

Governance Committee

29 June 2015

Firefighters' Pension Scheme and Local Government Pension Scheme Employer Discretions

Report by Executive Director Communities & Public Protection and Chief Fire Officer, Executive Director Corporate Resources and Services and Head of Corporate Human Resources

Executive Summary

This report considers the discretions available to the County Council as an Employer following amendments to the Firefighters' Pension Scheme (FPS), New Firefighters Pension Scheme (NFPS) and the introduction of the Firefighters Pension Scheme 2015. It also considers the discretions available to the County Council as an Employer following changes to the Local Government Pension Scheme.

Recommendations

The Governance Committee is asked:

- (1) To note the FPS, NFPS and FPS 2015 Employer Authority discretions already exercised, set out in [Appendix A](#), which have been updated to reflect the changes to the pension regulations;
- (2) To approve the current practice of the Continual Professional Development forming part of pensionable pay under the scheme (FPS 2015);
- (3) To approve the exercise of the new discretion that, should a spouse or child make a false declaration to claim a dependant's pension benefit, that the Fire Authority will look to seek recovery of any overpayment (FPS 2015);
- (4) To approve the exercise of the new discretion allowing the Fire Authority to allow a member of the FPS to commute (known as giving up) more than two and a quarter times their pension to provide for a lump sum (FPS);
- (5) To approve the exercise of the new discretion when a member chooses to purchase additional membership that they can pay by lump sum (FPS 2015);
- (6) To approve the exercise of the new discretion when a member chooses to purchase additional membership that payments less than £10 per month, which is not cost effective to administer, would require approval (FPS 2015);

- (7) To approve the exercise of the new discretion to agree the notice period and date of Partial Retirement of Firefighters (FPS 2015);
- (8) To approve the exercise of the new discretion in the LGPS to extend the 30-day time limit for a member to pay for their share cost 'lost pension' during a period of authorised unpaid absence, where it is clear that the member did not have the necessary information they needed to make an election within 30 days of returning to work (LGPS);
- (9) To approve the ongoing annual increase each year, in the award of additional pension (in line with the amendment in the LGPS regulations); and
- (10) To amend the Scheme of Delegation as set out at [Appendix C](#).

1. **Background**

- 1.1 From 1 April 2015 a new Firefighters' Pension Scheme (FPS) came into force, known as The Firefighters Pension Scheme 2015. For members of the FPS 2015, benefits will accrue on a Career Average Revalued Earnings (CARE) basis, rather than a final salary basis. This means that a member of the FPS 2015 will accrue pension, rather than service. Members of the FPS or NFPS will continue to accrue service towards their final salary pension.
- 1.2 Not all Firefighters transfer to the new scheme and there are protections in place for all those who were within 10 years of Normal Pension Age at 1 April 2012, with an additional 4 years tapered protection depending age.
- 1.3 A fully protected member will continue to remain in their current scheme, FPS or NFPS, and will never move to the FPS 2015.
- 1.4 This means that the Fire Authority is required to continue to operate three pension schemes to cover protected and taper protected members who remain within either the FPS or NFPS and non-protected and new members who are within the FPS 2015.
- 1.5 A tapered protected member will over the next 7 years transfer into the FPS 2015 on a relevant date linked to their date of birth, as set out in the transitional regulations for the FPS 2015.
- 1.6 The provisions of the CARE scheme, together with the protections for protected and tapered protected members', are contained in The Firefighters' Pension Scheme (England) Regulations 2014, The Firefighters' Pension scheme (England) (Consequential Provisions) Regulations 2015 and The Firefighters' Pension Scheme (England) (Transitional and Consequential Provisions) Regulations 2015.
- 1.7 As a result of the changes, Fire Authorities are required to formulate, publish and keep under review a Statement of Policy on certain discretions which

they have the power to exercise in relation to members of the FPS, NFPS and FPS 2015.

- 1.8 Fire Authorities are also required (or where there is no requirement, are recommended) to formulate, publish and keep under review a Statement of Policy on certain other discretions they may exercise in relation to members of the FPS, NFPS and FPS 2015.
- 1.9 This report sets out the Fire Authority's employer discretions under the FPS, NFPS and FPS 2015. The discretions have been reviewed to ensure that they remain fit for purpose and are largely those already exercised by the Fire Authority, as approved by the Governance Committee on 1 July 2013 (with amendment to the references to the legislation as appropriate). These minor changes are not detailed in this report.
- 1.10 Whilst reviewing the existing discretions policy it has come to light that the policy did not detail those discretions that needed adding following the Firefighters' Pension Scheme (Amendment) (No.2) (England) Order 2013. These have now been included in the discretions policy to reflect current practice and are outlined below at point 2.7.
- 1.11 Following the introduction of the FPS 2015, the Fire Authority can choose whether the payment for Continual Professional Development remains pensionable and this is outlined in point 2.1.
- 1.12 Following the introduction of the FPS 2015, there are three new discretions which it is proposed that the Authority exercises. These discretions relate to a false declaration made by a spouse or child to claim a dependant's benefit, members purchasing additional pension and partial retirement and these are outlined below in points 2.5, 2.13 and 2.16.
- 1.13 The FPS provides, following an amendment to the regulation in July 2013, a new discretion allowing the Fire Authority to allow a firefighter to commute (give up) more than two and a quarter times their pension to provide for a higher lump sum.
- 1.14 From 11 April 2015, The Local Government Pension Scheme (Amendment) Regulations 2015 came into force. This necessitated the County Council to review its discretions policy to ensure that any amendments were reflected within its policy.
- 1.15 Following the amendment order the LGPS now contains a new discretion allowing an employer to extend the 30-day period for a member who has been on a period of authorised unpaid leave, where the employer pays two thirds of the cost. A member can continue to elect to pay for their 'lost pension' beyond the 30-day period however they will pay for the full cost of repaying this.
- 1.16 The changes to the LGPS have also increased the limit to which an employer can award additional pension. The amount has changed from £6,500 to £6,675.

2. **Proposals**

Firefighters' Pension Schemes – New Discretions

Continual Professional Development

- 2.1 A Continual Professional Development (CPD) allowance is paid to firefighters employed up to and including the role of Area Manager in a “competent” role. CPD replaced the Long Service Increment, in July 2007, which was previously paid to all firefighters with at least 15 years’ continuous service. CPD has to be claimed and is to reflect ongoing training and development.
- 2.2 Under the FPS Regulations, payments for Continual Professional Development (CPD) are pensionable and there is no discretion to make them non pensionable. However they do not form part of a firefighters final pensionable pay but instead an Additional Pension Benefit (APB) is awarded, calculated in accordance to the scheme actuary’s guidance.
- 2.3 Under the FPS 2015 there is no provision to award an APB. However there is discretion for CPD to remain pensionable under the definition of pensionable pay and form part of their CARE benefits.
- 2.4 It is proposed (in line with current practice), that payments for Continual Professional Development will remain pensionable.

False Declaration to Claim a Spouse and/or Child’s Dependant’s Pension Benefit

- 2.5 In the case of a dependant making a false declaration, where they are not entitled to claim a spouse and/or child’s dependant’s pension benefit, the regulations now allow that a Fire Authority can reclaim any overpayment that may have been made.
- 2.6 It is proposed that the Fire Authority will seek to recover any overpayment in this scenario.

Commutation

- 2.7 Where a firefighter leaves the Service with less than 30 years’ service and is under the age of 55 but still entitled to a pension (they must be over the age of 50 and have completed at least 25 years’ service) their commutation lump sum (under the present rules) is limited to 2.25 times the value of their annual pension.
- 2.8 In circumstances of “normal” retirement the lump sum is based on a commuted amount of £22 for every pound of pension foregone up to a maximum of 25% of the total value of their pension fund. This is considerably higher than 2.25 times the value of the annual pension.
- 2.9 The new rules allow the employer to use discretion to enable staff to take up to 25% of their total pension fund value in all cases. However the difference between the amount that would have been taken under the 2.25 times pension option and the 25% of fund value option must be paid into the pension account by the employer.

- 2.10 If the following figures are used as a broad estimate it can be seen that these costs could be substantial:

Actual Service 26 years
Pension based on 32 years
Annual Salary £30,000
Annual Pension before commutation $30 \times 32/60 = £16,000$
Old calculation of
2.25 of annual pension for lump sum = £36,000

The new proposal allows for the figure of 22.4 to be applied. In this instance the result is as follows;

New amount available for commutation $£16,000 \times 25\% \times 22.4 = £89,600$.

Therefore the amount to be paid to the pensions account by the Fire Authority if the discretion is exercised in this instance would be £53,600.

- 2.11 The reason for this amendment is so as to allow Fire Authorities the flexibility to offer an incentive for staff to depart early who otherwise might not be considering the option. This has been raised as a required flexibility by the LGA, and as Rule A14 (Compulsory retirement on grounds of efficiency) was removed does give Fire Authorities wider discretionary powers similar to those within the local government pension scheme.
- 2.12 In respect of this issue, to date the Fire Authority has managed its workforce numbers effectively. Despite the fact that there are very few cases which would meet the criteria under which this discretion would apply it is proposed that the Authority should review each case, on a case-by-case basis, with the approval of a brigade manager in consideration with the Executive Director Corporate Resources and Services and Cabinet Member which will allow the authority flexibility to reduce staffing levels should it need to.

Purchase of Additional Pension

- 2.13 The FPS 2015 now allows for a firefighter to purchase additional pension, rather than service (as detailed under background above under point 1.1). The regulations give the Fire Authority discretion to allow the firefighter to make payment by either periodical contributions, or by another method. The regulations also give the Fire Authority discretion to set a minimum amount which must be paid. There is no financial implication of either discretion; these are more for administrative purposes.
- 2.14 It is proposed that the Fire Authority will allow a member to choose whether they make their additional pension payments by monthly deduction from their salary or by lump sum.
- 2.15 It is also proposed that the Fire Authority will set a minimum monthly contribution amount of £10 per month. If a firefighter wishes to pay an amount where the deductions would be less than £10 per month, which is not cost effective to administer, they would require approval by a brigade manager, and each case will be assessed on a case by case basis.

Partial Retirement

- 2.16 The FPS 2015 regulations allows for a firefighter to take partial retirement once they have reached age 55, which means that they can draw their pension and continue working without a break in service and without approval. The regulations however give the Fire Authority discretion to approve the date of partial retirement being exercised.
- 2.17 There is no direct cost associated with partial retirement, as the member would have to be entitled to immediate payment of benefits if they had retired on that date. The Fire Authority should be mindful, however, that in these cases, they will be paying the pension and a salary, whilst there is no ability to abate (i.e. suspension or reduction) their pension.
- 2.18 It is proposed that the Fire Authority require Firefighters who wish to take partial retirement to give a written notice period in line with their contract of employment. This will ensure that the Fire Authority has sufficient notice to enable them to forward plan.
- 2.19 The Firefighters employer discretions have been amended in line with the above proposals and can be found at [Appendix A](#).

Local Government Pension Scheme – New Discretions

Extension to period to Purchase of Lost Pension under the LGPS

- 2.20 The LGPS allows a member to pay for their 'lost pension' for a period of authorised unpaid leave. If they make an election within 30 days of returning to work, the County Council has to pay two thirds of the cost. The amendment order now allows for the County Council to extend that 30-day period.
- 2.21 It is proposed that the 30-day limit may be extended if it is clear that the member was unable to meet the normal deadline due to circumstances beyond their control e.g. if the member didn't have all necessary information to make an informed choice within the 30-day period. The approval would be delegated to the HR Consultant (Pensions).

Amended Employer Discretions

Additional Pension limit increased to £6,675

- 2.22 Under the LGPS the Authority currently exercises its discretion to purchase additional pension for employees, of any age, as a recruitment incentive and also to help facilitate the termination of employment (except in cases of redundancy). The amount of additional pension the Authority can purchase has increased from £6,500 to £6,675. The amount of additional pension that can be purchased increases annually in line with the regulations. Rather than seeking approval from the Governance Committee to increase the limit on an annual basis, it is proposed that the County Council agrees to the annual increase in line with the regulations each year.
- 2.23 As currently, the exercise of this discretion as well as being subject to a robust business justification would also be subject to the approval of the S.151 Officer and also to the Cabinet Member for Finance.

2.24 The LGPS employer discretions have been amended in line with the above proposals and can be found at [Appendix B](#).

3. **Changes to Scheme of Delegation**

The Scheme of Delegation has been updated to reflect the proposed discretions as set out at [Appendix C](#). Where indicated for matters under consideration which are routine low risk, low value items that do not require the input of the Executive Director it is proposed that the decision making be further sub-delegated (through the Scheme of Onward Delegation) from the Executive Director Communities and Public Protection & Chief Fire Officer to the Director of Public Protection and Deputy Chief Fire Officer.

4. **Consultation**

There will be consultation with UNISON/FBU and RFU in relation to the new/amended discretions and this will be reported back to the Committee at the Committee meeting.

5. **Resource Implications and Value for Money**

The amendment under the FPS to allow a firefighter to give up a higher amount of their pension to provide for a lump sum, where the Fire Authority has to pay for the difference could increase costs. The discretions will be exercised sparingly and will be tightly controlled and subject to robust business justification and approval mechanisms.

6. **Risk Management Implications**

No specific risks identified and where discretions are to be exercised or not exercised there is a clear rationale and/or approval process in place to mitigate any risks.

7. **Other Considerations – Equality – Crime Reduction- Human Rights**

An Equality Impact Report has been undertaken and is attached as [Appendix D](#) to this report.

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Background Papers - None