Essex Police, Fire and Crime Commissioner Fire & Rescue Authority
Essex County Fire & Rescue Service

Meeting	Performance and Resources Board	**Agenda Item**	5e
Meeting Date	Friday 31 January 2020	**Report Number**	**20-014**
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Subject	**Update on Pension Arrangements**		
Type of Report:	Information		

RECOMMENDATIONS

The Board is asked to note the report on the Sargeant and Others v London Fire and Emergency Planning Authority and Others hearing held on 18 December 2019 and note the potential implications for ECFRS.

BACKGROUND

In the "Sargeant" case, the Fire Brigades Union successfully argued that an overhaul of the Firefighter's Pension Scheme in 2015, which mirrored reforms across the public sector, discriminated on the basis of age, as it included 'transitional protection'.

The transitional protection broadly permitted those members who were closest to retirement age, at the time new pension schemes were introduced, to remain members of their respective old schemes as they have less time to alter their retirement plans.

In December 2018, the Court of Appeal found that those too far away from retirement age to qualify for transitional protection have been unfairly discriminated against.

The Government sought permission to appeal to the Supreme Court. On 27 June 2019, the Supreme Court refused permission for the Government to appeal the Court of Appeal's judgment. This means that the Court of Appeal's judgment stands; that transitional protection gave rise to unlawful discrimination in the Judges' and Firefighters' schemes.

The Government had been considering the impact of this judgment on transitional protection arrangements in other public sector schemes. In a written statement on 15 July 2019, chief secretary to the Treasury Liz Truss said that the government respected the decision of the Supreme Court to refuse its appeal after the transitional arrangements in the reformed pensions schemes were ruled discriminatory.

As a result, on 18 December 2019, the Government met with unions at a tribunal to discuss a remedy to compensate individuals for the difference in treatment since 2015 in those schemes.

OPTIONS AND ANALYSIS

The Tribunal gave an interim declaration that those listed as claimants to the case are entitled to be treated as if they had been given full transitional protection and had remained in their current scheme after 1 April 2015.

The Government intends to extend the same treatment to all members of the public service pension schemes (whether claimants or not) who are in the same legal and factual position as the claimants, i.e. were members of the FPS as at 31 March 2012 and were not treated as fully transitionally protected and moved to the Firefighters' Pension Scheme 2015 after 31 March 2015.

The difference in treatment will in due course be removed for all members with relevant service across all the main public service pension schemes – not just those who have lodged legal claims. Any solution will need to ensure that all members can instead keep the pensions they have earned to date.

The Government will be launching a public consultation on changes to the schemes and before that will hold a series of technical discussions with stakeholders. This will progress alongside the remedy directed by the Tribunals in the Sargeant case.

Some members are likely to have been better off remaining in their old scheme, while others may benefit more from the new scheme – that will depend on the individual circumstances of affected members. Any changes to the scheme must take account of this in order to ensure members can keep benefits they have already accrued.

Technical discussions will be held with the Firefighters' Pensions Scheme Advisory Board (SAB). The SAB comprises members of the Fire Brigade's Union, Fire and Rescue Services Association, the Fire Officers' Association and the Fire Leaders' Association as well as employer representatives.

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.

BENEFITS AND RISK IMPLICATIONS

The following implications are anticipated, however, please note we are awaiting further guidance from the Home Office:-

<u>Increase in Employee Contributions and repayment by scheme members.</u>

It is likely that in order to be put back in their old scheme, scheme members will be required to pay the difference in pension contributions backdated to the day that they joined the FPS 2015, which can be in most cases back to 1 April 2015.

The FPS 1992 would cost on average an extra 1-2% of pay in contributions for scheme members. For those returning to the FPS 2006, a refund will be due, as it costs more to be in the FPS 2015.

ECFRS has 181 current and former employees listed as claimants to the case. A further 466 current and former employees would qualify as non-claimants, i.e. were in the Firefighter Pension Schemes as at 31st March 2012 and were not treated as fully protected and moved to the new scheme after 31st March 2015.

For each person this means:-

- Moving the affected current employees across into their old scheme on Civica with effect from whatever the relevant date will be;
- Calculating the pensionable pay and contributions that would have been applicable for each person;
- Writing to the individuals with the amount they owe, or is owed to them;
- Offering and agreeing with them that they can pay the amount due in instalments;
- Monitoring their re-payments, in case the person leaves/retires and there is a balance to collect.

The calculation of the pensionable pay and contributions is likely to mostly be a manual process, as it will require pay data held in SAP and Civica. In addition, there is a different definition of what constitutes pensionable pay in the FPS 1992 and FPS 2015. For the FPS 2006 and FPS 2015, the definition is largely the same.

As the Government intends to apply the remedy across all the main public service pension schemes, the scheme for ECFRS' Control & Support staff, the Local Government Pension Scheme (LGPS) will also be affected. At least 168 people would qualify as non-claimants as they were in the LGPS on 31st March 2012 and moved to the new scheme after 31st March 2014.

Early and unexpected retirements
ECFRS bases its Workforce Planning on 'expected retirement dates' based on the scheme the employee is in.

If employees are moved back to their old scheme, meaning that their normal retirement age is lower, they will be retiring earlier than expected. This trend is not expected to take effect until 2022/23 and beyond as those closest to retirement will be those who have protection in their old scheme anyway, any built up pension in the FPS 2015 will be minimal and is unlikely to have affected their retirement plans. Work is underway to review the workforce planning reports.

Ill-Health Retirements
ECFRS will need to gather the ill-health retirement applications for Firefighters since 1 April 2015, as there may be a need for an Independent Qualified Medical Practitioner (IQMP) to re-assess those individuals, to see if there would have been a different outcome if the assessment had been under the (lower) requirements of their old scheme.

Work is underway to gather information on those who:-

i. Retired with entitlement to a lower tier ill-health award, but may need to be re-tested to see if they are entitled to a higher tier ill-health award, or
ii. had been referred to an IQMP but did not qualify for any ill-health award, or

iii. were not put forward to IQMP by the Service Medical Advisor as in their opinion would not have met the ill-health retirement criteria.

At present, for new ill-health cases, the IQMP is asked to assess the scheme member on the rules of both their old and new schemes.

Data Quality

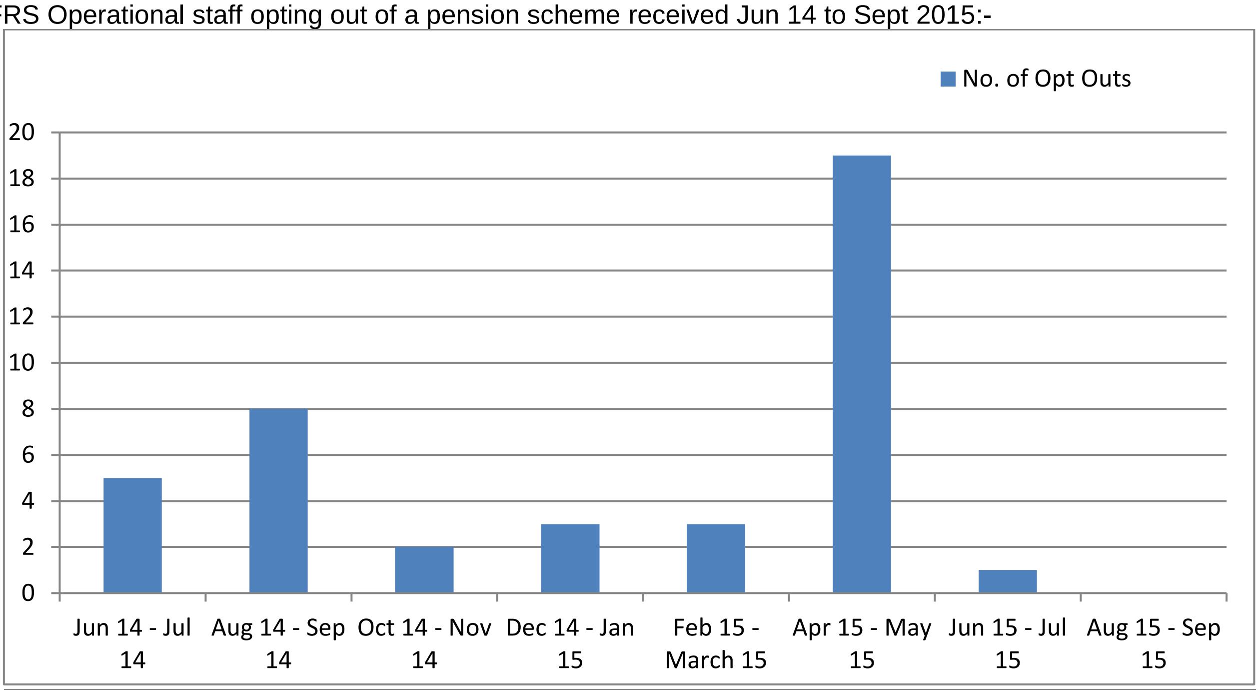
Schemes are required to report their data accuracy to the Pensions Regulator (TPR). If a large percentage of our pension scheme members are in the wrong scheme, this means a reduction in the quality of our data. TPR may be concerned if a large drop in data quality is reported as part of the Annual Scheme Return.

I understand that the Scheme Advisory Board will be in touch with TPR to advise them of this.

Optants out

At the time of the introduction of the FPS 2015 in April 2015, there was a large increase of people opting out of the pension scheme, as shown in the table below:-

ECFRS Operational staff opting out of a pension scheme received Jun 14 to Sept 2015:-



The opt outs, particularly those received in April 2015, are likely to have been due to dissatisfaction with being transferred to the FPS 2015.

It is not known whether those people who opted out will be in scope for the remedy or not, but if they are, they will presumably need to be written to ask if they want to go back in to their old scheme and pay the missed contributions.

Increased Enquiries and resource requirements

All the above is likely to lead to increase enquiries and workload in order to implement the remedy and to communicate the changes. Ideally every Firefighter whether affected or not should be sent a letter explaining the judgment and what it means to them. There will be associated postage and packing costs for this. It may be worthwhile to hold information sessions at stations and Kelvedon Park to talk about the changes.

FINANCIAL IMPLICATIONS

The Government has previously said that extending the protections to all public sector pension scheme members would cost around £4bn to HM Treasury, although it should be noted that is a figure disputed by trade unions.

We don't know how or when the Government expects us to amend the employer contributions that ECFRS pays, but simply taking the employer contributions paid in December 2019 and converting them to their old scheme equivalent, in respect of those who may be affected, would add an £900k per annum to the employer contribution bill.

The Home Office has responded to question as to whether the additional cost of removing the difference in treatment be borne by employers. The Home Office have said that that the most recent valuation process set employer contribution rates until 31 March 2023. The next valuation will assess scheme costs in the round, in the usual way, and will set employer contribution rates from 2023.

Numerous factors could affect the valuations between now and then, of which the Sargeant ruling is just one. It is too early to say whether employer contribution rates will increase from 2023. If deficits do emerge in the scheme, they will need to be paid off over the deficit recovery period in the usual way.

EQUALITY AND DIVERSITY IMPLICATIONS

There are no equality implications associated with this paper.

WORKFORCE ENGAGEMENT

The Pension Board will be updated of the Sargeant case in the next Board meeting on Thursday 16 January 2020.

LEGAL IMPLICATIONS

There are no specific legal implications associated with this paper.

HEALTH AND SAFETY IMPLICATIONS

There are no Health and safety implications associated with this paper.