

Kent and Medway Fire and Rescue Authority - 29 June 2023

Addendum to Report B5: Financial Update for 2023-24

For Decision

Background

1. There are two pension related issues that have arisen, since the drafting of the Financial Update 2023-24 report, which Members are asked to consider and then agree to the proposals set out in this report.
2. By way of background there are between 50 and 60 discretions set out in the 1992 Fire Pension Scheme regulations (FPS 1992), which are effectively delegated decisions to each Fire and Rescue Authority.
3. The firefighter pension schemes are all unfunded pension schemes, meaning they are not backed by asset investments but are funded on a pay as you go basis supported by an annual top-up grant from Government. In some instances, the application of a discretion will result in an additional cost to the relevant Fire and Rescue Authority, rather than the Firefighters' Pension Fund.
4. In the past, the application of any one of the discretions has been relatively infrequent, so they have been brought to Members for their consideration and agreement as and when the need arises. But on occasions the gap between meetings of the Authority does not always fit with the timing of the decision required. As such, it is proposed that going forward a Policy will be drafted which sets out each discretion and the consequent approach to their application, which will be presented to the Authority in October for Members approval.
5. In the meantime, Members are requested to consider the following two issues, both of which fall as discretions in the FPS 1992.
6. **First Discretion** – the FPS 1992 regulations state that:
The payment of the survivor's pension would stop on remarriage or formation of a new civil partnership, except where this took place after 1 April 2015 and the death of the member was caused by an injury on duty or they were travelling to or from work. However, the pension may be reinstated at the FRA's discretion if the new marriage or civil partnership dissolves or ends due to death of the other party.
7. The Service has been made aware of a widow who is in such a situation, as she remarried in 1996, after her firefighter husband had sadly passed away sometime before that date. As set out in paragraph 6, at the point of remarriage she had to relinquish her pension, which had been granted to her under the FPS 1992 scheme

rules, as a spouse of the deceased firefighter. However, earlier this year her second husband also passed away, so she is now asking the Authority to apply the discretion and agree to reinstate her pension that was stopped in 1996, some 27 years previous.

8. The pension discretion does allow the Authority to reinstate the pension, so it is left with the Authority to decide if it will re-instate the pension after considering the necessary facts and information available.
9. It would not seem unreasonable to agree to re-instate a pension, under these circumstances, if a relatively small timeframe has elapsed or if other exceptional circumstances have been expressed for consideration. Based on the FPS 2015 Career Average Revalued Earnings (CARE) pension regulations an individual can withdraw from the pension scheme, but provided that they return within five years, they can link the two memberships together to maintain a final salary link, but any gap of longer than five years, they cannot do so. Therefore, from a reasonableness perspective, it would seem appropriate to agree that a survivor's pension could be reinstated within a five-year timeframe, from the cessation of that pension. As such, under this discretion, Members are asked to agree that a survivor's pension should be re-instated, providing that no longer than five years has elapsed since the survivor's pension stopped. However, if more than five years have elapsed, but exceptional circumstances are such that it would be reasonable to reinstate the pension, Members are asked to delegate this decision to the Chief Executive, in consultation with the Chair of the Authority and the Director of Finance and Corporate Services.
10. **Second Discretion** – Another discretion that Members may be aware of in the FPS 1992 is that which relates to Abatement. Abatement occurs where an individual is in receipt of their FPS 1992 pension and is also in receipt of a salary from employment in a public sector body (including the Fire and Rescue Authority), but the FPS 1992 pension is reduced (abated) so that the combination of pension and salary does not exceed the individual's salary at the time their pension comes into payment. The Authority has the discretion to waive abatement, but where this discretion is exercised, the Authority has to pay a contribution into the Firefighter's Pension Fund equal to the amount of pension that would have been abated had the discretion not been exercised.
11. The process of abatement only applies to the final salary firefighter pension schemes (FPS 1992, FPS 2006 and FPS Modified) but is not included in the FPS 2015 (CARE scheme) regulations nor is it included in the Local Government Pension Scheme Regulations, so does not apply to Green Book employees.
12. To date Members have agreed to waive abatement in two specific circumstances, and full details have been set out in exempt reports which have supported this request. However, in April 2019 the Authority agreed a general policy in relation to abatement for those employees who have deferred their pension, but carried on in their full time

role, which was that their pension should be abated once it comes into payment. The pension regulations state:

Firefighters have an option within the FPS 1992 and FPS 2006 firefighter pension schemes to defer the payment of their pension until the age of 60 or in the FPS 2006 scheme to 65 (but this can be at an earlier specified date, from age 55, but it will be reduced). The deferred pension will be paid at the agreed deferred date, regardless of whether the individual is still employed.

13. However, there may be some operational circumstances when the Authority would wish to retain the services of that individual for a longer period of time, but the application of abating (reducing) pension when it comes into automatic payment, would mean that it would not be cost effective for the individual to continue working full time in that firefighter role, whilst not gaining any benefit or receipt of their respective pension. It is therefore proposed that in these exceptional circumstances, Members agree to delegate the decision as to whether or not to abate, to the Chief Executive in consultation with the Chair of the Authority and the Director of Finance and Corporate Services.

RECOMMENDATIONS

14. Members are requested to agree:
 - 14.1 To re-instate a survivor's pension, providing that no longer than five years have elapsed since it was previously paid (paragraph 9 refers).
 - 14.2 That if more than five years have elapsed, the decision to re-instate the survivor's pension is delegated to the Chief Executive, in consultation with the Chair of the Authority and Director of Finance and Corporate Services (paragraph 9 refers).
 - 14.3 That if the operational need requires an individual to remain employed beyond the date at which their deferred pension comes into payment, then the Chief Executive, in consultation with the Chair of the Authority and the Director of Finance and Corporate Services, can agree not to abate their pension whilst they remain employed in that role (paragraph 12 refers).