

MEETING OF COUNCIL

1 APRIL 2015

Establishing the FPS Pension Board

Report of the Lead Executive Director: Steven Mason

Policy Board member: Councillor D Ledger (Deputy Leader of the Council and Portfolio Holder for the Fire and Rescue Service)

Purpose of report

This report is to enable the Council to comply with its legal obligation as fire and rescue authority for the FPS in Northumberland to establish a FPS local Pension Board before 1 April 2015. An officer/member Working Group was established by a delegated decision of the Lead Executive Director and the Executive Director for Local Services in consultation with the Deputy Leader of the Council and Portfolio Holder for the Fire and Rescue Service to make recommendations to Council to implement the requirements contained in new FPS Governance Regulations to establish a NCC FPS Pension Board. This report recommends an amendment to the NCC Constitution to establish the Pension Board, and a further amendment to set out how NCC discharges its responsibility for the FPS Scheme Manager function.

Recommendation

Council is recommended to:

- (i) endorse the recommendations of the Working Group to establish NCC's FPS Pension Board, which are described in **paragraph 29** of this report and set out in full in **Appendix 1** to this report;
- (ii) approve such amendments to the Constitution as are necessary in the opinion of the Monitoring Officer to establish NCC's FPS Pension Board by 1 April 2015, based on the proposed Terms of Reference as set out in Appendix 1; and
- (iii) approve the further proposed amendment to the Constitution, as set out in **paragraph 37** of this report.

Key issues

1. A new regulatory requirement has been introduced in the Firefighters' Pension Scheme (FPS) for each fire and rescue authority to establish a local Pension Board (LPB) by **1 April 2015**. In the FPS, the local Pension Board is responsible for assisting the Scheme Manager in securing compliance with legislation and regulations, and to

ensure the efficient and effective governance and administration of the FPS. The LPB has an oversight role, and is not a decision making body.

2 Creation of the local Pension Board does not change the core role of the fire and rescue authority or the way it delegates its FPS functions. NCC already has an established structure for administering the FPS, with the day to day administration being the responsibility of the section 151 officer, the decision making role carried out by the section 151 officer in consultation with the Chief Fire Officer, and disputes heard and determined by the Disputes Panel (Fire Services).

3 It is the responsibility of the Council (in its capacity as fire and rescue authority) to establish the NCC FPS Pension Board and amend its Constitution accordingly. In a delegated decision taken by the Lead Executive Director in consultation with the Deputy Leader of the Council in November 2014, the Council set up a member/officer Working Group to make recommendations to NCC to set the Terms of Reference on which to establish the LPB. The Working Group's recommended changes to the NCC Constitution are set out in **Appendix 1** to this report.

4 The FPS Governance Regulations set out that each LPB must have **equal numbers of member and employer representatives**, with at least two representatives in each category (i.e. at least four in aggregate). No member or officer who is responsible for the discharge of functions relating to the FPS (which includes administering the Scheme, the decision making role and the dispute resolution role) can also be a voting member of the LPB. NCC's proposal is to have four representatives on its Pension Board or five if an independent chair is deemed necessary. Paragraph 29, below, and Appendix 1, attached, provide more detail.

5 One further amendment to the Constitution is proposed in this report to formalise the already established structure for administering the FPS in NCC, as set out in paragraph 37 below.

BACKGROUND

Northumberland County Council is a fire and rescue authority under the Fire and Rescue Services Act 2004. A fire and rescue authority is a Scheme Manager as defined by the Public Service Pensions Act 2013.

Requirement to establish NCC's FPS local Pension Board

1 The Public Service Pensions Act 2013 ("the 2013 Act") set out new governance arrangements for all public service schemes with effect from **1 April 2015**, including the requirement for each public service scheme to have a Scheme Manager and a local Pension Board (LPB) in place.

2. The term Scheme Manager is defined in the 2013 Act as the person responsible for **managing or administering** the scheme, but the Act then goes on to make clear that the "person" referred to may be the responsible authority. The Firefighters' Pension Scheme (FPS) Governance Regulations provide that for the FPS, the Scheme Manager is the appropriate fire and rescue authority. Therefore, it is NCC as a fire and rescue authority for the FPS that has the Scheme Manager role to administer the Scheme.

3 NCC already has a delegated structure in place for administering the FPS which fulfils the Scheme Manager role. The **section 151 officer** is responsible for the day to day administration of the Scheme, including the decision making role which is carried out in consultation with the Chief Fire Officer. The NCC Constitution also sets out a role which is delegated to the **Disputes Panel (Fire Services)**, a committee of 8 elected members whose remit is to "*hear and determine disputes, as required, in accordance with the provisions in the National Joint Council for Local Authority Fire and Rescue Services.*"

4 In contrast to the Scheme Manager role, the local Pension Board is responsible for **assisting the Scheme Manager in securing compliance** with legislation and regulations, and to ensure the **efficient and effective governance and administration** of the FPS, which is being interpreted as having an oversight role. Establishing a FPS LPB is a new regulatory requirement for FPS fire and rescue authorities, it is mandatory not optional, and the LPB must be established **no later than 1 April 2015**.

5 Creation of the local Pension Board does not change the core role of the fire and rescue authority or the way it delegates its FPS functions. The role of the LPB is **to assist**, and its establishment **does not alter** the existing delegations. One of the key drivers behind the introduction of local Pension Boards is to ensure appropriate opportunity for FPS key stakeholders, being the scheme members and employer, to provide comment on the management of the Scheme.

6 The 2013 Act requires DCLG to make governance regulations to enable fire and rescue authorities such as NCC to establish their local Pension Boards by 1 April 2015. The final Firefighters' Pension Scheme (Amendment) (Governance) Regulations 2015 (SI 2015 No. 465) enabling fire and rescue authorities to establish LPBs were laid before Parliament on 5 March 2015, much later than originally intended, and giving authorities a short timeframe in which to comply. The Regulations can be accessed from the link: http://www.legislation.gov.uk/ukxi/2015/465/pdfs/ukxiem_20150465_en.pdf.

7 Under the 2013 Act, DCLG was required to issue regulations to enable authorities to set up LPBs for both the Local Government Pension Scheme (LGPS) and

the FPS. The draft Governance Regulations for the FPS were issued some months behind those of the LGPS, despite having the same legal deadline for LPB establishment of 1 April 2015. For the LGPS, there was a discussion paper (June 2013), first and second draft Regulations (June 2014 and October 2014 respectively), and final Regulations issued in January 2015, with significant changes at each stage. The FPS **draft** Governance Regulations, issued for consultation in October 2014, contained many identical clauses to the then draft LGPS Regulations, including some phrasing taken straight from the 2013 Act, but there were some important differences which were queried by many respondents to the FPS consultation, including NCC. The final version of the FPS Governance Regulations, issued in March 2015, is materially different in some respects to the October 2014 draft, and is now in line with the final LGPS Governance Regulations.

8 The final FPS Governance Regulations require each fire and rescue authority in England to establish a LPB, which means approving the establishment including the Terms of Reference of the LPB no later than 1 April 2015. Therefore, approval at this meeting of full Council will enable NCC to comply with the deadline.

9 The final FPS Governance Regulations state that the Scheme Manager “*must have regard to guidance issued by the Secretary of State in relation to local pension boards*”. At the time of finalising this report, the FPS LPB guidance had **not** been issued. Information obtained from the Local Government Association is that the FPS guidance will be largely similar to the equivalent LGPS guidance which *has* been published. Therefore, the Shadow LGPS Advisory Board’s “*Guidance on the creation and operation of Local Pension Boards in England and Wales*” issued 28 January 2015 has been followed when drafting the NCC FPS Pension Board Terms of Reference. The LGPS guidance can be accessed from the link:
[http://www.lgpsboard.org/images/Guidance/LGPS Board Guidance FINAL PUBLISHED.pdf](http://www.lgpsboard.org/images/Guidance/LGPS_Board_Guidance_FINAL_PUBLISHED.pdf).

10 The expenses of operating the NCC FPS LPB will be an administration cost borne by the fire and rescue authority.

Requirement to establish the national FPS Advisory Board in England

11 The FPS Governance Regulations also provide for the establishment of a single FPS Advisory Board in England. The Advisory Board is established by the Regulations themselves, with effect from 1 April 2015.

12 The FPS Advisory Board is responsible for providing advice to the Secretary of State for Communities and Local Government on the desirability of making changes to the FPS, and to fire and rescue authorities and LPBs in relation to the effective and efficient administration and management of the FPS and any connected scheme.

13 The expenses of the FPS Advisory Board will be shared between fire and rescue authorities, broadly by reference to member numbers.

Membership of the LPB

14 The final FPS Governance Regulations confirm details regarding the required make-up of the LPBs. As well as having **equal numbers of member and employer representatives**, the LPB must have **at least two representatives in each category** (i.e. four in aggregate). There is no prescribed maximum number of members.

15 Elected members of the fire and rescue authority can be appointed as either employer or member representatives, but no member or officer of an authority that is

responsible for the discharge of any Scheme Manager FPS function can be appointed. This means that the following **cannot be members** of the NCC FPS Pension Board:

- the section 151 officer and the staff reporting to him that administer the FPS, including any decision making role;
- the Chief Fire Officer and staff reporting to him that administer the FPS, including any decision making role;
- councillors who are the members of the Disputes Panel (Fire Services); and
- members of the Appointments Panel as defined in the FPS Terms of Reference (see Appendix 1).

16 The Governance Regulations preclude voting rights being conferred on any member of the LPB other than the member and employer representatives, which means if an independent chair is appointed, he/she cannot have a vote.

17 Member and employer representatives must have the “**capacity**” to represent members / employers (as appropriate). The LGPS guidance issued by the Shadow LGPS Advisory Board indicates that the concern here is around time constraints rather than personal qualities. Paragraph 5.14 of the guidance says: “*It will be important to appoint members who have the time to commit to attend meetings, undertake training and effectively represent employers and members (as appropriate).*”

18 The proposed requirement (in the previous consultation draft) that member and employer representatives must have appropriate “**capacity and understanding**” has been dropped from the final form of the FPS Governance Regulations, and replaced by a requirement to have “capacity” only, perhaps in part to bring it in line with the LGPS Governance Regulations, and in part because the requirement to have appropriate “**knowledge and understanding**” on an ongoing basis is covered elsewhere.

19 There is a separate requirement for LPB members to acquire appropriate knowledge and understanding of pensions matters under the Pensions Act 2004, and under **the Pensions Regulator’s (tPR’s) code of practice number 14**: “*Governance and administration of public service pension schemes*” which applies to all public service schemes from April 2015.

20 The 2013 Act introduces a new regime for all public service pension schemes including FPS, with tPR having oversight with effect from 1 April 2015. TPR’s particular focus is on governance and administration, including the requirement for LPB members to have knowledge and understanding. The code number 14 can be accessed from the link: <http://www.thepensionsregulator.gov.uk/docs/draft-code-14-governance-administration-public-service-pension-schemes.pdf>. LPB members can acquire knowledge and understanding by undertaking suitable training following appointment.

21 The DCLG consultation paper which accompanied the draft FPS Governance Regulations referred to the *possibility*, in the future, of having shared FPS LPBs, and in November 2014, NCC officers contacted the fire and rescue authorities in the North East to explore interest in this possibility. The final FPS Governance Regulations (in line with the LGPS Governance Regulations) confirm that a **joint** LPB can be established **only if** administration and management functions are “*wholly or mainly shared*”, and the fire and rescue authorities have obtained written approval from the Secretary of State. Such approval may be made subject to conditions, and can be revoked if those conditions are breached or if the arrangement ceases to be

appropriate. It is not anticipated that this option will be widely used, and NCC does not propose exploring this option, at this stage at least.

22 The draft FPS Governance Regulations prohibited former firefighters from being members of a LPB. This was queried by many respondents to the consultation, including NCC, and this prohibition has been dropped from the final FPS Governance Regulations.

NCC's proposals to establish a FPS LPB

23 NCC must establish a FPS LPB and amend its Constitution accordingly. In a delegated decision taken by the Lead Executive Director and the Executive Director for Local Services in consultation with the Deputy Leader of the Council and Portfolio Holder for the Fire and Rescue Service in November 2014, the Council set up a member/officer Working Group to make recommendations to NCC to set the Terms of Reference on which to establish the LPB.

24 The NCC FPS LPB officer/member Working Group members were:

	<u>Job title</u>	<u>In his/her capacity as</u>
Clare Gorman * (Group lead)	Principal Accountant (Pensions)	NCC LGPS Pension Fund accountant
Councillor Tony Reid *	NCC councillor	Chairman of the Pension Fund Panel
Councillor Andrew Tebbutt *	NCC councillor	Member of the Pension Fund Panel
Colin Logan substituting for Steven Mason	Head of Financial and Customer Services	Representing section 151 officer, and with responsibility for Pensions Administration
Liam Henry	Legal Services Manager	Monitoring Officer
Jackie Roll	Service Manager - Democracy	Democratic services and governance adviser
Mark McCarty	Area Manager – Fire Services	Fire Service/FPS governance expert
Stephen Richards	Assistant Chief Fire Officer	Fire Service/FPS governance expert
Alison Murray / Dan Kanaris	Aon Hewitt **	Independent FPS governance expert

* Councillor Tony Reid, Councillor Andrew Tebbutt and Clare Gorman, were members of the Group because they were also members of the equivalent Group to establish the LGPS LPB and because of the overlap of LGPS and FPS requirements.

** Aon Hewitt provided advice to the Group via liaison with Clare Gorman.

25 The member/officer Working Group met on 11 December 2014 and made the principal decisions to be incorporated in the recommended Terms of Reference for the NCC FPS LPB. Decisions made on 11 December were based on the provisions of the draft FPS Governance Regulations and Aon Hewitt's knowledge of the anticipated changes to the Regulations "in the pipeline", and the *likely* terms and tone of the associated FPS guidance.

26 Aon Hewitt has been providing advice to a number of authorities to establish both the LGPS and FPS LPBs, and its advice and early indicators of changes yet to be formally made by DCLG have been very valuable to the process adopted by NCC.

27 The final FPS Governance Regulations were published on 5 March 2015, and the Terms of Reference for the FPS Pension Board, which are set out in full in **Appendix 1** to this report, were agreed by the Working Group on 18 March 2015. As noted in paragraph 9 above, at the time of finalising this report, the FPS LPB guidance had still not been issued, so the LGPS LPB guidance was followed. If the FPS LPB guidance, when published, indicates that the Appendix 1 Terms of Reference are not appropriate, a recommended change to the Terms of Reference will be tabled at the meeting.

28 No member or officer who is responsible for the discharge of functions relating to the **FPS** (which includes administering the Scheme, the decision making role and the dispute resolution role) can also be a voting member of the FPS LPB. However councillors who are voting members of the NCC **Pension Fund Panel** (the decision making body for the LGPS) who do not also have a decision making role within the FPS can be voting members of the FPS LPB, and the Terms of Reference of the NCC FPS LPB have been drafted so as to "reuse" the knowledge and expertise of two of the members of the Pension Fund Panel as the two voting employer representatives on the FPS Pension Board.

29 The key points incorporated in the NCC FPS LPB draft Terms of Reference are:

- there are four members of the LPB, or five if an independent chair is deemed necessary;
- only the four members of the LPB (i.e. not the independent chair, if there is one) have voting rights;
- the two employer representatives are NCC councillors who are members of the Pension Fund Panel who are **not also** members of the Disputes Panel (Fire Services) or members of the Appointments Panel as defined in the FPS Terms of Reference;
- the two Scheme member representatives are (i) a FPS union representative, and (ii) a FPS member (active or pensioner) to be sourced by seeking interest via a newsletter or similar communication; and
- there will be a minimum of two meetings per year, with the option for the Chair of the LPB to call more.

30 A "minimalist approach" has been taken to setting the Terms of Reference, in part to control the costs of operating the NCC FPS LPB, in part to recognise that the role of the LPB is to *assist* the Scheme Manager and not to make the decisions of that should be taken by the Scheme Manager.

31 To establish the NCC FPS Pension Board **no later than 1 April 2015**, the Working Group recommends that Council approves **such amendments to the NCC Constitution as are necessary** in the opinion of the Monitoring Officer, based on the proposed Terms of Reference which are set out in full in **Appendix 1** to this report.

32 The LGPS LPB guidance recommends that LPBs should have their first meetings by 1 August 2015. The FPS LPB guidance, when issued, will probably contain a similar recommendation, but given the lateness of publication of the final FPS Regulations and the FPS LPB guidance, it is unlikely to be earlier than 1 August 2015.

Other related change to the NCC Constitution

33 As part of the work undertaken to make recommendations to Council to establish the NCC FPS LPB, the opportunity was taken to review the management and administration arrangements for the FPS, consider their appropriateness and whether the delegated structure in place is accurately reflected in the NCC Constitution.

34 **A further change** to the NCC Constitution is recommended in this report. This is set out in paragraphs 37 to 38 below, together with the reason for recommending the change.

35 The current NCC Constitution, dated 1 October 2014, contains the following references to administration of pension schemes (see pages 73 and 75 of the Constitution):

Within **Part 4: DELEGATION SCHEME**

“9. The Lead Executive Director

The Lead Executive Director will also have service responsibilities for:

(a) The exercise of corporate Council functions in relation to finance services, revenues and benefits, including benefits fraud, the Council’s fraud strategy and associated arrangements, debt recovery, treasury management, insurance and associated corporate risk management, internal audit and liaison with external audit, administration of the Local Government Pension Scheme and procurement.

12. Deputy Section 151 Officer

In the absence of the Section 151 Officer (including conflicts of interest) the service responsibilities of the Deputy Section 151 Officer shall be:

(a) The exercise of corporate Council functions in relation to finance services, revenues and benefits, including benefits fraud, the Council’s fraud strategy and associated arrangements, debt recovery, treasury management, insurance and associated corporate risk management, internal audit and liaison with external audit, administration of the Local Government Pension Scheme and procurement.”

36 The current NCC Constitution is silent with regard to administration of the FPS. The only reference in the Constitution to the governance of the FPS is as follows (see page 53 of the Constitution):

Within **Part 3: MATTERS RESERVED TO ELECTED MEMBERS AND COMMITTEE TERMS OF REFERENCE**

“9. Disputes Panel (Fire Service)

Terms of Reference and Powers

To hear and determine disputes, as required, in accordance with the provisions in the National Joint Council for Local Authority Fire and Rescue Services.”

37 To ensure that the established structure for administering the FPS already in place in practice is reflected in the Constitution, it is proposed that the clause shown in bold and italics below be added to the Constitution:

Within **Part 4: DELEGATION SCHEME**

“9. The Lead Executive Director

The Lead Executive Director will also have service responsibilities for:

(a) The exercise of corporate Council functions in relation to finance services, revenues and benefits, including benefits fraud, the Council’s fraud strategy and associated arrangements, debt recovery, treasury management, insurance and associated corporate risk management, internal audit and liaison with external audit, administration of the Local Government Pension Scheme and procurement.

(b) The exercise of the scheme manager function for the Firefighters’ Pension Scheme in consultation with the Chief Fire Officer.”

38 The proposed change shown above does not imply any change to the current responsibilities of the section 151 officer and/or the Chief Fire Officer, it merely formalises current practice. Without this addition to the Constitution, there is a risk that the entire Council would be deemed to be responsible for the discharge of the FPS Scheme Manager function.

Implications

Policy	<p>The proposed revisions to the NCC Constitution are:</p> <p>to comply with The Firefighters' Pension Scheme (Amendment) (Governance) Regulations 2015 (SI 2015 No 465) requirement to establish a NCC FPS Pension Board with effect from 1 April 2015; and</p> <p>to update the NCC Constitution for other FPS related matters.</p>
Finance and value for money	There is a cost associated with establishing and operating the FPS Pension Board which will be charged to the Fire and Rescue Service.
Legal	None
Procurement	None
Human Resources	None
Property	None
Equalities (Impact Assessment attached) Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A <input type="checkbox"/>	None
Risk Assessment	None
Crime & Disorder	None
Customer Consideration	None
Carbon reduction	None
Wards	All

Background papers

- Shadow LGPS Advisory Board’s “*Guidance on the creation and operation of Local Pension Boards in England and Wales*” updated 28 January 2015, (link attached, see paragraph 9 above)
- The Firefighters’ Pension Scheme (Amendment) (Governance) Regulations 2015 (SI 2015 No 465), (link attached, see paragraph 6 above)
- The Pensions Regulator’s code of practice number 14: “*Governance and administration of public service pension schemes*,” (link attached, see paragraph 20 above)
- The Public Service Pensions Act 2013
- Shadow LGPS Advisory Board’s sample Terms of Reference
- Information and analysis from various FPS pension experts and advisers including Aon Hewitt and Eversheds

Report sign off

	initials
Finance Officer	CL
Monitoring Officer/Legal	LH
Human Resources	n/a
Procurement	n/a
I.T.	n/a
Executive Directors	SM and BR
Portfolio Holder(s)	DL

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