



**Northamptonshire
County Council**

Democratic Services
One Angel Square
Northampton
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Northamptonshire Local Pension Board (Firefighters' Pension Scheme)	21 June 2017	Conference Room Moulton Logistics Centre Northants Fire & Rescue HQ Moulton Way Northampton NN3 6XJ	2.00pm
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AGENDA

*** Papers enclosed**

Item No.	Subject	Responsible Officer
1.	Apologies for Absence and Declaration of Interests	Jim Dorrill
2.	Election of Chairman & Vice-Chairman	Jenny Rendall
3.*	Minutes from the meeting held on 16 November 2016	Jenny Rendall
4.*	Northamptonshire Firefighters Pension Scheme(s) Risk Register	Joanne Walton
5.*	Data Quality	Joanne Walton
6*	Annual Report by the Local Pension Board	Jenny Rendall
7.*	Requesting Items for Consideration at the Local Pension Board	Joanne Walton
8.*	Voluntary Scheme Pays' in the Firefighters' Pension Schemes.	Jim Dorrill
9.	Date and Time of Next Meeting - Wednesday 15 November 2017 (2pm), Conference Room, Moulton Logistics Centre.	Jenny Rendall

Item No.	Subject	Responsible Officer
EXEMPT ITEMS		
<p>In respect of the following items the Chairman may move the resolution set out below, on the grounds that if the public were present it would be likely that exempt information (information regarded as private for the purposes of the Local Government Act 1972) would be disclosed to them:</p> <p>The Committee is requested to resolve: “That under Section 100A of the Local Government Act 1972, the public be excluded from the meeting for the following item(s) of business on the grounds that if the public were present it would be likely that exempt information under Part 1 of Schedule 12A to the Act of the descriptions against each item would be disclosed to them”</p>		

Issued: 13 June 2017

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**Northamptonshire Fire & Rescue Service
Local Pension Board
Meeting held in public in
The Conference Room, Moulton Logistics Centre, Moulton, Northampton**

Actions & Summary of Meeting: Wednesday 16 November 2016

Agenda Item No: 3

PRESENT:-

Jim Dorrill (Employee Representative & Acting Chairman)

Councillor Graham Lawman Employer Representative Terry Smith Employee Representative

Also in attendance (for all or part of the meeting)

Darren Dovey	Chief Fire Officer
Paul Hanson	Democratic Services Manager
Gary McLellan	LGSS Pensions Principal Regulations Officer
Jenny Rendall	Democracy Officer (minutes)
Joanne Walton	LGSS Pensions Governance & Regulations Manager

Item No.	Item	Action to be taken by
19/16	<p><u>Apologies for Absence and Declarations of Interest:</u> Apologies were received from Dave Harding (Employer Representative & Chairman)</p> <p>There were no declarations of interest.</p>	Jenny Rendall
20/16	<p><u>Minutes from the Meeting held on 6 July 2016:</u></p> <p>RESOLVED that: the minutes of the meeting held on 6 July 2016 were approved as a true and accurate record of the meeting subject to the following amendments:</p> <ul style="list-style-type: none"> • Item 09/16: That Councillor Graham Lawman seconded the appointments of Chairman and Vice-Chairman for 2016-17. 	Jenny Rendall
21/16	<p><u>Draft Northamptonshire Firefighters' Pension Scheme 1992 – Internal Dispute Resolution Procedure:</u> At the Chairman's invitation, LGSS Pensions Governance & Regulations Manager, Joanne Walton introduced this report (copies of which had been previously circulated) stating this was required under Section 50 of the Pensions Act 1995. The one presented was based on the 1992 Scheme and it had already progressed through Stage 1.</p> <p>Answers to queries on the report was answered as follows:</p> <ul style="list-style-type: none"> • The procedure would be amended to clarify timescales as it was noted that 8.1 of the procedures stated the Chief Fire Officer was required to provide a notice of decision within 2 months but at a later stage in the report it stated 3 months. It was felt 2 months was a reasonable time in which to expect the decision. • All areas would be checked to ensure all statutory deadlines were covered in the procedure. • The application forms could be included in the Firefighter's Scheme webpages and the Fire Service would publish a link from their own site. 	

	<p>The Chief Fire Officer also noted that the appeal he had managed through Stage 1 had gone well. There was often a lot of information provided but he considered it reasonable to provide a notice of decision within 2 months.</p> <p>RESOLVED that:</p> <ol style="list-style-type: none"> 1) the Local Pension Board (Firefighters' Scheme) approved the draft Internal Dispute Resolution Procedure in respect of the Firefighter's Pension Scheme 1992; and 2) that a link to the Internal Dispute Resolution Procedure in respect of the Firefighter's Pension Scheme 1992 would be included on the Northamptonshire Fire & Rescue Service Intranet. 	<p>Gary McLellan Joanne Walton Darren Dovey</p>
<p>22/16</p>	<p><u>Pension Scheme Risk Strategy 2016:</u> At the Chairman's invitation, LGSS Pensions Governance & Regulations Manager, Joanne Walton introduced this report (copies of which had been previously circulated) stating it was another statutory document. It was standard in terms of risks and how they were managed. There were no investments to manage.</p> <p>Queries on the report were answered as follows:</p> <ul style="list-style-type: none"> • All risk ratings were in line with the Council's usual practice. • It would be completed in time for the next meeting and required a review twice a year. <p>RESOLVED that: the Local Pension Board (Firefighters' Scheme) approved the Risk Strategy.</p>	<p>Joanne Walton</p>
<p>23/16</p>	<p><u>Pension Ombudsman Case Study:</u> At the Chairman's invitation, LGSS Pensions Governance & Regulations Manager, Joanne Walton introduced this report (copies of which had been previously circulated) stating it related to an incident that had happened in another Fire Authority in the country whereby a firefighter retired on ill health and was forwarded an estimate of his benefits which included a large sum to his widow. Some time later he passed away from cancer which was not related to his original retirement. The Widow was expecting £7,000 per year and a complaint was made but the family had been unable to provide any evidence to state the cause of death had related to his reason for retiring. The authority offered £500 as the information on his retirement had been misleading. The Ombudsman upheld this decision stating it was a fair sum to pay.</p>	

	<p>Answers to queries raised on the report were provided as follows:</p> <ul style="list-style-type: none"> • It would appear the letter was forwarded on the assumption that the firefighter was a member of the pension scheme. • The pensions regulator recognised the Council as the administering authority. • Those retiring on grounds due to injury did tend to be subject to more administration issues. • Fewer people retired on grounds of ill health. • This would be added to the risk register. <p>It was also noted that there was a need to use the correct letter headed paper when contacting a member in order to ensure they were aware of the correct responsible body. There was also a need to check the information provided was the correct information.</p> <p>RESOLVED that: the Local Pension Board (Firefighters' Scheme) noted the content of the Pension Ombudsman Case Study.</p>	<p>Joanne Walton</p>
<p>24/16</p>	<p><u>Northamptonshire FPS Local Pension Board Communication Policy:</u></p> <p>At the Chairman's Democratic Services Manager, Paul Hanson introduced this policy (copies of which were provided at the meeting) stating it was another compliance policy. Section 2A confirmed what would be provided. It would be hosted on the Council's Committee Management Information System with a link from the Fire Service intranet.</p> <p>Answers to queries raised on the report were provided as follows:</p> <ul style="list-style-type: none"> • A questions and answers document would also be included with frequently asked questions included. • There was currently no members self service for the firefighter's scheme. <p>RESOLVED that: the Local Pension Board (Firefighters Scheme) approved the Local Pension Board Communication Policy.</p>	<p>Joanne Walton</p>

25/16	<p><u>Any Other Business:</u> It was noted B5B was an HR issue that would be resolved with Assistant Chief Fire Officer, Dave Harding. It was also noted that this would potentially only be an issue for the next 5 years.</p> <p>RESOLVED that: the Local Pension Board (Firefighters' Scheme) noted B5B would be resolved by Assistant Chief Fire Officer, Dave Harding.</p>	Dave Harding
26/16	<p><u>Date and Time of Next Meeting:</u></p> <p>RESOLVED that: the Local Pension Board (Firefighters' Scheme) agreed to meet at 2pm at Moulton Logistics Park on the following dates during 2017-18:</p> <ul style="list-style-type: none"> • Wednesday 21 June 2017 • Wednesday 15 November 2017. 	Jenny Rendall

There being no further business the meeting closed at 3.10pm.
Jenny Rendall, Democracy Officer

NORTHAMPTONSHIRE FIREFIGHTERS' PENSION SCHEME



LOCAL PENSION BOARD

21 June 2017

Report by: THE HEAD OF PENSIONS

Subject:	Northamptonshire Firefighters Pension Scheme(s) Risk Register
Purpose of the Report	To present the Northamptonshire Firefighters Pension Scheme(s) Risk Register to members of the Local Pension Board
Recommendations	The Local Pension Board are asked to note the attached Northamptonshire Firefighters Pension(s) Scheme Risk Register located in the appendix to this report
Enquiries to:	Name – Joanne Walton – LGSS Pensions Governance and Regulations Manager Tel – 01604 367030 jwalton@northamptonshire.gov.uk

1. Background

- 1.1 Good governance ensures that there is an appropriate Risk Register in place supported by an appropriate Risk Strategy outlining the approach to managing risk. It is also a requirement of the Pensions Regulator's code of practice on the governance and administration of public service pension schemes to have in place a Risk Register which is regularly reviewed.

2. The Pensions Regulator's Requirements

- 2.1 The Public Service Pensions Act 2013 added an additional provision to the Pensions Act 2004 relating to the requirements to have internal controls in public service pension schemes. The Pensions Regulator's code of practice guidance on internal controls requires schemes managers to carry out a risk assessment and produce a risk register which should be reviewed regularly.

3. The Risk Strategy

- 3.1 In November 2016 the Risk Strategy was approved by the Local Pension Board and from this a risk register needed to be established. The strategy and risk register should be read in conjunction with each other as the strategy sets out the principles of risk management and how the risks are profiled. This profiling is undertaken by using the impact and likelihood tables to determine the gross and residual likelihood and impact on the authority once mitigations are in place.

4. The Northamptonshire Firefighters Pension Scheme(s) Risk Register

- 4.1 The proposed risk register can be found in appendix 1 of this report and consists of relevant risks to the authority. The register contains the whole range of risks to be considered by the Local Pension Board for comment on whether the risks seem appropriate and that the gross and residual risks are set at a correct level.
- 4.2 The risk scoring has been determined using Northamptonshire County Council's risk impact descriptors and risk analysis table in line with the Risk Strategy. The risk scoring matrix is in appendix 2 and the impact descriptors are in appendix 3 of this report.

5. Next Steps

- 5.1 Once the risks and associated scores have been agreed only risks that score over 6 will be entered onto the heat pad model to ensure that the Local Pension Board are concentrating efforts on the risks that are most significant. This consists of 21 risks with three of these being amber risks. There are currently no risks deemed as a red category.
- 5.2 The heat pad analysis model will be presented to the Local Pension Board when populated and subsequently on a yearly basis or as required if there is a significant change. This includes the risks with a scoring of 6 or less that move to amber or red category at a later date.

6. Finance & Resources Implications

- 6.1 There are no financial and resource implications associated with this risk register.

7. Risk Implications

a) Risk(s) associated with the proposal

Risk	Mitigation	Residual Risk
None	A risk register highlights areas of concern and allows for appropriate mitigations to be put in place.	Green

b) Risk(s) associated with not undertaking the proposal

Risk	Risk Rating
If the authority does not monitor and report risks the authority will not demonstrate that it has appropriate control over the management of the risks that the authority faces.	Red

8. Communication Implications

Website	Officers will keep the Local Pensions Board updated with changes to the risks.
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9. Legal Implications

9.1 Not applicable

10. Consultation with Key Advisers

10.1 Not applicable.

12. Alternative Options Considered

12.1 Not applicable

13. Background Papers

13.1 Not applicable

14. Appendices

Appendix 1 – Draft Risk Register

Checklist of Key Approvals	
Is this decision included in the Business Plan?	Not applicable
Will further decisions be required? If so, please outline the timetable here	Not applicable
Is this report proposing an amendment to the budget and/or policy framework?	No
Has this report been cleared by Deputy Head of Pensions?	Mark Whitby

Appendix 1 – Firefighters Pension Scheme Draft Risk Register

Risk NO	Risk	Gross Impact	Gross Likelihood	Gross Total	Internal Controls	Residual Impact	Residual Likelihood	Residual Total
1	Failure to administer the scheme in line with regulations and policies.	5	2	10	Up to date knowledge through various sources such as SAB and the Home Office. Up to date training. Attendance at regional fire administrator working groups. Information on the scheme is held on the Firefighters section of the LGSS Pensions Service website.	4	1	4
2	Those charged with governance of the Fund and Scheme are unable to fulfil their responsibilities effectively.	4	3	12	Knowledge Management Principles in place (July 2015 meeting). Knowledge Management Policy being developed. Requires Board members to receive continuing training.	4	2	8
3	Policies and Strategies not being in place and up to date.	3	3	9	Policies and strategies are being developed.	2	2	4
4	Failure to recognise/manage conflicts of interest.	4	2	8	Declaration of interests at the beginning of each meeting.	2	2	4
5	Risk of manual changes when producing management reports leading to lack of audit trail.	3	3	9	Automated extraction of data where viable and agreed procedures for reporting.	2	2	4
6	Potential fraudulent activity by staff.	5	2	10	Robust checking system in place, log in security, Altair multiple log in requirements, locked records for pension staff, pension staff not authorised to access family/friends records.	5	1	5
7	Potential fraudulent activity by scheme members	3	3	9	National Fraud Initiative participation, suspension and investigation of returned pay advices for pensions in payment, sight of relevant certificates before payments made.	3	2	6
8	Lack of knowledge amongst Board members due to high turnover.	4	2	8	Knowledge Management Principles in place (July 2015 meeting). Knowledge Management Policy being developed.	3	2	6
9	Failure of succession planning for key roles on the Board leading to the inability to pick up work if a member is sick/leaves.	4	2	8	Knowledge Management Principles in place (July 2015 meeting). Knowledge Management Policy being developed.	2	2	4

Risk NO	Risk	Gross Impact	Gross Likelihood	Gross Total	Internal Controls	Residual Impact	Residual Likelihood	Residual Total
10	Failure of officers to maintain a sufficient level of competence to discharge their duties.	4	2	8	Internal training upon appointment, ongoing internal and external training courses/seminars, professional qualifications.	2	2	4
11	Changes to the Firefighters Pension Scheme and lack of expertise in the revised/new area.	3	3	9	The use of advisors (e.g. LGA) where deemed applicable to provide relevant information and recommendations on particular areas. Knowledge Management Principles in place (July 2015 meeting). Knowledge Management Policy being developed.	2	2	4
12	Failure to understand and monitor risk and compliance.	5	2	10	Risk Strategy in place. Draft risk register in development. The Board will be updated if there are any risk movements between scheduled reporting timescales.	3	2	6
13	Failure by the Scheme to meet requirements (including statutory) to ensure members are not disadvantaged.	4	3	12	LGSS Pensions have and regularly review responsibilities in the capacity of a third party administrator and advise Northamptonshire Fire and Rescue Service of their responsibilities as the Scheme Manager. LGA also advise and produce information regarding responsibilities as do other websites.	4	2	8
14	Failure (of LGSS Pensions) to act professionally when dealing with stakeholders leading to lack of confidence in the Authority.	3	2	6	Knowledge Management Principles in place to ensure officers have a good level of knowledge and officers are encouraged to undertake professional qualifications. LGSS Pensions have Customer Excellence accreditation to ensure the core focus is the customer across the service.	3	1	3
15	Failure to provide adequate information to the Pension Board.	3	2	6	Board meetings held every 6 months at which key information relating to the administration of the Scheme(s) is provided. Extraordinary meetings can also be arranged for urgent items.	2	2	4
16	LGSS Pensions are unable to deliver pension services due to unavailability of staff leading to unachieved targets.	3	2	6	The ability for staff to work remotely to meet the demands of the service. Multi skilling across the service for flexibility.	2	2	4
17	Inconsistencies in delivery due to failure to properly document processes and procedures	3	2	6	Task management ensures that processes are adhered to and officers are guided to ensure correct information is sent and messages are consistent. All calculations and corresponding letters are checked before they leave the office.	1	1	1

Risk NO	Risk	Gross Impact	Gross Likelihood	Gross Total	Internal Controls	Residual Impact	Residual Likelihood	Residual Total
18	Failure to include all required information in documents issued to members under disclosure regulations.	5	3	15	Officers keep up to date with disclosure regulations and distribute knowledge to teams accordingly via relevant websites, seminars and working groups. Letters are generated through task management for consistency and are checked before being sent out.	5	2	10
19	Failure to communicate adequately with scheme members.	3	3	9	Website regularly updated. Newsletters are published annually. Annual Benefit Statements produced and distributed.	3	2	6
20	Records are not accurate or do not reflect changes in circumstances.	4	3	12	Records are supported by appropriate documentation, input and output checks are undertaken. Regular reviews of data quality in line with the Public Service Pensions (Record keeping and misc. amendments) Regulations 2014.	3	2	6
21	Pension systems and data may not be secure and appropriately maintained.	5	2	10	System user controls are in place including regular password changes. Access rights are controlled. Data is backed up. Audit trails are in place. Pension system is protected against viruses and other system threats. The pensions administration system is regularly updated to ensure requirements are met.	5	1	5

RISK SCORING MATRIX

Potential impact if risk occurred	5 Catastrophic	5	10	15	20	25
	4 Major	4	8	12	16	20
	3 Moderate	3	6	9	12	15
	2 Minor	2	4	6	8	10
	1 Insignificant	1	2	3	4	5
		1 Rare	2 Unlikely	3 Possible	4 Likely	5 Almost certain
		Likelihood of risk occurring				

Red (risk scores 15 to 25): Excess of risk appetite

Yellow (risk scores 7 to 14): Likely to cause some difficulties

Green (risk scores 1 to 6) Monitor as necessary

Appendix 3 –

IMPACT DESCRIPTORS

The following descriptors are designed to assist the scoring of the impact of a risk:

	Negligible (1)	Low (2)	Medium (3)	High (4)	Very High (5)
Legal and Regulatory	Minor civil litigation or regulatory criticism	Minor regulatory enforcement	Major civil litigation and/or local public enquiry	Major civil litigation setting precedent and/or national public enquiry	Section 151 or government intervention or criminal charges
Financial	<£0.5m	<£1m	<£5m	<£10m	>£10m
Service provision	Insignificant disruption to service delivery	Minor disruption to service delivery	Moderate direct effect on service delivery	Major disruption to service delivery	Critical long term disruption to service delivery
Reputation	No reputational impact	Minimal negative local media reporting	Significant negative front page reports/editorial comment in the local media	Sustained negative coverage in local media or negative reporting in the national media	Significant and sustained local opposition to policies and/or sustained negative media reporting in national media

**NORTHAMPTONSHIRE
FIREFIGHTERS'
PENSION SCHEMES**



LOCAL PENSION BOARD

21 June 2017

Report by: THE HEAD OF PENSIONS

Subject:	Data Quality
Purpose of the Report	To present members of the Local Pension Board with information on the data quality improvement projects in progress.
Recommendations	That the Local Pension Board notes the content of the report.
Enquiries to:	Name: Jo Walton – Governance and Regulations Manager Tel: 07342 065329 jwalton@northamptonshire.gov.uk

1. Background

1.1 It is an essential role of the scheme manager and the Local Pension Board of the Northamptonshire Firefighters' Pension Schemes to ensure that data held on scheme members is accurate and regularly reviewed.

1.2 The following legislation provides the legal requirement for pension schemes to hold accurate data.

1.2.1 Pensions Act 2004 – section 249B (inserted by Schedule 4 of the Public Service Pensions Act 2013)

*(1) The scheme manager of a public service pension scheme must establish and operate internal controls which are adequate for the purpose of securing that the scheme is administered and managed –
(a) in accordance with the scheme rules and
(b) in accordance with the requirements of the law*

1.2.2 Public Service Pensions (Record Keeping and Miscellaneous Amendments) Regulations 2014

(4) Retention of records of member and beneficiary information

1.2.3 Data Protection Act 1988 Schedule 1: The Data Protection Principles: Part I – The Principles

(4) Personal data shall be accurate and, where necessary, kept up to date.

1.2.4 Pensions Act 2004 – section 90A (inserted by Schedule 4 of Public Service Pensions Act 2013)
(5) A code of practice issued under this section is admissible in evidence in any legal proceedings

1.3 In addition to the legislation in 1.2, the Pensions Regulator has issued the following sets of guidance relating to the requirement for pension schemes to hold accurate data:

1.3.1 The Pensions Regulator’s code of practice: governance and administration of public service pension schemes – code 14 (April 2015)

Record-keeping – Failing to maintain complete and accurate records can affect the ability of your public service pension scheme to carry out basic functions. Accurate record-keeping is crucial in ensuring that benefits are paid correctly.

1.3.2 The Pensions Regulator’s code of practice should be adhered to in line with the Pensions Act 2004 – section 90A (inserted by Schedule 4 of Public Service Pensions Act 2013) which states under regulation (5) that a code of practice issued under this section is admissible in evidence in any legal proceedings.

1.3.3 The Pensions Regulator’s: A quick guide to record keeping, from which the following extracts are relevant

“Public service scheme managers must keep records as specified in legislation including on transactions and pension board meetings and decisions”.

“From 2017, some schemes will need to report their record keeping score to us via the scheme return. We will use these scores to target schemes that are failing in their duties, so it’s now more important than ever for schemes to get their records in order”.

1.3.4 The Pensions Regulator’s: Compliance and enforcement policy for public service pension schemes (June 2015) sets out who is responsible for ensuring accurate data (i.e. scheme managers, pension boards and administrators) and the consequences of failing to do so.

2. Data quality projects

2.1 In order for the Firefighters’ Pension Schemes and those responsible for their governance and administration to demonstrate compliance with the law in the area of data quality, LGSS Pensions have put in place a number of projects which will then feed into an ongoing data improvement plan.

2.2 The data improvement plan will be a live document that covers all areas of data appertaining to the administration and financial accounting of the Firefighters’ Pension Scheme. The plan will be scoped over the next few months and be presented to the Local Pension Board at the next meeting for approval. The data improvement plan, once established, will be an ongoing project that is regularly reviewed to take account of changing systems and procedures and relevant changes to legislation.

- 2.3 Progress made against the data improvement plan will be reported to the Local Pension Board at each meeting.
- 2.4 The data improvement plan will also encompass two large scale projects that are already underway. These projects are a detailed reconciliation of the pensioner payroll system against pension administration records and a reconciliation of the contracted-out membership data held by the scheme and that recorded by HMRC. These projects are outlined in further detail in section 3 and 4 of this report.

3. Pensioner payroll reconciliation

- 3.1 With effect from October last year, the pensioner payroll was moved away from the Council’s Oracle payroll system to LGSS Pensions’ Altair administration and payroll system. All pensioner members’ payroll records were merged with their respective administration records.
- 3.2 Following on from this, it was considered necessary to ensure that the appropriate rate of pension is in payment and also to comply with the regulations in section 1 of this report on ensuring only accurate data is held.
- 3.3. An analysis of the pensioner administration system pension in payment compared with the pension physically in payment on the pensioner payroll was carried out with the potential variances identified as detailed in the table below.

Potential Over/Underpayments	Number to be investigated
Underpayments £100+ pa	54
Overpayments £100+ pa	20
Underpayments £10.01 - £100 pa	14
Overpayments £10.01 - £100 pa	2
Total potential over/underpayments	90

- 3.4 These variances are currently being investigated and with an anticipated completion date of 31 March 2018.
- 3.5 Full details of the reconciliation and the circumstances as to how any under or overpayments have occurred will be presented to the Local Pension Board. .
- 3.6 The scheme manager should also consider if a policy on how to deal with overpayments should be managed is required. LGSS Pensions, strongly recommend that a policy is put in place and so will draft a policy based on industry guidance. This policy will be presented for discussion with the Local Pension Board as to its appropriateness but with ultimate sign off by the scheme manager. The draft policy will be presented at the next meeting of the Local Pension Board.

4. Contracting-out reconciliation

- 4.1 On 5 April 2016, the ability for defined benefit pension schemes (e.g. the Firefighters’ Pension Schemes) to contract-out of the state second pension ceased upon the introduction of the new flat rate state pension with effect from 6 April 2016.

- 4.2 As such all UK pension schemes that were contracted out of the state second pension are advised to reconcile their individual member records with that held by HMRC by 31 December 2018 to ensure that schemes hold the correct period and amount of contracting-out liability.
- 4.3 Failure to ensure that the correct liability is held could expose schemes to a liability to pay a member, ex-member or their dependant, a pension that they aren't entitled or have previously extinguished (via a transfer of pension benefits to another scheme or a refund of contributions).
- 4.4 HMRC are operating a contracting-out reconciliation service that will run until 31 December 2018. After this date HMRC will no longer accept any amendments to their records and will write to all individuals and advise them of their period of contracted-out membership, its monetary value and which pension scheme is liable to pay pension benefits in respect of it.
- 4.5 An analysis of the extent to which data held by HMRC differs to that held by LGSS Pensions has been carried out by an external data audit company, ITM. The results of this analysis are detailed in the table below:

Scheme membership type	Number of data variances/total number of members
Pensioner, dependant and deferred	345 / 567
Active	To be advised

- 4.6 It should be noted that HMRC active member data has only recently been released and the variance analysis was not available at the time this report was published. It is anticipated that the Local Pension Board will be updated verbally at this meeting.
- 4.7 It should also be noted that across the pensions industry most pension schemes are not planning to investigate a contracting-out liability that differs by less than £2 per week. This threshold has been applied to derive the numbers reported in section 4.5 of this report.
- 4.8 ITM are now progressing the reconciliation of data directly with HMRC. This stage of the project is due to complete by 31 December 2017. By this time ITM will have reconciled and agreed with HMRC the contracting-out period and the amount of liability in respect of the Northamptonshire Firefighters' Pension Schemes.
- 4.9 The next stage will be for LGSS Pensions to calculate any over or underpayments that may be due in respect of previously holding an incorrect amount of contracting-out liability for scheme members whose pension is already in payment.
- 4.10 The scheme manager will need to consider how overpayments are to be managed as a result of an incorrect amount of contracting-out liability previously being paid. LGSS Pensions will include a section within the draft overpayments policy as detailed in 3.6 for discussion by the Local Pension Board and ultimate sign off by the scheme manager.
- 4.11 The Local Pension Board will receive regular updates on how this reconciliation project is progressing.

5. Finance & Resources Implications

- 5.1 The cost of using external support to complete the contracting-out reconciliation is to be met via the annual recharge.

6. Risk Implications

a) Risk(s) associated with the proposal

Risk	Mitigation	Residual Risk
There are no risks associated with ensuring that records held on members of the Firefighters' Pension Schemes are accurate	N/A	Green

b) Risk(s) associated with not undertaking the proposal

Risk	Risk Rating
Failure to ensure the records held on members of the Firefighters' Pension Scheme are accurate would be a breach in the legislation detailed in section 1 of this report.	Red

7. Communication Implications

Direct communications	Members affected by an overpayment of pension will be managed in line with the policy detailed in section 3.6 and 4.9 of this report.
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8. Legal Implications

- 8.1 Failing to comply with the legislation detailed in section 1 of this report is a breach of the law, reportable to the Pensions Regulator.

9. Consultation with Key Advisers

- 9.1 LGSS Pensions have consulted with ITM regarding the contracting-out reconciliation.

10. Alternative Options Considered

- 10.1 There are no alternative options to be considered.

10. Background Papers

- 10.1 Not applicable

Checklist of Key Approvals

Has this report been cleared by Head of Pensions?	Mark Whitby -
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**NORTHAMPTONSHIRE FIRE
AND RESCUE SERVICE
LOCAL PENSION BOARD**



LOCAL PENSION BOARD

21 June 2017

Report by: THE DEMOCRATIC SERVICES MANAGER

Subject:	Annual Report of the Local Pension Board
Purpose of the Report	To consider the draft annual report of the Local Pension Board and recommend its submission to full council.
Recommendations	The Local Pension Board are asked to review, comment on and approve its annual report.
Enquiries to:	Paul Hanson – LGSS Democratic Services Manager Tel: 01604 366813 e-mail: phanson@northamptonshire.gov.uk

1. Background

- 1.1 It is generally considered good practice for the Local Pension Board to consider publishing an annual report of the Board’s activities for that year. It is consistent with good governance practices that the Board should submit this report to the the Council in its capacity as the Scheme Manager.
- 1.2 A copy of the draft Local Pension Board Annual Report is attached at Appendix 1. The report provides a summary of the work of the Board. The Board is asked to consider the Annual Report and raise any comments accordingly. Once finalised, the Annual Report will be presented to full Council later in the year. The report will also be published on the Council’s website.

2. Content

- 2.1 The annual report focuses on the work undertaken by the Board during the year to date. The Board are asked to comment on this content and advise if they wish to add anything further.

3. Finance & Resources Implications

- 3.1 Not applicable.

4. Risk Implications

- a) Risk(s) associated with the proposal

Risk	Mitigation	Residual Risk
There are no risks associated with this report.		

b) Risk(s) associated with not undertaking the proposal

Risk	Risk Rating
There are no risks associated with this report.	

5. Communication Implications

5.1 Not applicable.

6. Legal Implications

6.1 Not applicable.

7. Consultation with Key Advisers

7.1 Not applicable.

8. Alternative Options Considered

8.1 Not applicable

9. Background Papers

9.1 Not applicable

10. Appendices

Appendix 1: Annual Report by the Local Pension Board

Checklist of Key Approvals	
Is this decision included in the Business Plan?	Not applicable
Will further decisions be required? If so, please outline the timetable here	Not applicable
Is this report proposing an amendment to the budget and/or policy framework?	No
Has this report been cleared by Director of Finance/Section 151 Officer?	Not applicable
Has this report been cleared by Head of Pensions?	No
Has this report been cleared by Legal Services?	Not applicable

**Northamptonshire
Firefighters' Pension Scheme
Local Pension Board**

**Annual Report
2016-17**

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Chairman's Foreword

I am pleased, as Chairman of the Northamptonshire Firefighters' Pension Scheme Local Pension Board, to introduce the Board's latest Annual Report. Local Pension Boards are relatively new bodies established by statute and tasked with assisting the Council by ensuring it is administering the scheme effectively and in compliance with the law.

The Board was established by the Council in March 2015. Much of the Board's first year of operation was occupied with putting in place the policies and procedures necessary for the satisfactory operation of the Board according to statutory requirements and guidance. In order to provide assurance to the Council that the Board is operating within the relevant statutory provisions, the Board's first annual report focused on these areas.

This, the second report of the Board, focusses on the work the Board has undertaken over the past year. During this time, the Board has sought to assist the Scheme Manager by reviewing policies and practices, as well as assessing the Scheme Manager's performance in line with established best practice.

Information about the Board, as well as details of the Board's work, is available on the Council's website. We want to hear from scheme members and employers about any issue or issues which may be causing them concern so please feel free to contact any member of the Board using the details set out in this report.

I am confident that the dedication and commitment of the current Board members will continue into 2017-18 in order to assist the Council in maintaining the high standards of the administration of the Fund.

Chairman

Northamptonshire Firefighters' Pension Scheme Local Pension Board.

Background

The Public Services Pensions Act 2013 requires all Public Service Pension Schemes to establish a Local Pension Board. In the case of the Firefighters' Pensions Scheme, the role of the Board is to assist the Scheme Manager (Northamptonshire County Council):

- to secure compliance with:
 - the relevant regulations;
 - any other legislation relating to the governance and administration of the Scheme (and any Connected Scheme); and
 - the requirements imposed by the Regulator in relation to the Scheme (and any Connected Scheme), and
- to ensure the effective and efficient governance and administration of the Scheme (and any Connected Scheme).

The Local Pension Board is expected to complement and enhance the Council's existing arrangements for managing the scheme. It does not replace the existing arrangements and it is not a decision making body. Rather, it is designed to act as a critical friend to the Council and its officers when they act in the capacity of scheme manager.

The Firefighters' Pension Scheme (Amendment) (Governance) Regulations 2015 relating to the creation and ongoing operation of local pension came into force on 1st April 2015. These regulations required the Council to agree the establishment of a Local Pension Board in respect of the Firefighter's Pension Scheme by 1st April 2015. In this context, established means that the Council, as Scheme Manager, had to approve the creation of the Board and agree its composition and terms of reference in accordance with its constitution. It did not mean that the Firefighters' Pension Scheme Local Pension Board had to be fully operational by that date.

The Northamptonshire Firefighters' Pension Scheme Local Pension Board was established by the Council at its meeting of full Council meeting on 19 March 2015 and held its first meeting on 29 July 2015.

Role and Remit

The role and remit of the Local Pension Board is to assist the Council in its capacity as scheme Scheme Manager by making sure it is administering the Firefighters' Pension Scheme effectively and efficiently and, in doing so, is complying with relevant laws and regulations. The Board does this by reviewing the policies and practices that the Council has adopted and checking them against the applicable regulations, as well as comparing them to examples of best practice elsewhere. It is a slightly different role when compared to the (seperate) Board charged with overseeing the Local Government Pension Scheme arrangements as the Firefighters' Pension Scheme is an unfunded scheme with no investment aspect.

Constitution and Membership

The Council approved the terms of reference for the Firefighters' Pension Scheme Local Pension Board on the basis that the Board is a stand-alone authority. It has also approved standing orders for the Board. A copy of both documents is available at the following link:

https://cmis.northamptonshire.gov.uk/cm5live/Committees/tabid/110/ctl/ViewCMIS_CommitteeDetails/mid/558/id/449/Default.aspx

A concise summary of the Firefighters' Pension Scheme Local Pension Board's terms of reference is set out in the Council's constitution (see Part 2, Article 9 (Local Pension Boards) and Part 3 (Responsibility for Functions):

<https://cmis.northamptonshire.gov.uk/cm5live/PublicDocuments.aspx>

In order to ensure they are fully representative, all Local Pension Boards must include an equal number of employer and member representatives with a minimum requirement of no fewer than four in total. At its meeting in March 2015, the Council agreed to establish a Firefighters' Pension Scheme Local Pension Board with two employer representatives and two scheme member representatives. The term of appointment for all members is four years or until qualification for membership ceases.

Council determined that one of the employer representatives were to be appointed by Full Council directly, while all other members were appointed via an open and transparent selection process. An application pack containing the terms of reference and an outline of the knowledge and understanding and capacity requirements was made available and advertised to employers and members within the Fund in a way that was compliant with the requirements set out in the relevant guidance on the creation and operation of Local Pension Boards. Following receipt of applications from potential representatives, a short listing and interview process involving the Council's Monitoring Officer determined that the selected representatives had the required attributes to carry out the role effectively.

The appointment/recruitment process led to the successful appointment of two scheme member representatives – Jim Dorrill and Terry Smith – and two employer representatives – Paul Hanson and Councillor Graham Lawman. The appointment of Paul Hanson was an interim measure in order to secure compliance with the relevant statutory requirements and he was replaced by David Harding after the first meeting of the Board. The current membership of the Board is as set out below:

Employer Representatives

Member	Role	Email	Appointed
David Harding	Area Manager Corporate Services Northamptonshire Fire and Rescue Service	DHarding@northantsfire.org.uk	June 2015
Councillor Graham Lawman	County Councillor	gmlawman@northamptonshire.gov.uk	September 2015

Scheme Member Representatives

Member	Role	Email	Appointed
Jim Dorrill	Northamptonshire Fire and Rescue Service	JDorrill@northantsfire.org.uk	June 2015
Terry Smith	Northamptonshire Fire and Rescue Service	TSmith@northantsfire.org.uk	June 2015

The Chair and Vice-Chair of the Board is elected by the Board on annual basis. The current Chair is (TBC) and the Vice Chair is (TBC)

The Board has met three times during the period of this Annual Report. The attendance record for members of the Board is detailed below:

Date	David Harding	Councillor Graham Lawman	Jim Dorrill	Terry Smith
06/07/16	Attended	Attended	Attended	Apologies
16/11/16	Apologies	Attended	Attended	Attended
21/06/17	TBC	TBC	TBC	TBC

Note – June '17 information to be included.

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Pensions Administration Services – Key Performance Indicators

LGSS Pensions (and prior to the formation of LGSS, the Pensions Section of Northamptonshire County Council) have historically provided pensions administration services to Northamptonshire County Council's Fire and Rescue Service on an informal basis. Both LGSS Pensions and the Fire and Rescue Service agreed that it would be appropriate to put in place a formal arrangement, in the form of a Service Level Agreement, to set out the expectations of each party.

The Service Level Agreement sets out the level of administration performance required by LGSS Pensions for the various Firefighters' Pension Schemes and the associated costs of carrying out those administration functions. The Local Pension Board was asked to fulfil its role in assisting the Scheme Manager by reviewing this Service Level Agreement.

The SLA covers the following functions:

- Provide transfer in quote to scheme member;
- Confirm receipt of transfer-in payment and service credited to scheme member;
- Provide a cash equivalent value in respect of divorce proceedings to scheme members on request;
- Notify early leavers of the scheme of their deferred benefit entitlement;
- Notify scheme members retiring from active membership of benefit award;
- Acknowledge death of active/deferred/pensioner scheme member;
- Award dependant benefits on the event of a scheme member's death; and
- Provide response to other enquiries.

The Board reviewed the KPIs with a view to ascertaining that arrangements would be put in place to ensure that quality assurance of KPIs would be undertaken by a manager within the service. Assurances were also given that the same KPIs were in place across Northamptonshire and Cambridgeshire, in order to achieved consistent and efficient approach to governance.

Compliance and Work Plan

A particularly important part of the Board's work this year has been on the Compliance Work Plan. Following the introduction of the Public Service Pension Act 2013, with effect from 1 April 2015 the Pensions Regulator became responsible for regulating the governance and administration of public service pension schemes and issued a code of practice for schemes to follow.

The code of practice sets out the legal requirements and provides practical guidance and standards that the Pensions Regulator expects of those in charge of the governance and administration of public service pension schemes. The Pensions Regulator would regard the Scheme Manager, members of the Local Pension Board and the pension administrators (LGSS Pensions) as those who are responsible for ensuring compliance with the code of practice.

At the Local Pension Board meetings of 10 March 2016 and 6 July 2016, reports on the extent to which compliance with the Pensions Regulator's code of practice had been achieved were presented for consideration. The Board were advised of the specific areas where full compliance had already been achieved, as well as areas where compliance could not yet be evidenced.

A work programme for achieving compliance, complete with specific timescales, was developed and shared with the Board. Performance against this work programme will be reported to the Board at appropriate intervals. *As of the end of 2016, full compliance with the Code of Practice was achieved.*

Firefighters' Pension Scheme 1992 – Pension Contribution Holiday Update

Firefighters who joined the Firefighters' Pension Scheme 1992 aged between 18 and 20 have previously had to contribute for up to 32 years to receive a pension that is based on a maximum of 30 years membership at the earliest age of 50. The Fire Brigades Union (FBU) brought a case to the Department of Communities and Local Government (DCLG) many years ago stating that this represents indirect age discrimination. Since then DCLG have been seeking advice as to the legal position of the Regulations on this specific matter.

In December 2015, shortly before the scheduled hearing of the legal case, DCLG confirmed that the Secretary of State would allow members of the Firefighters' Pension Scheme 1992 who are under the age of 50, who have accrued 30 years'

membership to take a pension contribution holiday from the time they obtain 30 years' reckonable service until after they reach age 50.

The rules of the Firefighters' Pension Scheme 1992 therefore have to be amended to allow affected members that joined the scheme before age 20 upon reaching age 50 to choose to:

- retire with a pension;
- continue in employment and recommence paying contributions; or
- continue employment without paying contributions thereby electing to defer payment of their pension

The retrospective nature of this proposal means that if a Firefighter paid contributions into the Firefighters' Pension Scheme 1992 after 1 December 2006, had already accrued 30 years membership and was aged less than 50 they will be entitled to a refund of contributions for this period including interest. Please note that the employer's contribution is not returned.

The Board received an update on this change and was advised the information was awaited from the Government as to the nature of amended legislation and guidance which would enable Fire Authorities and Fire and Rescue Services to proceed with reimbursing the affected members. The Board asked to be kept updated on the situation as it develops.

Rule B5B – Additional Pension Benefit: Long Service Increment

A member of the Board requested a briefing on the application of Rule B5B following feedback received from scheme members. Rule B5B provides an Additional Pension Benefit to protect the pension position of a firefighter whose average pensionable pay, as used for the assessment of a pension, would be affected by the phasing out of the Long Service Increment

Before 1 July 2007, a firefighter with at least 15 years' continuous service would have received an additional amount of pensionable pay known as the Long Service Increment ("LSI"). As part of the 2003 pay settlement the NJC agreed that LSI should be phased out. It was frozen at £990 a year from 7 November 2003 and reduced to £495 a year from October 2006 although transitional payments continued until 30 June 2007, following which LSI ceased.

The phasing out of LSI meant that FPS members who had been in receipt of it would have paid pension contributions on something which would not feature in their final year's pay. And those who retired shortly after the phasing out of LSI may have it included in their final pay but at a lower rate than if LSI had continued. Because the FPS is a "final salary" pension scheme this could have an adverse effect on benefits.

Ministers recognised this and agreed that arrangements should be made to allow compensatory adjustments to the average pensionable pay used in the assessment of benefits, or to provide an Additional Pension Benefit ("APB") based on the LSI. Consequently, the Firefighters' Pension Scheme (Amendment) (England) Order 2008 amended Rule G1 to provide for a compensatory adjustment to average pensionable pay and added Rule B5B to provide LSI APBs. The amendments have effect from 1 July 2007.

Information on the application of the Rule was provided to Board members to consider.

Draft Northamptonshire Firefighters' Pension Scheme 1992 – Internal Dispute Resolution Procedure

At their meeting in November 2016, the Board was asked to review and comment on the draft Internal Dispute Resolution Procedure under the Firefighters' Pension Scheme 1992.

Section 50 of the Pensions Act 1995 required all occupational pension schemes (other than very small schemes) to introduce formal Internal Dispute Resolution Procedures (IDRP) for dealing with complaints from scheme members or a personal representative of a scheme member. The detailed procedures to be followed are now set out in Section 50B of the Pensions Act 1995, which was inserted by section 273 of the Finance Act 2004 and amended by Section 16 of the Pensions Act 2007, and the Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008. Together, in this report, this legislation is referred to as 'the IDRP Regulations'.

The Internal Dispute Resolution Procedure has direct application to firefighters' pensions. Fire and Rescue Authorities are required to follow the procedures the IDRPs Regulations lay down in pension disputes other than those that are specifically excluded.

The Pensions Regulator's code of practice entitled 'Governance and administration of public service pension schemes', recognises the legal requirement for public service pension schemes to have in place a suitable Internal Dispute Resolution Procedure to ensure that complaints are dealt with in a prompt and effective manner. Failure of pension schemes to have appropriate published Internal Dispute Resolution Procedures will be regarded by the Pensions Regulator as a lack of compliance with the law.

The Board received a draft two stage Internal Dispute Resolution Procedure which had been drafted by LGSS Pensions on behalf of the Scheme Manager. The Board approved the procedure for adoption.

Northamptonshire Firefighters' Pension Schemes Risk Strategy 2016

The Board was asked to comment on and approve the Risk Strategy for Firefighters' Pension Schemes. The risk strategy details the approach to managing risk. It outlines the risk philosophy, how risk management is implemented, responsibilities, procedures and internal controls to ensure risk is identified, analysed, controlled and monitored effectively. In accordance with the Pensions Regulator's requirements, Schemes Managers must carry out a risk assessment and produce a risk register which should be reviewed regularly. The Board approved the strategy and noted that it would be reviewed twice-yearly.

Other Matters

The Board reviewed a range of other matters during the course of its meetings. Specifically, it reviewed case studies from the Pensions Ombudsman, which enabled the Board to assure itself that the findings of the Ombudsman's investigations into issues arising at other authorities had been understood and that actions had been taking to prevent similar issues arising in Northamptonshire.

The Board also approved a communications policy, which covered the publication of information about the Board, as well as agendas and papers for the Board’s meetings.

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Board Meetings

Full papers and minutes for The Firefighters' Local Pension Board are available here:

https://cmis.northamptonshire.gov.uk/cm5live/Committees/tabid/110/ctl/ViewCMIS_CommitteeDetails/mid/558/id/449/Default.aspx

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Work Programme 2017-18

The Firefighters' Pension Scheme Local Pension Board maintains a work programme which is considered at every meeting. Now that the Board is established and members have completed a number of training activities it will begin to select topics for in-depth analysis with a view to making recommendations to the Pension Committee on a regular basis.

The Work Programme for 2016-17 is as set out below:

Add work programme when completed

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Key Officers supporting the Local Pension Board

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**NORTHAMPTONSHIRE FIRE
AND RESCUE SERVICE
LOCAL PENSION BOARD**



LOCAL PENSION BOARD

21 June 2017

Report by: THE DEMOCRATIC SERVICES MANAGER

Subject:	Requesting Items for Consideration at the Local Pension Board
Purpose of the Report	To agree a protocol for requesting items to be added to the agenda of the Local Pension Board
Recommendations	The Local Pension Board is asked to comment on and approve the protocol below.
Enquiries to:	Paul Hanson – LGSS Democratic Services Manager Tel: 01604 366813 e-mail: phanson@northamptonshire.gov.uk

1. Background

- 1.1 In carrying out their role, members of the Local Pension Board are encouraged to ask for particular items to be included on the agenda of Board meetings. Indeed, this may be done at the request of scheme members or the employing authority, who those members are appointed to represent.
- 1.2 It is important that such items are dealt with properly so that they may be given proper consideration and, where necessary, are supported by reports and other written materials from the LGSS Pension Team or Democratic Services as appropriate. This report sets out a suggested protocol for members to request that items be added to the agenda.

2. Protocol

- 2.1 It is suggested that, in the first instance, requests about pension matters are made in writing to the Governance and Regulations Manager, while requests about Democratic Services matters are made to the Democratic Services Manager.
- 2.2 In terms of timing, it is important that officers receive sufficient notice of requests to allow the preparation of any reports necessary for that item to be given proper consideration. It is suggested that all requests for additional items be submitted no later than six weeks before the date of the relevant meeting.

3. Finance & Resources Implications

- 3.1 Not applicable.

4. Risk Implications

- a) Risk(s) associated with the proposal

Risk	Mitigation	Residual Risk
There are no risks associated with this report.		

b) Risk(s) associated with not undertaking the proposal

Risk	Risk Rating
There are no risks associated with this report.	

5. Communication Implications

5.1 Not applicable.

6. Legal Implications

6.1 Not applicable.

7. Consultation with Key Advisers

7.1 Not applicable.

8. Alternative Options Considered

8.1 Not applicable

9. Background Papers

9.1 Not applicable

10. Appendices

None

Checklist of Key Approvals	
Is this decision included in the Business Plan?	Not applicable
Will further decisions be required? If so, please outline the timetable here	Not applicable
Is this report proposing an amendment to the budget and/or policy framework?	No
Has this report been cleared by Director of Finance/Section 151 Officer?	Not applicable
Has this report been cleared by Head of Pensions?	No
Has this report been cleared by Legal Services?	Not applicable

‘Voluntary Scheme Pays’ in the Firefighters’ Pension Schemes.

Background

Mandatory Scheme Pays (‘MSP’).

1. Individuals whose annual growth in pension savings during the Scheme’s ‘Pension Input Period’ exceeds **HMRC’s standard Annual Allowance Limit (‘HMRC AA Limit’)**, currently set at £40,000, and who have no unused Annual Allowance to carry forward from the previous three tax years will be subject to an **Annual Allowance tax charge (‘AA tax charge’)**.
2. The individual can pay the AA tax charge from their own personal finances, however, the Finance Act 2004 provides that a pension scheme must provide a ‘Scheme Pays’ facility¹ where all of the following qualifying conditions are met:
 - i. the HMRC AA limit (currently set at £40,000) has been exceeded in the pension scheme that the Scheme Pays election is made; and
 - ii. an AA tax charge exceeding £2,000 has been triggered; and
 - iii. the relevant time limits for making an election have been met.

Voluntary Scheme Pays ‘VSP’

3. Where a member does not meet the conditions for Mandatory Scheme Pays ‘**MSP**’ to apply or they do not make their nomination in time then a scheme may decide to pay the member’s annual allowance charge on a voluntary basis ‘**VSP**’.
4. Changes to the tax rules now mean that some high earning members with income of more than £150,000 per annum are now subject to a **Tapered Annual Allowance (‘tapered AA’)** which reduces from £40,000 to £10,000 incrementally for those earning between £150,000 and £210,000 per annum.

Members who are subject to a tapered AA will incur an AA tax charge where their pension growth exceeds their tapered AA. The tapered AA will be lower than the £40,000 HMRC AA limit and therefore these members cannot use MSP to pay this charge.

¹ A scheme pays facility works by having the pension fund pay the member’s tax charge initially. This is then repaid by the member as a debit is added to their pension once it comes into payment.

5. With the introduction of the 2015 Scheme, members of the 1992 Firefighters' Pension Scheme ('1992 Scheme') and 2006 Firefighters' Pensions Scheme ('2006 Scheme') who have transferred into the 2015 Scheme on or after 1 April 2015 will effectively be members of two pension schemes and will see pension benefit growth in both schemes until retirement:

By virtue of accruing their pension growth across two rather than one pension scheme, there is an increased likelihood that although the member's total annual pension growth across both schemes may exceed £40,000, the pension growth in any one of the schemes may fall short of the HMRC AA limit. As such, they will not be eligible to use MSP to pay the AA tax charge.

Home Office Proposal

6. At their meeting of 6th March 2017, the Firefighters Scheme Advisory Board considered and agreed an initial proposal from the Home Office to amend the Firefighter Pension Regulations to allow the charge to be met in the circumstances below using Voluntary Scheme Pays (**VSP**)
 - (i) transitional members with pension growth of over £40,000 across both schemes (HMRC AA limit) and a corresponding tax charge, to use the scheme to pay this cost initially, before it is repaid by a pension debit added to the member's pension when it comes into payment
 - (ii) members subject to a tapered AA, to use the scheme to pay their charge initially and then this be repaid via a pension debit. For this option, it is also recommended that the member should be required to make an initial contribution of £2,000 from their own finances towards the resultant AA tax charge.
7. It is now for the Home Office to seek the new administration's views on the proposal after the General Election. Assuming this is taken forward the working assumption is that these changes would be introduced via an amendment to the pension scheme regulations rather than guidance. Legislative amendments take time and therefore will not be introduced in the short term.
8. **It is important to note that this is simply a proposal at this time and is not a guarantee that legislation will change. It will be dependent on a number of factors.**
9. Therefore unless or until that legislation is introduced it is for the FRA to consider their approach to this issue ensuring that what they do is both lawful and appropriate.

Can an FRA operate Voluntary Scheme Pays?

10. This note therefore considers whether FRAs have the ability to offer **Voluntary Scheme Pays 'VSP'** without an amendment to the Firefighter Pension Regulations, and that it is both lawful and appropriate.
11. LGA has recently sought legal advice on behalf of English FRAs, in order to determine whether an FRA can offer voluntary scheme pays, without the need for a change to legislation.
12. **The legal advice was prepared solely for the Local Government Association ("LGA"). Sharing of this legal advice does not amount to a waiver of legal privilege by Eversheds Sutherland.**
13. To operate voluntary scheme pays there are two different steps.
 1. The first is for the Fire Authority to pay the annual allowance charge on behalf of the scheme member to HMRC
 2. The second is for the Fire Authority to adjust the members benefit to reflect the payment made by the administrator

Step 1 – Can the Fire Authority satisfy a member's annual allowance charge on a voluntary basis?

14. The legal advice we have sought opines 'yes, we consider that it is possible for an FRA to operate voluntary "scheme pays"'.

The instruction to Eversheds Sutherland from LGA was

"Does a FRA have the power to agree to voluntary "scheme pays", taking into account both the relevant provisions of the FPS Regulations and the FRA's general powers, and to pay the member's tax liability from the Firefighters' Pension Fund (the "FPF") maintained under the FPS Regulations?"

15. The short answer was 'yes' the longer answer (paraphrased) was 'yes because they have a power of general competence, which may be exercised reasonably where there are sufficient grounds for doing so'.

16. Extract from the 'executive summary' of the legal advice

3. In relation to the specific questions posed:

3.1 Yes, we consider that it is possible for a FRA to operate voluntary "scheme pays":

3.1.1 A FRA which is a county council in England can operate voluntary "scheme pays" relying on s.1 of the Localism Act 2011 and reg.2 of the Modification Regulations. It would be possible to construct an argument that the necessary powers are conferred by virtue of s.111 of the Local Government Act 1972, but the position is less clear-cut than under the Localism Act.

3.1.2 For those FRAs which are metropolitan county FRAs or created by Order as a combined FRA the power to operate such a scheme is derived from s.5A of the Fire and Rescue Services Act 2004 which was inserted by s.9 of the Localism Act 2011.

3.1.3 Where a FRA agrees to operate voluntary "scheme pays", it can properly pay the amount of the tax charge which is due to HMRC from its FPF without contravening the FPS Regulations.

17. Extract from the 'detailed advice' of the legal advice

3.2 First, as regards the question of whether a FRA may agree to meet a member's liability to the annual allowance charge, the arrangements for the administration of the FPS are set out in regulations which are complex in nature and very prescriptive. This is true of many areas of local government activity, and through the Localism Act 2011 the then Government introduced a means by which specific regimes can be supplemented by the exercise of a broad general power of competence for local authorities.

3.3 Those FRAs which are county councils may exercise this power to enter into the necessary arrangements with the member and HMRC. This power cannot be exercised where there is express prohibition of the action proposed. However, since there is no express prohibition of the action proposed here, the FRA may participate in such an arrangement.

3.4 The power of general competence, like all local authority powers, must be exercised reasonably. The FRA must be satisfied that there are sound reasons to make the payments and that the interests of the authority are not harmed by so doing.

3.5 We believe that there are sufficient grounds on which the authority could conclude that there are sound reasons for offering a voluntary "scheme pays" facility, given that (for instance) the effect of the recently introduced tapered annual allowance is that scheme members may now face a substantial tax charge without being able to access the mandatory "scheme pays" facility (because the latter provisions remain based upon the standard annual allowance). Similarly, the interests of the authority will not be harmed, provided that the authority is able to make a consequential adjustment under the Modification Regulations, because the payment will ultimately be met from the member's benefit entitlement, and because the authority will have discretion as to when to offer voluntary "scheme pays", meaning that the administrative burden of such arrangements can be retained within manageable bounds.

3.6 It should be noted that the Localism Act 2011 provisions apply only to English local authorities.

3.7 For those English fire and rescue authorities which are not county councils there is power in the Fire and Rescue Services Act 2004 to enter into voluntary "scheme pays" arrangements subject to the same principles and constraints as apply to county councils.

3.8 Section 5A of the Fire and Rescue Services Act 2004 was inserted by s.9 of the Localism Act 2011. This provides as follows:

“Powers of certain fire and rescue authorities

(1) A relevant fire and rescue authority may do—

(a) anything it considers appropriate for the purposes of the carrying-out of any of its functions (its “functional purposes”),

(b) anything it considers appropriate for purposes incidental to its functional purposes,

(c) anything it considers appropriate for purposes indirectly incidental to its functional purposes through any number of removes,

(d) anything it considers to be connected with—

(i) any of its functions, or

(ii) anything it may do under paragraph (a), (b) or (c), and

(e) for a commercial purpose anything which it may do under any of paragraphs (a) to (d) otherwise than for a commercial purpose.

(2) A relevant fire and rescue authority's power under subsection (1) is in addition to, and is not limited by, the other powers of the authority.

(3) In this section “relevant fire and rescue authority” means a fire and rescue authority that is—

(a) a metropolitan county fire and rescue authority,

(b) the London Fire and Emergency Planning Authority,

(c) constituted by a scheme under section 2, or

(d) constituted by a scheme to which section 4 applies.”

[Sections 2 and 4 relate to combined FRAs.]

3.9 Reliance upon s.111 of the Local Government Act 1972 requires the FRA to be satisfied that it is doing something “*which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions*”. The purpose of the incidental power is to enable actions to be taken in support of statutory functions, so it is necessary to identify the function before the authority can be said to be acting incidentally to it. The functions of a local authority acting as a FRA and as scheme administrator (for tax purposes) are defined by statute and regulation, and it can be argued that entry into a voluntary “scheme pays” arrangement is incidental or conducive to the performance of those functions (though the position is necessarily not as clear-cut as with the general power of competence under the Localism Act). Again, the test of reasonableness is to be applied.

'Exercised reasonably where there are sufficient grounds for doing so'

18. The power of general competence that allows an FRA to satisfy an annual allowance charge on a voluntary basis, must be exercised reasonably and the FRA must be satisfied there are sound reasons for doing so.
19. LGA consider that the circumstances below proposed by the Home Office and agreed by the Scheme Advisory Board should be considered as sound reasons.
- Transitional members with service in one of the 1992 or 2006 Schemes, and the 2015 Scheme, are able to access a VSP arrangement in the same way that a protected 1992 or 2006 scheme member, or a member with service only in the 2015 Scheme, can do so through Mandatory Scheme Pays.
 - Scheme members with a tapered annual allowance are able to use a VSP arrangement to pay a tax charge in a circumstance where the pension growth in one scheme (or more schemes) is less than the £40,000 general AA limit but more than their own tapered AA limit.
20. Any fire authority wishing to make a Voluntary Scheme Pays arrangement for reasons outside of the two listed are advised to consider whether to do so is a reasonable exercise of their powers and they would have sound reasons for doing so. For example they may not consider allowing a VSP arrangement for a member who would have been eligible for Mandatory Scheme Pays but did not notify the authority within the statutory limit to be a reasonable exercise of their powers.

Step 2 - Can a fire authority adjust a members benefits to reflect the payment made?

21. Having established that the fire authority has the vires in order to satisfy the members charge. The second question for consideration, is does the Fire authority have the power to adjust the members benefit (ie the scheme pays debit) to recover the charge?
22. The Modification of Scheme Rules [\[SI 2011/1791\]](#), Rule 2, Paragraph 2 allows for such an adjustment to be made to the pension (ie the scheme pays debit)

2.—(1) This regulation applies where a scheme administrator of a registered pension scheme ("the scheme") satisfies all or part of a member's liability to the annual allowance charge, either on a voluntary basis or pursuant to a liability under section 237B of the Finance Act 2004(1).

(2) The rules of the scheme shall be modified so as to allow for a consequential adjustment to be made to the entitlement of the member to benefits under the scheme on a basis that is just and reasonable having regard to normal actuarial practice. This paragraph is subject to paragraph (3).

(3) Any modification to the scheme's rules made by virtue of paragraph (2) is subject to section 159 of the Pension Schemes Act 1993(2) or section 155 of the Pension Schemes (Northern Ireland) Act 1993(3) (inalienability of guaranteed minimum pension etc).

23. The intent of this regulation is explicitly laid out in the explanatory memorandum paragraph 2.1

This instrument provides that where a scheme administrator of a registered pension scheme satisfies an annual allowance charge on behalf of a member of the pension scheme from the member's pension benefits, any rules of the pension scheme which prevent such an adjustment to the member's pension benefits are modified to allow for such adjustments.

For the avoidance of doubt who is the 'scheme administrator'?

24. The modification of scheme rules refers to the 'scheme administrator' for the avoidance of doubt, LGA sought legal guidance onto whom this refers in the case of a Fire Authority.

Does a FRA count as the "scheme administrator" for the purposes of reg.2(1) of The Registered Pension Schemes (Modification of Scheme Rules) Regulations 2011 (the "**Modification Regulations**"), taking into account the effect of The Registered Pension Schemes (Splitting of Schemes) Regulations 2006 (the "**Split Scheme Regulations**")?

25. The legal advice opines that the FRA in this case is the 'scheme administrator'.

4.1 Yes. The Split Scheme Regulations provide in reg.2(1)(a) that all registered pension schemes listed in Schedule 1 to the regulations are to be treated as "split schemes". Both the 1992 scheme and the 2015 scheme are listed by name, and although the 2006 scheme (the NFPS) is not expressly listed by name, it is clear that the intention is for the reference in Sch.1 to the "Firefighters Pension Scheme" to cover both the 1992 and the 2006 schemes, since reference is made expressly to s.34 of the Fire and Rescue Services Act 2004, which is the enabling legislation for the 2006 scheme.

4.2 On the basis that all three FPS schemes are to be treated as "split schemes", this therefore means that under reg.3(2) of the Split Scheme Regulations, in the provisions referred to in Schedule 3 to those regulations, "any reference to the scheme administrator shall be read as a reference to the sub-scheme administrator". Schedule 3 includes the Modification Regulations.

4.3 Under reg.1, the "sub-scheme administrator" for a split scheme is "the scheme administrator of a sub-scheme appointed in accordance with the rules of the split scheme to be responsible for the discharge of the functions conferred or imposed on the sub-scheme administrator by or under these Regulations".

4.4 In relation to the 2015 scheme, this is clearly the FRA as "scheme manager" for the purposes of the 2014 Regulations. Under reg.177 of the 2014 Regulations:

*"177 Scheme administrator for the purposes of the Finance Act 2004
The scheme manager is appointed to be responsible for all liabilities and responsibilities connected with the functions conferred or imposed on the scheme administrator by or under Part 4 of FA 2004 which the scheme manager assumes as sub-scheme administrator under regulation 3 of, and Schedule 3 to, the Registered Pension Schemes (Splitting of Schemes) Regulations 2006."*

4.5 In relation to the 2006 scheme and the 1992 scheme, there is no explicit statement under either the 2006 Order or the 1992 Order confirming who is to act as scheme administrator for the purposes of the Finance Act 2004. However, given that under both sets of provisions, the FRA is expressly required to deduct tax / lifetime allowance charges which are due on any payments, it can be inferred that the intention was for the FRA also to be the scheme administrator for Finance Act purposes.

4.6 Therefore, a decision by a FRA to operate voluntary "scheme pays" would constitute a "scheme administrator" satisfying "all or part of a member's liability to the annual allowance charge" for the purposes of reg.2(1) of the Modification Regulations. As such, it would trigger the operation of reg.(2)(2), which would override the provisions of the FPS to the extent needed to make the "consequential adjustment" to the member's benefit entitlement.

Summary

26. In certain circumstances, an individual cannot use Mandatory Scheme Pays 'MSP' to pay a relevant HMRC tax charge. This note considers whether an FRA can satisfy the tax charge on a members behalf using Voluntary Scheme Pays 'VSP'
27. The Home Office is considering amendment to the legislation that would allow an FRA to use 'VSP' in certain circumstances only. However, unless or until that legislation is introduced it is for the FRA to consider their approach to this issue ensuring that what they do is both lawful and appropriate.
28. Having taken Legal advice on behalf of FRA's, LGA can confirm that an FRA (including County Councils, combined Fire Authorities and Metropolitans) can offer Voluntary Scheme Pays arrangements in order to pay the tax bill where a member of the scheme cannot use mandatory scheme pays because they have a power of general competence, which may be exercised reasonably where there are sufficient grounds for doing so'.
29. It is considered that FRAs should consider the test of 'exercised reasonably where there are sufficient grounds for doing so' to be in line with the two circumstances proposed by the Home Office and agreed by the Scheme Advisory Board:
 - Transitional members with service in one of the 1992 or 2006 Schemes, and the 2015 Scheme, are able to access a VSP arrangement in the same way that a protected 1992 or 2006 scheme member, or a member with service only in the 2015 Scheme, can do so through Mandatory Scheme Pays.
 - Scheme members with a tapered annual allowance are able to use a VSP arrangement to pay a tax charge in a circumstance where the pension growth in one scheme (or more schemes) is less than the £40,000 general AA limit but more than their own tapered AA limit.
30. The Fire Authority as the 'scheme administrator' have an express power under [Rule 2, paragraph 2](#) of the Modification of Scheme Regs SI 2011/1791, to allow for an adjustment to be made to the pension (ie in this case a scheme pays debit)

Final Note

31. This note was prepared on 31st May 2017 for Fire Authorities consideration by the Local Government Association. It does not constitute legal advice and should not be treated as so.

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