produce the Annual Benefit Statements.</p> <p>ii) Annual Report 2019-2020</p> <p>The next work plan item is the Pension Board's Annual Report.</p> <p>The final version to be considered at this meeting. No amendments were suggested to the report by the Board, so this will be presented at the Service Leadership Team meeting on 23 June 2020.</p> <p>Following that it will be presented to the Police, Fire & Crime Commissioner at the next available meeting after 23 June 2020.</p> <p>iii) TPR Public Service Governance and Administration Survey – Results discussed</p> <p>The report is expected soon but to date has not been released. This item to be carried over to next meeting.</p> <p>At the next Board meeting on Wednesday 2 September 2020, the Board will look at the following work-plan activities:-</p> <ul style="list-style-type: none"> • APB return – Temporary Promotion & CPD - feedback/performance against target date • Feedback from Annual Benefit Statements • TPR Public Service Governance and Administration Survey – Results discussed (carried forward). 	
8	<p>Review of Risk Register</p> <p>James updated the Board on the pension risks and controls on the pensions risk register.</p> <p><u>Risk P0003 – Administration Failure / Maladministration</u></p> <p>Target rating for Risk P0003 – Administration Failure / Maladministration is</p>	

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<p>increased to Medium (as per last Board meeting recommendation).</p> <p>Triggers that have affected this risk are the Effect of McCloud / Sargent case leading to processing delays and reduced level of service and COVID-19.</p> <p>The control measures in place are the Attendance at relevant events and conferences and the Authority and Essex Pension Fund have remote working arrangements in place.</p> <p><u>Risk P0004 – Increased Costs to Essex Fire</u></p> <p>Changed to Minor – Likely (as per last Board meeting recommendation).</p> <p>Triggers that have affected this risk are the impact of Sargent & O'Brien may increase employer contribution costs and Additional staffing costs due to McCloud / O'Brien cases.</p> <p>The control measures in place are the Attendance at relevant events and conferences.</p> <p>Other relevant factors in the assessment of the risk are that the Government gave a grant for 2019/20 and 2020/21 to cover increases in employer contribution rises. Also, the Government asserts that employer rates are fixed until 2024.</p> <p><u>Risk P0002 – Incomplete or inaccurate record keeping</u></p> <p>This risk remains as Minor – Likely.</p> <p>Triggers that have affected this risk are the impact of McCloud / Sargent may mean data is missing from records and COVID-19 which may affect administrative processes.</p> <p>The control measures in place are the preliminary work undertaken for Sargent & O'Brien cases and the Authority and Essex Pension Fund have remote working arrangements in place.</p> <p>Other relevant factors in the assessment of the risk are that the Pension Regulator may take a lenient view when checking data scores for 2020.</p> <p><u>Risk P0005 – Regulatory and Compliance Failure</u></p> <p>Remains as Minor – Likely.</p> <p>Triggers that have affected this risk are that the impact of McCloud / Sargent may mean data is missing from records and statutory requirements are not met and COVID-19 which may affect administrative processes.</p> <p>The control measures in place are attendance at relevant events and conferences, Pension Board member recruitment and the Authority and Essex Pension Fund have remote working arrangements in place.</p>	

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	<p>Other relevant factors in the assessment of the risk are that the Pension Regulator may take a lenient view when checking breaches of the law.</p> <p>Dave Bill requested that the risk register is sent to the Board members a week or so before the meeting so that members have a chance to review it and the JCAD reports.</p>	
9	<p>Update on training/training plan</p> <p><u>TPR Module</u></p> <p>As the next meeting of the Pension Board will coincide with Annual Pension Benefit statement being sent to scheme members, James suggested that the Board members complete the <i>'Providing information to members and others'</i> TPR training module ahead of the next meeting.</p> <p>The Board agreed. James will email the link to the training module.</p> <p>Dave asked James to issue a reminder for those who haven't done the previous module.</p> <p><u>Local Pension Board Training – provided by the Local Government Association</u></p> <p>James mentioned that the Local Government Association are once again running their popular annual Local Pension Board (LPB) wrap-up session.</p> <p>This is for Pension Board members who are either new to the board or who want an opportunity to refresh themselves on the principles of governance for the Firefighters' Pension Schemes.</p> <p>Nick Gannon from The Pension Regulator will be joining for a session on last year's TPR governance and administration survey results;</p> <p>The free session will be held on Zoom: 10 June or 8 July, both from 11:00 until 13:30.</p>	<p>Board to complete TPR module <i>'Providing information to members and others'</i> before the next meeting.</p> <p>James to email the link to the module and a reminder.</p>
10	<p>Any other business</p> <p>Andy raised that he has reviewed the information that is sent to new starters should be better. More information needs to be included such as opting out of the scheme and automatic enrolment. Dave asked James to pick this up with the Assistant Director of HR, Natalie Quickenden.</p> <p>Colette added that follow the re-vamp of the induction, pensions was one of the casualties of that review, but suggested that James produces recorded video inductions and reviews what paperwork is sent and when.</p> <p>Colette asked James to provide this to Andy Knowles and Alistair Castle to review and feed in any comments. This will be reviewed at the next meeting.</p>	<p>James to discuss starter information with the AD of HR.</p> <p>James to revise starter information and provide to Andy Knowles and Alistair Castle.</p>

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11	<p data-bbox="145 136 464 170">Date of next meeting</p> <p data-bbox="145 210 1062 244">The next meeting is on Wednesday 2nd September 2020 at 3pm.</p> <p data-bbox="145 284 1278 389">This meeting will be held virtually on Microsoft Teams. For the December meeting and onwards we will review whether they should remain online or at Kelvedon Park, providing if it safe to resume them.</p> <p data-bbox="145 430 683 463">Other future meetings are as follows:-</p> <ul data-bbox="153 504 815 658" style="list-style-type: none">• Thursday 3rd December 2020, at 9.30am.• Thursday 4th March 2021, at 9.30am.• Thursday 3rd June 2021, at 9.30am.• Thursday 2nd September 2021, at 9.30am.	