

CUMBRIA FIRE LOCAL PENSION BOARD

Meeting date: 4th February 2020

From: Director of Finance (Section 151 Officer)

MONITORING REPORT FOR THE PERIOD ENDED 30TH SEPTEMBER 2019

1.0 EXECUTIVE SUMMARY

1.1 *This report advises Cumbria Fire Local Pension Board Members of any material risk management, policy or governance issues and national regulatory changes to 31st December 2019 and any performance monitoring issues of the Scheme to 30th September 2019.*

Risk Management:

1.2 *The Cumbria Fire Local Pension Board (the Board) follows accepted best practice across Public Sector Pension Schemes in formally reviewing Scheme risks at every meeting.*

1.3 *The risk register (as presented in Appendix 1) outlines the key risks to the Scheme.*

1.4 *One risk has been added to the register in the quarter (Sargeant Judgement) and one risk has been removed (Timeliness of Breach Reporting).*

1.5 *Whilst there have been a number of developments during the quarter that have led to amendments to the comments associated with some of the risks on the register, there are no proposed amendments to the scores associated with the impact or likelihood of the risks occurring.*

Pensions Administration:

1.6 *Performance against key performance indicators for YPS was 100% (against the SLA of 95%) for the quarter to 30th September 2019.*

- 1.7 ***Work on the next phase of the Guaranteed Minimum Pension (GMP) reconciliation relating to active members is currently underway, with information awaited from HMRC.***

Governance:

- 1.8 ***There are no legal breaches to report during the period.***
- 1.9 ***There were no discretions exercised during the period.***

Policy & Regulation:

- 1.10 ***Work continues on the development of a Discretions Policy for the Scheme. The Board have reviewed the draft policy and the sign off process is underway.***

2.0 STRATEGIC PLANNING AND EQUALITY IMPLICATIONS

- 2.1 ***The Council's vision is to be "A Council that works with residents, businesses, communities and other organisations to deliver the best services possible within the available resources". As part of the approach to delivering this vision the Council aims to "Put customers at the heart of everything we do".***
- 2.2 ***Good governance and risk management will aid the Council in its role as Scheme Manager in ensuring its regulatory responsibilities are met, a good service is provided to scheme members and costs are controlled. Cost control will have a direct impact on revenue budgets.***
- 2.3 ***There are no direct equality implications arising out of the recommendations in this report.***

3.0 RECOMMENDATION

- 3.1 ***It is recommended that the Cumbria Fire Local Pension Board receive and note the performance of the Cumbria Firefighters' Pension Scheme (FPS) to 30th September 2019 and any material policy or governance issues and national regulatory changes to 31st December 2019.***

4.0 RISK

- 4.1 Risk management is a key element of good governance for any organisation. Officers of the Scheme continually review and monitor risks bringing any significant emerging issues to the Boards attention throughout the year, with Members formally reviewing these at each meeting. This quarterly review process ensures consistent and timely Member oversight of risk monitoring and thereby provides enhanced due diligence in this regard.

- 4.2 The current risk register at December 2019 is attached at Appendix 1. The register currently has 12 risks comprising 1 red risk (information security arrangements); 2 amber risks (pension administration processes and Sargeant Judgement); and 9 green risks.
- 4.3 This quarter there has been no amendments to the scoring of any of the risks, however there are a number of issues of note as detailed below.

- **New Risk: Ref 1.6 - Sargeant Judgement**

The Risk Register has previously noted the emerging risk related to the implications of Sargeant on Scheme liabilities and the impact this may have on employer contributions in the future.

However, the Fire Scheme Advisory Board (FSAB) have recently released further information noting the potential additional burden that the Sargeant judgement may have on the administration function of the Scheme.

The matter has been considered by an Employment Tribunal and, in December 2019, the Employment Tribunal issued an Interim Order. The Order in effect provides that, pending the final determination of all of the remedy issues, those that brought claims in England and are entitled to be treated as if they remained in the in 1992 FPS.

Consequently, an additional risk has been added to the register noting that there is a risk that the Scheme may be unable to adequately comply with required administration processes arising from the resolution of the Sargeant judgement. This could result in legal breaches reportable to the Pensions Regulator; incorrect pension entitlements being calculated for pensioners; and loss of credibility with scheme members and the employer.

The main mitigation for dealing with this risk is through providing early communication to the scheme employer of the information that is required to address Sargeant. Consequently the Officers will be monitoring announcements from the Fire Scheme Advisory Board and informing the employer at the earliest opportunity.

- **Removed Risk: Timeliness of Breach Reporting**

The risk register has previously included a risk that escalation of employer breaches (including the reporting of breaches to the Regulator) are not conducted in a timely manner.

This risk was originally included in the register as a result of an LGPS employer accruing several months of pension contributions due to the Fund before being reported to the Regulator by the Fund. The employer eventually became insolvent with the outstanding pensions contributions being paid by its guarantor.

The Scheme has reviewed lessons from this case and introduced processes to monitor and report breaches to the Local Pension Board.

It is now considered that the processes in place adequately mitigate this risk and consequently it is recommended that this is removed from the risk register.

- **Risk ref 1.1: Information Security Arrangements**

Information security controls within the Council have strengthened and have been independently assessed in the following 3 areas:

- GDPR: '**Substantial Assurance**' - Internal Audit opinion June 2019
- Cyber Security: '**Reasonable Assurance**' - Internal Audit opinion June 2019
- PSN: **Annual independent PSN Accreditation** confirmed July 2019

This risk, the highest ranked on the risk register, is of particular interest to the Local Pension Board. Consequently there is a presentation on the data system security within YPS at the end of this meeting.

The Fund scores the risk for Information Security Arrangements as per those recorded in the Corporate Risk Register. Therefore the likelihood of a significant information security incident occurring has been retained at a score of 3 out of 5 defined as "possible". The potential implications of this risk occurring remains at the highest risk score of 5 "most severe".

5.0 SCHEME MONITORING

Actuarial Valuation and Funding Position

- 5.1 As previously reported, the draft results of the 2016 valuation showed that the cost cap floor has been breached (i.e. costs are more than 2% lower than the 16.8% of pensionable earnings cost target set out in the 2015 firefighter scheme regulations). Under normal circumstances this would result in action being taken (e.g. improving member benefits) to bring the cost back up to within the target cost range.
- 5.2 However, as also previously reported, this action was paused in January 2019 following a ruling by the Court of Appeal on two cases (Sargeant and McCloud). The cases related to 'transitional protections' in public service pension schemes which applied on the introduction of the new career average public sector pension schemes in 2015. In the case of the FPS this is the protections in the 2015 Scheme which allowed certain members to have benefits calculated under the 1992 and 2006 Schemes. Following consideration of the cases the Court ruled that these changes discriminated against a group of firefighters and a group of judges on the grounds of age.
- 5.3 In response to the ruling the Government applied to the Supreme Court for permission to appeal and, on 27th June 2019, the application was denied. Subsequent to this the matter has been considered by an Employment

Tribunal and, in December 2019, the Employment Tribunal issued an Interim Order. The Order addresses immediate issues which arise before a Final Declaration is issued and is binding on Fire and Rescue Authorities for the limited interim period until the final declaration is issued.

- 5.4 The Order in effect provides that, pending the final determination of all of the remedy issues, those that brought claims in England and Wales (see 5.4.1 below regarding 'non-claimants') are entitled to be treated as if they remained in the in 1992 FPS. It anticipates that the final determination of the remedy regarding to membership of the 1992 FPS should be resolved around mid-July 2020. However, it should be noted that even when the final determination on this issue is published it may be some time before this part of the remedy can be put into effect for all claimants (as reflected in the new risk detailed at 4.3 of this report). In addition to this there may be other issues relating to remedies to be resolved, for example claims for injury to feelings.
- 5.5 The Order only covers the existing claimants in England and Wales, all of whom were in the 1992 FPS. It does not cover those who did not bring claims (non-claimants). However, discussions are taking place on how to provide a remedy for those non-claimants as appropriate.
- 5.6 The LGA has noted that guidance on the implementation of the interim order is awaited from the Home Office. Pending the guidance the LGA advises that *"FRAs should take no immediate steps save that if they are dealing with ill-health retirements, to avoid delay, they should ask the IQMP to assess the applicant under both the 1992 FPS and 2015 FPS rules. They should also identify all applications for ill-health retirements on the 2015 FPS since 1 April 2015, so they are in a position to take steps once [the LGA has] Home Office guidance."*
- 5.7 In the interim the Home Office has noted that Technical discussions will be held with the FSAB. These discussions will consider changes to the scheme which are necessary:
- in order to remove discriminatory provisions from the public service pension schemes for non-claimants; and
 - to ensure individuals can keep benefits they have accrued regardless of changes needed to remove discrimination, for example if they would have been better off in the new scheme.
- Following these discussions, the Government will formally consult on its proposals, providing a further opportunity for input. This will progress alongside the remedy directed by the Tribunals in the Sargeant case.
- 5.8 YPS are fully sighted on the matter and we are working with them to ensure that appropriate action is taken in response to the Interim Order. In addition to this officers and YPS continue to monitor the situation and will report back to the Board on any significant further developments.
- 5.9 Officers will provide the Board with a verbal update if there are any significant developments between the publication of this paper and this meeting.

YPS Performance

- 5.10 To allow members of the Board to perform effective governance and oversight of the Fund Administration, the quarterly performance report from YPS for the period to 30th September 2019 has been attached at Appendix 2.
- 5.11 The Scheme and YPS have agreed to review the performance indicators used to assess performance of the pensions administration service. This will ensure that the performance is assessed by focussing on customer experience thereby “putting the customer at the heart of everything we do”. Whilst these performance indicators are being reviewed, the Scheme and YPS have agreed to increase the target performance levels for each of the current indicators from 90% to 95% as this more accurately reflects the level of service provided by the company and the Scheme’s expectations regarding the level of service.
- 5.12 During the quarter to 30 September, performance increased to 100% from the June quarter level of 98% - exceeding the revised SLA target of 95%.
- 5.13 As noted previously, the Fund will continue to provide robust scrutiny and challenge to the quality of service provided by YPS to ensure that the service experienced by scheme members and employers is good, consistent and sustainable.

Guaranteed Minimum Pension Reconciliation Update

- 5.14 As previously reported, all Public Sector Pension Schemes have been required by Government to undertake a Scheme Guaranteed Minimum Pension (GMP) reconciliation and implement corrective action accordingly.
- 5.15 Work on the next phase of GMP reconciliation relating to active members is currently underway, with information awaited from HMRC.

Legal breaches recorded / reported during the quarter

- 5.16 All individuals with a role in the Scheme have a duty to report breaches of law when they have reasonable cause to believe that a breach of material significance to the Pensions Regulator has taken place. Where a breach is not deemed material there is a requirement to record the breach.
- 5.17 In line with good governance and the Scheme’s policy and procedure on reporting breaches of the law, the Fire Local Pension Board are notified of:-
- all breaches, including those reported to the Pensions Regulator and those unreported, with the associated dates;
 - in relation to each breach, details of what action was taken and the result of any action (where not confidential); and
 - any future actions for the prevention of the breach in question being repeated.

5.18 There are no breaches to report for the quarter to 30th September 2019.

Scheme Discretions

5.19 It has not been necessary to exercise any of the Scheme Manager discretions during the period.

5.20 The Local Government Association (LGA) has issued guidance on the discretions available under the 1992, 2006 and 2015 Pension Schemes and the Compensation Scheme. Discretions relating to the 2015 Scheme have previously been approved. People Management have worked with the Chief Fire Officer, as the Scheme Manager, to review the remaining discretions.

5.21 Work continues on the development of a discretions policy. The Fire Local Pensions Board were invited to give feedback on the draft discretions by the end of May 2019. No comments were received. Further consultations are continuing and a sign off process is underway.

Pension Ombudsman

5.22 A complaint made to the Pension Ombudsman by a CFRS employee was received in November 2019. This complaint was in relation to an accident while on duty as an On Call Crew Manager and the subsequent decision to offer permanent redeployment and not Ill Health Retirement. CFRS have responded to the complaint, within the deadlines set by the Ombudsman. This response detailed the Services position which was that in the Services view, the matter had been dealt with in accordance with the appropriate pension regulations and employment legislation. At the time of writing this paper the Service awaits further correspondence from the Ombudsman in relation to next steps. Further information will be presented at future meetings as and when it arises.

Pensionable Pay

5.23 As reported at the last meeting, the High Court Judgement in Booth v Mid and West Wales FRA; and Mid and West Wales FRA v Bradshaw, considered 4 different types of pay and determined whether or not they were pensionable. Cumbria Fire and Rescue Service with support from People Management and Payroll colleagues are continuing to undertake a review of pensionable pay. Officers will provide the Board with a verbal update if there are significant developments between the publication of this paper and the meeting.

Annual Benefit Statement 2019 Survey

5.24 The Fire Scheme Advisory Board recently issued a survey on the ABS process, developed in collaboration with their Local Pension Board effectiveness committee. This has been completed by officers and submitted within the 6th January deadline. Any feedback will be communicated to the Board at a future meeting.

6.0 POLICY AND REGULATION

Regulatory changes

- 6.1 This section of the monitoring report provides a summary for Members on recent and proposed future changes to legislation which may impact on the Scheme.
- 6.2 To date there has been no further developments in any of the following areas:
- Public Sector discretionary exit payment lump sums.
 - Public Sector recovery of exit payment regulations (a.k.a. the 'clawback' regulations).

Restricting exit payments in the public sector

- 6.3 Public Sector Exit Payment Restrictions have been on the Government agenda since 2015, and on 10 April 2019 HM Treasury launched a consultation and set draft regulations "The Restriction of Public Sector Exit Payments Regulations 2019". The consultation closed on 3rd July, and an update will be provided to the Board after the Government have released further information. This is not expected before April 2020.
- 6.4 Full details of all regulatory changes to the Firefighters' Pension Scheme are available from the Scheme Advisory Board website at: www.fpsboard.org.

7.0 OTHER MATTERS

Members Self Service Update

- 7.1 The number of FPS members that have enrolled for My Pension Online (MPO) as at 30th September 2019 has remained at 40% of all scheme members.
- 7.2 MPO continues to be promoted for FPS members through the weekly Fire Bulletin, and with the support of both the employer and employee representative organisations.

Training

- 7.3 Board Members continue to be notified of relevant training events (internal and external) as and when they arise and are encouraged to attend.
- 7.4 During the quarter a Member attended a Pensions Tax seminar facilitated by the Local Government Association (LGA). They will be hosting their annual Fire Conference and Exhibition on 10-11 March, in London.
- 7.5 Guidance and training material can be accessed by Board Members via the link below to the dedicated Fire Local Pension Board Sharepoint site:-
<https://extranet.cumbria.gov.uk/CLGPS/ers/FireLPB/default.aspx>

8.0 OPTIONS

- 8.1 To either note the performance of the Cumbria Firefighters' Pension Scheme (FPS) to 30th September 2019 and any material policy or governance issues and national regulatory changes to 31st December 2019 or request further information.

9.0 RESOURCE AND VALUE FOR MONEY IMPLICATIONS

- 9.1 The Sargeant ruling is expected to result in changes to the Firefighters' Pension Scheme and an increase in the cost of the Scheme. The full extent of these changes and the anticipated increase in costs is not yet known and will only become apparent once a final remedy has been determined by the employment tribunal. The Board will continue to be advised of progress with this valuation through the Monitoring Reports, specific reports and verbal updates to the Board when appropriate.

10.0 LEGAL IMPLICATIONS

- 10.1 The report is for the Board to note and there are therefore no direct legal implications.

11.0 CONCLUSION

- 11.1 To ensure good governance the Scheme must have in place a suite of fit for purpose policies and risk control procedures. Regular scrutiny by this Board will provide challenge and help ensure these stay current and effective.

Julie Crellin
Director of Finance (s151 Officer)
4th February 2020

APPENDICES

- 1 Cumbria Fire LPB Risk Register at December 2019
- 2 YPS Quarterly Performance Report to 30th September 2019

Electoral Division(s): *

Executive Decision

	No*
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Key Decision

	No*
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If a Key Decision, is the proposal published in the current Forward Plan?

		N/A*
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Is the decision exempt from call-in on grounds of urgency?

	No*
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If exempt from call-in, has the agreement of the Chair of the relevant Overview and Scrutiny Committee been sought or obtained?

		N/A*
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Has this matter been considered by Overview and Scrutiny?
If so, give details below.

	No*
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Has an environmental or sustainability impact assessment been undertaken?

	No*	
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Has an equality impact assessment been undertaken?

	No*	
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PREVIOUS RELEVANT COUNCIL OR EXECUTIVE DECISIONS

None

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