

Only to be opened by



Date Wednesday 23 November 2016

Dear Mr T [REDACTED]

### Internal Dispute Resolution Procedure Stage 2

I am writing with regard to your application under Stage 2 of the Internal Dispute Resolution Procedure dated 14 October 2016. I formally considered your Stage 2 application on 2 November 2016. I was advised in this process by a specialist pensions lawyer from an external legal practice.

I have reviewed all the grounds and information that you submitted in support of your Stage 2 application and revisited, where necessary, the information considered in the Stage 1 decision making process as set out in the decision letter dated 13 April 2016.

You confirm in your Stage 2 application that the situation surrounding both your stage 1 and stage 2 applications, and the procedures used by the Authority, has continued to be unacceptable to you. You set out six grounds of dispute to which I will refer in this decision letter.

*Ground 1 – You disagree with the conclusions of both of Kelly Fairman and Rob Bond to your IDR Stage 1 application of 20<sup>th</sup> December 2014.*

This Stage 2 appeal is against the outcome of the reconsidered original complaint which was heard by Rob Bond as set out in his letter of 13 April 2016. I do not therefore think the reference to Kelly Fairman is relevant to this appeal, though I would note that in practice in many cases the conclusions reached were the same.

I have reviewed the basis of the conclusions reached by Ron Bond in his response. In summary these are:

- There was legal authority for the adjustments to your injury pension
- That there was no legal entitlement for you to have any part of your suspended injury pension repaid.

- That the Authority has acted in accordance with injury pension overpayments guidance and provided you with sufficient explanation
- That in relation to the proposed recovery by the Authority of any payments this will be dealt with separately in accordance with those proceedings

As you have acknowledged in the preliminary comment to your Stage 2 appeal the latter point has now been addressed separately in the letter to you from Yvonne McKenna dated 15 July 2016. Having re-examined the rest of the evidence considered by Rob Bond I am satisfied that the conclusions he reached are sound. I am therefore upholding the outcome of this reconsidered Stage 1 appeal

*Ground 2 – You disagree and are dissatisfied with the delays of about 16 months in dealing with your IDRPs Stage 1 application.*

There are a number of factors particular to this case that have contributed to the extended time period over which this case has been considered including:

- the initial uncertainty about whether the complaint was permitted to be dealt with under the IDRPs procedure which was not resolved until 2 April 2015
- the interrelationship between the IDRPs complaint and the proposed action being considered at the time by the Authority against you for alleged overpayments
- the appointment of an independent adviser for IDRPs claims involving the review of injury awards which resulted in a reconsideration of the original complaint and
- queries raised by you relating to the proper constitution of the IDRPs body, the legitimacy of the independent adviser and whether attendance at an IDRPs hearing by you was permitted

However I agree that the case has taken a considerable length of time to reach this point and acknowledge that this has been frustrating for you

*Ground 3 – you are dissatisfied with the legitimacy or legality of the involvement of an 'independent' adviser in your IDRPs Stage 1 application.*

The IDRPs regime was revised in April 2008 and since then has become less prescriptive. This has meant that managers of occupational pension schemes have considerable flexibility when considering the processes that should be adopted. I am therefore satisfied that the Authority in its capacity as a manager of the fire fighter pension scheme was able to involve an independent adviser to assist in the determination of your IDRPs complaint

*Ground 4 – You are dissatisfied with the legitimacy or legality of the current panel selection as practiced by the LFB for Stage 2 applications. It does not comply with current IDRPs procedures practised nationally.*

I am also satisfied with the Authority's panel selection for these IDRPs Stage 2 applications. The Authority's entire IDRPs process has recently been the subject of a report to the Local Pension Board which is made up of both elected members (representing the employers side) and trade union members (representing the employee's side). I have attached a copy of this for your information

*Ground 5 – You are dissatisfied with the way your whole appeal process has been dealt with by the LFB and its legal department since your first submission on 21<sup>st</sup> December 2014.*

I do understand that this process has been frustrating for you and have acknowledged the time delays. I have set out details at the end of this letter of the steps that you may now choose to take if you remain dissatisfied following the conclusion of this Stage 2 process.

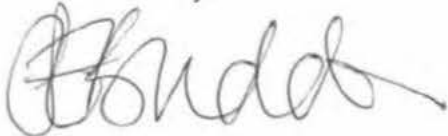
*Ground 6 – You are unsure of the relevance of a letter from Yvonne McKenna of the legal department dated 26<sup>th</sup> May 2016.*

Yvonne McKenna wrote to you on 15 July 2016 to respond to your request for clarification. You have stated in the preliminary comment to your Stage 2 appeal that you accept that the Authority will no longer be proceeding with the claim. I do not have any more to add on this point.

Taking all your submissions into account, I have decided to confirm the Stage 1 decision. However I would like to reiterate that I acknowledge that there have been delays in the process which have been frustrating for you.

This now concludes the consideration and determination of your appeal application under Stage 2 of the Internal Disputes Resolution Procedure. If you remain dissatisfied, TPAS (the Pensions Advisory Service) is available to assist members and beneficiaries of pension schemes in connection with any difficulty with a scheme which remain unresolved. TPAS can be contacted at: 11 Belgrave Road, London, SW1V 1RB (Telephone 0845 6012923). The Pensions Ombudsman, appointed under Section 145(2) of the Pension Schemes Act 1993, may investigate and determine any complaint or dispute of fact or law in relation to a scheme made or referred in accordance with that Act. He can be contacted at: 11 Belgrave Road, London, SW1V 1RB (Telephone: 020 7630 2200).

Yours sincerely,



**Sue Budden**

Director of Finance and Contractual Services

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Report title

## Firefighters' Local Pension Board - Update Report

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Meeting

Firefighters' Local Pension Board

Date

13 September 2016

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Report by

Head of Finance

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Public

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### Summary

This report provides members of the Local Pension Board (LPB) with an overview and update on the position relating to a number of current issues affecting firefighters' pensions.

### Recommendation

That the LPB note the content of the report.

### Introduction/Background

1. The purpose of the LPB is to assist the Authority in its role of Scheme Manager:
  - (a) To secure compliance with legislation relating to the governance and administration of the firefighters' pension schemes, and any requirements imposed by The Pensions Regulator in relation to the firefighters' pension schemes; and
  - (b) To ensure the effective and efficient governance and administration of the firefighters' pension schemes.
2. This report provides an update on a number of issues considered to be relevant to the LPB's role. The issues, whilst all relating in some way to the firefighters' pension scheme, are quite disparate in nature. They vary quite significantly in their complexity, and the stage they are at, and their impact on LFEPA.

3. The following items will be considered as part of the report. These have been grouped together, to try to consider related issues together.

Legal cases

- Loss of Protected Pension Age
- Transitional arrangements for the 2015 FPS
- Contributions – firefighters that joined aged 18-20

Pensions issues

- Member Self Service (MSS)
- Annual Benefit Statements (ABS)
- Annual Allowance/Lifetime Allowance
- GMP reconciliation

Firefighter pensions

- Valuation

Local pensions issues

- LPFA arrangements
- Communication with members
- Auto Re-Enrolment

Consultations

- Tax relief on pensions

**Legal cases**

4. The following section provides an update on legal cases that impact on the pension scheme.

Loss of Protected Pension Age

- a. As reported to Board Members in May 2016, Her Majesty's Revenue & Customs (HMRC) wrote to all Fire and Rescue Authorities (FRAs) on 8 November 2013 with regard to the loss of Protected Pension Age (PPA) issue due to concurrent FRA employment.

LFEPFA has one former firefighter that is affected by this, continuing with his secondary employment as a retained firefighter with another FRA without any break in service when he retired from LFEPFA. This led to HMRC concluding that both the individual and the Authority are liable to tax and unauthorised payment charges.

Officers have had discussions with HMRC on the tax liabilities of this individual affected by the loss of PPA, and are seeking to work with the individual concerned to resolve this issue. The matter has now been referred to HMRC. Officers have been informed that HMRC will contact the individual concerning his tax liabilities and that they will ask that the individual contact Authority officers to discuss his case.

Transitional arrangements for the 2015 FPS

- b. As reported to the Board in May 2016, a multiple parties' discrimination claim, supported by the FBU, was issued in September 2015 in the Employment Tribunal in relation to the transitional arrangements for the Firefighters' Pension Scheme 2015.

The claims challenge the statutory transitional provisions introduced in regard to the move from the FPS 1992 and NFPS 2006 to the new 2015 FPS. The claims do not challenge the

substantive terms of the 2015 FPS, only the statutory transitional measures setting out the scope of protection provided to some firefighters.

In particular, the effect of the above is that older firefighters are significantly more likely to be protected and the FBU supported claimants' assertion that this amounts to unlawful age discrimination. In addition, the FBU supported claimants have also raised claims for indirect sex discrimination, equal pay and indirect race discrimination in that individuals with certain protected characteristics e.g. BME or women, are less likely to be afforded protection under the transitional arrangements as they generally joined the fire service later and are generally younger.

A preliminary hearing took place at the end of May 2016, to determine a number of preliminary issues, such as whether the claims have been submitted within the prescribed time limit, and whether the FRAs are able to rely on a statutory defence. The Employment Tribunal found that the claims had been lodged within the prescribed time limits and that Schedule 22 of the Equality Act 2010 could not be relied upon by the FRAs as a statutory defence. The FRAs have subsequently lodged an appeal to the Employment Appeal Tribunal (EAT) in relation to the Schedule 22 defence but, have asked for the appeal to be stayed pending the determination of the substantive issues in the case. The final hearing in this case is scheduled to take place in January 2017.

#### Contributions – firefighters that joined aged 18-20

- c. At the last LPB meeting, officers were asked to seek an update on this from the Government, in particular whether firefighters will have the option of choosing between a contributions holiday period or a refund of contributions. Officers have been advised by the LGA Firefighters' Pension Advisor that their understanding is that draft regulations have been prepared, and are to be submitted to the Minister for approval as a Home Office priority. Following this, the Home Office and the Government Actuaries Department (GAD) will put in place processes to manage the arrangements.

The current understanding, based on limited information currently available, is that from the date of the legislation any serving firefighter who reaches 30 years' service before age 50 will have a contributions holiday immediately implemented, and any firefighter who between 1 December 2006 and the date of the legislation reached 30 years' service before age 50 will have the contributions made for the period after reaching 30 years until age 50 refunded.

Officers have contacted the Home Office requesting further information, including anticipated timescales, and will report back to Board members when any further information is available.

### **Pensions issues**

5. This section provides an update on general pensions issues.

#### Member Self Service (MSS)

- a. The LPFA's software provider has now released an updated MSS system, which includes the facility to produce the Annual Benefit Statements for all scheme members. This is being tested to confirm that it is able to calculate benefits correctly for all members. The previous release had problems identified during LPFA testing which included pension benefits for those that have moved, or will do so at a future date, into the 2015 scheme, death in service lump sum benefits, and level of dependants' benefits. When officers are satisfied that the

MSS delivers accurate information it will be made available for all pension scheme members, and allow them on-line access to review, update and print pensions information.

#### Annual Benefit Statements (ABS)

- b. Annual Benefit Statements have now been despatched to all scheme members - deferred member statements were issued in July, and active member statements in late August. Details of the number of members receiving statements are shown below:

Status	Scheme	Number
Active	1992	1,510
Active	2006	14
Active	2015	2,796
Deferred	1992	511
Deferred	2006	291
Deferred	2015	64

#### Annual Allowance/Lifetime Allowance

- c. The Annual Allowance (AA) value for pension savings was set at £40k from 2014/15. However, new arrangements were introduced in 2015/16 to align the period for the AA to the tax year, and so the year end was extended from 31 March 2016 to 5 April 2016. To compensate for this change the tax allowance was increased to a maximum of £80k, and the level of inflation protection increased to 2.5%, but for the 2015/16 transition year only. It is expected that these transitional arrangements will see a fall in the number of LFEPA staff incurring a tax liability for exceeding the tax allowance.

The value of the Lifetime Allowance (LTA) was reduced from 6 April 2016 from £1.25m to £1.0m. Individuals are able to apply to HMRC to seek protection against the reduction in the LTA subject to the criteria set by HMRC.

Following a review of member pensions savings, as part of the ABS exercise, 56 scheme members have been separately written to with details of their own position in relation to the Annual and/or Lifetime Allowance.

For the majority of the members receiving the letter no immediate action is required – the letter simply provides information to the member in monitoring their tax position. A letter has been sent to all members that earn over £60k and provides a comparison of their pension savings to the AA and LTA.

The table below sets out how the 56 members that received a letter stand against the AA and LTA.

Pension savings	Less than AA	Greater than AA but sufficient unused allowance to avoid tax charge	Tax charge
Exceed LTA	3	1	3
Currently below £1m but expected to exceed LTA by retirement	7	2	0
Expected to be below LTA at retirement	39	0	1

Whilst it is of course members' responsibility to manage their own tax affairs, further support is provided to the above members. The LPFA has arranged two dates where the LPFA Technical Specialist will meet with affected members at pre-booked appointments to discuss the member's options and potential impact. The dates for LFB are 5 and 7 October.

#### GMP reconciliation

- d. In April 2016, contracting out status for all UK defined benefit schemes ended. Following this, HMRC will be writing to all those individuals who will be affected by this change to clarify the Guaranteed Minimum Pension (GMP) they will receive, and confirm who will be responsible for paying it.

Before this happens, all schemes will need to reconcile their pension data against HMRC data to ensure liabilities are recorded correctly and avoid overpayment of pensions.

The LPFA were instructed to do the analysis and matching of the contracted-out liability data provided by HMRC with the contracted-out liabilities that they held on the Fire schemes for LFEPA. This required the checking of over 9,000 records, for pensioners, dependants and deferred members and a report produced.

Following the initial report from the LPFA showing the initial analysis and matching of LFEPA data, the LPFA submitted a proposal to conduct a full review and data correction exercise.

Given the cost of this work, and the fact that there are other companies that could undertake it, a tender process will now be completed.

The Board will be kept informed of any developments.

#### **Firefighter pensions**

6. This section provides an update on firefighter pensions issues.

#### Valuation

- a. The Firefighters' Pension Schemes are subject to actuarial valuations every four years, with the Government Actuary's Department (GAD) being appointed as Scheme Actuary to carry out the actuarial valuation of the Schemes. This process will value the total liabilities of the 1992, 2006 and 2015 Schemes as at 31 March 2016, with employer contribution rates expected to be revised from 2019/20.



GAD has made arrangements to collect data from FRAs as part of the 2016 valuation of the firefighters' pensions schemes. The LPFA has provided detailed member data on each of the schemes to GAD, on LFEPA's behalf, and are responding to any queries that are raised.

### **Local pensions issues**

7. This section provides an update on local firefighter's pensions issues.

#### LPFA arrangements

- a. As previously reported to the Board, the London Pensions Fund Authority (LPFA) and Lancashire County Council (LCC) have formed a partnership and from April 2016 have created a wholly owned company, Local Pensions Partnership (LPP). The LPP will manage pension fund investment activities (only on the Local Government Pension Scheme(LGPS)), and provide pensions administration services, including to third party clients on the LGPS and the firefighters' pension schemes.

Officers are reviewing the options available to consider the best long term arrangement for the administration of LFEPA's firefighter pension schemes.

A report on this is included on today's LPB agenda - this report is also being presented to Resources Committee on 16 September.

#### Communication with members

- b. As reported above, officers that may be at risk of hitting HMRC Annual Allowance and Lifetime Allowance limits will be written to individually by the LPFA before the deadline of 30 September.

A Life Certificate exercise was carried out in May 2016 with all overseas pensioner members being written to and asked to complete a simple form. Members that fail to reply are written to on two further occasions, before consideration is given to suspending their pensions. At the end of July there were still approximately 50 members that had not replied to any of the three letters.

Letters were sent to staff that were auto re-enrolled in the June 2016 exercise.

As reported, Annual Benefit Statements were sent to all pension scheme members to meet the statutory deadline of 31 August.

#### Auto Re-Enrolment

- c. As reported to the Board in May 2016, the Authority was required to complete an Auto Re-enrolment exercise for anyone that had opted out of the Authority's pension schemes between 1 April 2013 and 31 May 2015. For the firefighters' pension schemes this resulted in 206 staff being re-enrolled - 204 into the FF Scheme 2015 and 2 into the FF Scheme 2006. However, as at 2 September 179 of the 204 staff (88%) have opted out again. Staff can opt out of the pension schemes at any time, but if done up to three months after re-enrolment they are entitled to have their contributions refunded in full. Any member opting out after this has their pension deferred.

As required, the Authority completed a re-declaration of compliance with The Pensions Regulator.

## Consultation

8. This section provides an update on consultations of relevance to pensions.

### Tax relief on pensions

- a. At the Board meeting in May 2016, officers were asked to report back on the outcome of this consultation. The Government has published a report on the outcome of the consultation, providing a summary of the responses and listing respondents. The report is provided at Appendix 1. Further updates will be provided to the Board when the Government publishes any further plans on tax relief for pensions savings.

## Head of Legal and Democratic Services comments

10. The Head of Legal and Democratic Services has reviewed this report and has no comments.

## Director of Finance and Contractual Services comments

11. Comments by the Director of Finance and Contractual Services are incorporated in the body of the report.

## Sustainable Development implications

12. No direct implications.

## Staff Side Consultations undertaken

13. Consultation is not necessary as the Staff Side are members of the Local Pension Board.

## Equalities implications

14. No direct implications.

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## List of Appendices to this report:

1. HM Treasury: 'Strengthening the incentive to save'; summary of responses to the consultation on pensions tax relief.

<b>LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985</b>	
<b>List of background documents</b> As listed in the report.	
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