



## REPORT TO COUNCIL

### FORMATION OF A NEW SURREY LOCAL PENSION BOARD FOR THE FIREFIGHTERS' PENSION SCHEME

#### **KEY ISSUE/DECISION:**

Under the provisions of section 5 of the Public Service Pensions Act 2013 (“the 2013 Act”) the Surrey Fire and Rescue Authority (the Scheme Manager) is required to establish a new body known as a Local Pension Board to assist the Scheme Manager in its management and administration of the Firefighters’ Pension Scheme (FFPS) in line with relevant legislation and in particular the 2013 Act, the Firefighters’ Pension Scheme (England) Regulations 2014 the 2014 Regulations) and Regulation 4A of the draft Firefighters’ Pension Scheme (Amendment) (Governance) Regulations 2015. (“the draft regulations”) . This legislation requires each Scheme Manager to establish a new Local Pension Board for the purposes of assisting the Scheme Manager in its compliance with the Regulations and any other legislation relating to the administration of the Scheme. This Local Pensions Board must be established no later than 1 April 2015. This report sets out the requirement for Surrey County Council in its role as Fire and Rescue Authority to create such a Local Pension Board and the administrative issues that need to be considered.

#### **BACKGROUND:**

##### **1. Introduction**

1.1 On 10 March 2011, Lord Hutton published his final report of the Independent Public Service Pensions Commission, making 27 recommendations for the reform of public service pension schemes, including:

- a properly constituted, trained and competent pension board with member nominees, responsible for meeting good standards of governance including effective and efficient administration;
- a pension policy group for each public service pension scheme at national level for considering major changes to scheme rules; and
- independent oversight of the governance, administration and data transparency of public service pension schemes.

- 1.2 On May 24 2012 the Department for Communities and Local Government (DCLG) issued the Proposed Final Agreement on the benefit design for the Scheme to take effect from 1 April 2015.
- 1.3 The Public Service Pensions Bill 2013 was introduced in the House of Commons on 13 September 2012 and received Royal Assent on 25 April 2013. The Public Service Pensions Act 2013 set out governance requirements for the Scheme.
- 1.4 Section 17 and Schedule 4 of the Act extended the regulatory powers of the Pensions Regulator (“the Regulator”) to cover some aspects of public service pension schemes, including the FFPS.
- 1.5 Regulation 4A of the draft Regulations states that the Local Pension Board has responsibility:
  - for assisting the Scheme Manager [in our case the County Council]
  - (a) to secure compliance with:
    - (i) the Regulations;
    - (ii) any other legislation relating to the governance and administration of the Scheme and any connected scheme;
    - (iii) any requirements imposed by the Pensions Regulator; in relation to the scheme;
  - (b) to ensure the effective and efficient governance and administration of the Scheme.

In addition the Local Pension Board has power to do anything that is calculated to facilitate or is conducive or incidental to the discharge of any of its functions.
- 1.6 The new Local Pension Board will have no decision making powers, only the power to assist the Scheme Manager in an advisory capacity.
- 1.7 This report relates to the creation of a Local Pension Board for the Firefighters’ Pension Scheme. A separate report will recommend the formation of an additional Local Pension Board for the Local Government Pension Scheme.

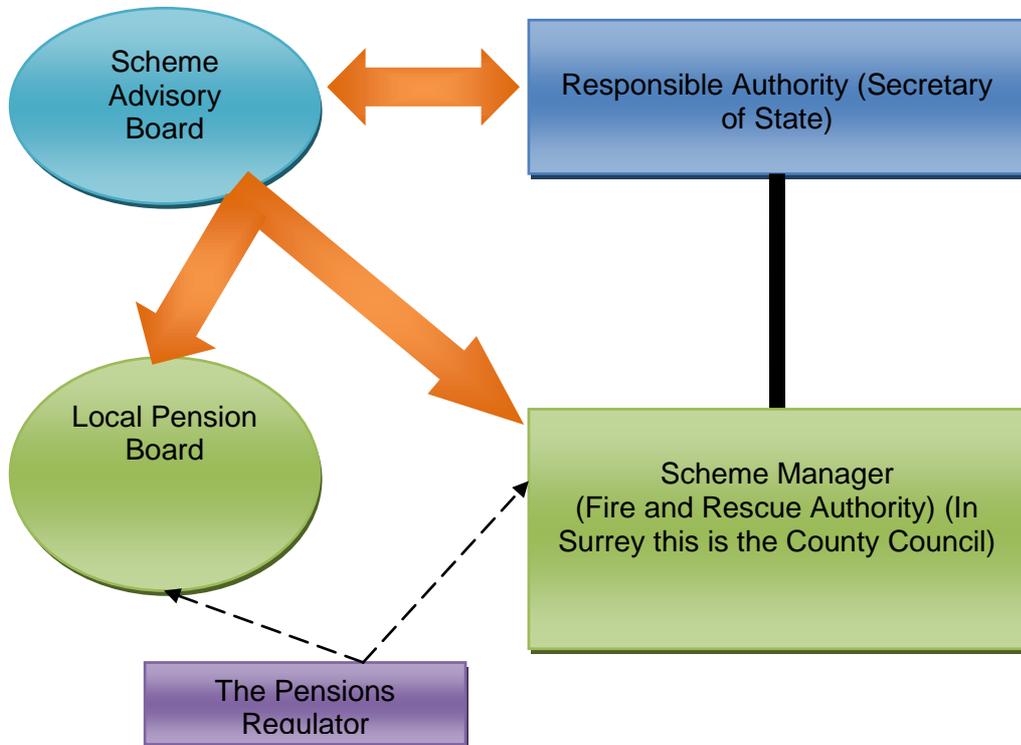
## **2. Current Situation**

- 2.1 The Scheme is a common pension scheme throughout England, administered locally by 46 separate Scheme Managers.
- 2.2 The Scheme is a statutory unfunded public service pension scheme. It differs in legal status from trust based pension schemes in the private sector because it is established under statute and not set up under a trust. Matters of governance in the Scheme therefore need to be considered on their own merits and with proper regard to the unique legal status of the Scheme.
- 2.3 Each Scheme Manager is responsible for managing and administering the Scheme in relation to any person for which it is the appropriate Fire and Rescue Authority for the purposes of the Regulations. The appropriate authority for a person who is or has been a member of the Scheme (or is

entitled to benefits in respect of such a person) is the Fire and Rescue Authority by whom the member was last employed whilst an active member of the Scheme.

### 3. New Governance Structure

3.1 From 1 April 2015, the new governance structure of the Firefighters' Pension Scheme can be summarised as follows:



#### The Responsible Authority

3.2 In accordance with section 2 of the 2013 Act, each pension scheme established under section 1 of the 2013 Act must have a 'responsible authority' which is the person who may make regulations for that scheme. In the case of the Scheme, the Responsible Authority is the Secretary of State.

#### Scheme Manager

3.3 Section 4 of the 2013 Act requires that, in the case of a pension scheme established under section 1 of that Act, Regulations must provide for a 'scheme manager'. The scheme manager is the person who is responsible for managing or administering the scheme. The 2014 Regulations specify that the Fire and Rescue Authority is responsible for managing and administering the Scheme in relation to any person for which it is the appropriate Fire and Rescue Authority under the Regulations.

3.4 In the case of the Scheme, each Fire and Rescue Authority is therefore a Scheme Manager. This contrasts with other public service pension schemes administered on a national basis, such as the Teachers' Pension Scheme, where there is a single scheme manager for the whole scheme. The Fire and Rescue Authority is responsible for making all decisions relating to the operation of the Scheme. This authority to undertake statutory functions as required on behalf of the FFPS is delegated to the Audit and Governance

Committee. The creation of a new Local Pension Board does not change the core role of the Scheme Manager, or the way in which it delegates its pension functions.

### **Scheme Advisory Board**

- 3.5 The Scheme Advisory Board for the FFPS is a national body established by the 2013 Act and is responsible for providing advice to the Secretary of State on the desirability of making changes to the Firefighters' Pension Scheme; and to the Scheme Manager and Local Pension Boards in relation to the effective and efficient administration and management of the Firefighters' Pension Scheme.

### **Local Pension Board**

- 3.6 Section 5 of the 2013 Act requires that, in the case of a pension scheme established under section 1 of that Act, Regulations must provide for the establishment of a board with responsibility for assisting the scheme manager(s) in relation to specified matters. In turn, this has resulted in the requirement for the creation of Local Pension Boards for each Scheme Manager under the Regulations.
- 3.7 The detail of these arrangements will be set out in the Firefighters' Pension Scheme (Amendment) (Governance) Regulations 2015 due to come into force on 1 April 2015. At present there are only draft regulations available, and these have been the subject of consultation. Regulation 4A of these draft Regulations specifies that each Scheme Manager shall establish its own Local Pension Board with responsibility for assisting the Scheme Manager to secure compliance with the Regulations, other legislation relating to the governance and administration of the Scheme, and the requirements imposed by the Pensions Regulator in relation to the Scheme. It will also ensure the effective and efficient governance and administration of the Scheme.
- 3.8 The Local Pension Board will have the role of ensuring good governance and compliance with requirements imposed by legislation and the Pensions Regulator. In all cases, the Scheme Manager will retain ultimate responsibility for the administration and governance of the scheme. The role of the Local Pension Board is to support the Scheme Manager.
- 3.9 Local Pension Board members will be required to have proper knowledge and understanding of the Scheme. In accordance with section 248A of the Pensions Act 2004, every individual who is a member of a Local Pension Board must be conversant with the rules of the Scheme and have a knowledge and understanding of the law relating to pensions.
- 3.10 The Scheme Manager needs to be satisfied that a person to be appointed as a member of the Local Pension Board does not have a conflict of interest. "Conflict of interest", in relation to a person, means a financial or other interest which is likely to prejudice the person's exercise of functions as a member of the Board (but does not include a financial or other interest arising merely by virtue of membership of the scheme or any connected scheme).

### **The Pensions Regulator**

- 3.11 The 2013 Act introduces a framework for the Pensions Regulator's regulatory oversight of aspects of governance and administration of all public service

pension schemes (including the FFPS) with effect from 1 April 2015. The role of the Local Pension Board will see a direct communication link between that new body and the Pensions Regulator.

3.12 The 2013 Act provides the Regulator with a range of enforcement powers. However, these powers of the Regulator are not extended to cover the funding and investment of Funds.

3.13 The Regulator has issued a Code of Practice which covers:

- i) knowledge and understanding requirements for local board members
- ii) conflicts of interest and representation
- iii) reporting breaches of law
- iv) publishing information about schemes
- v) internal controls
- vi) scheme record keeping
- vii) maintaining contributions
- viii) providing information to members
- ix) internal dispute resolution

#### **4. Constitution and Membership of a Local Pension Board**

##### **Constitution**

4.1 Local Pension Boards must be established no later than 1 April 2015. Established in this context means that the Scheme Manager must have approved the establishment of the Local Pension Board, its composition and also the terms of reference, in accordance with its constitution. The Local Pension Board does not have to be fully operational by this date. However, it is anticipated that a Local Pension Board will be operational within a reasonably practicable period after 1 April 2015 (being no longer than four months). The recommended terms of reference for the Local Pension Board are set out in Annex 1.

4.2 The responsibility for establishing a Local Pension Board rests with the Scheme Manager. This is something the Scheme Manager must do: it is not optional. The Scheme Manager is given power under draft Regulation 4A(2) of the Regulations to determine the procedures applicable to its Local Pension Board, including voting rights and the payment of expenses. When exercising this power (as provided for in the 2013 Act), the Scheme Manager must do so in accordance with usual local government principles, acting reasonably and within the powers set out in the Regulations.

##### **Membership**

4.3 A Local Pension Board must include an equal number of employer and employee representatives with a minimum requirement of no fewer than four in total. The Regulations do not preclude that other individuals may also be appointed to the Board as long as the employee/employer balance is maintained. Only a person of 'scheme employment' as defined in regulation 6 of the Regulations, that is a person employed as a firefighter, may be a member representative. No officer or member of the Fire and Rescue Authority who is responsible for the discharge of any function under the Regulations (apart from any function relating to Local Pension Boards or the Scheme Advisory Board) may be a member of a Local Pension Board.

## **Capacity of Representative Members**

- 4.4 Draft Regulation 4B(2)(a) also requires that the Scheme Manager must ensure that any person it wishes to appoint as an employer or member representative has the capacity to represent the employers or members (as appropriate). An individual's ability to properly represent the interests of employers or members (as appropriate) and channel information back to those persons effectively should also be a key factor in selecting members of the Local Pension Board.

## **Appointment of Members to the Local Pension Fund Board**

- 4.5 It is recommended that the Local Pension Fund Board, totalling five members consist of:
- Two employee representatives
  - Two employer representatives
  - One other member
- 4.6 It is recommended that officers run the appointment process with open and transparent communication to all employer organisations and all employees. It is recommended that an appointment panel, consisting of officers and members, be appointed to oversee this process.
- 4.7 The Appointment Panel shall be made up of the following:
- Chairman of People, Performance and Development Committee (or his nominee);
  - the Strategic Finance Manager (Pension Fund and Treasury);
  - the Director of Finance (or her nominee);
  - the Director of Legal and Democratic Services (or her nominee);
  - the Chief Fire Officer (or his nominee);
- 4.8 As part of the appointment process the Scheme Manager will obtain confirmation from the appointee that they understand the requirements of the role and should:
- i) disclose all potential conflicts of interest;
  - ii) commit to attend the Local Pension Board meetings;
  - iii) commit to undertake and attend the necessary knowledge and understanding training;
  - iv) undertake to abide by the Local Pension Board's terms of reference.

## **5. Knowledge and Understanding Requirements for Local Pension Board Members**

- 5.1 Members of the Local Pension Board should have a level of knowledge and understanding in accordance with the Pensions Act 2004.

5.2 Once established the Local Pension Board should establish and maintain a policy and framework to address the ongoing knowledge and understanding of Local Pension Board members in accordance with the Surrey Local Pension Board Attendance and Knowledge and Understanding Policy.

5.3 Knowledge and understanding requirements apply to Local Pension Board members individually and not as a collective group.

## **6. Resourcing of Local Pension Boards**

6.1 The establishment of a Local Pension Board is a statutory requirement and the expenses of a Local Pension Board shall be regarded as part of the costs of the Scheme Manager

6.2 The Local Pension Board shall be financially accountable to the Pension Fund. All resourcing decisions shall be delegated to the Director of Finance.

## **7. Officer Responsibility**

7.1 It is recommended that a specific council officer takes responsibility for all Local Pension Board matters and agenda items. Responsibility for the Local Pension Board agenda should be formalised within the duties and responsibilities of the Strategic Finance Manager (Pension Fund and Treasury).

7.2 Such responsibilities will include:

- ensuring that the process for the appointment and termination of members of the Local Pension Board;
- having a clear idea of and being responsible for the items of business that are taken to the Local Pension Board;
- management of the Local Pension Fund Board business;
- ensuring those on the Local Pension Board have the appropriate knowledge and skills;
- ensuring Local Pension Board members are properly and effectively trained;
- ensuring risk assessments are undertaken and considered by the Local Pension Board on a regular basis;
- ensuring that a budget is allocated and managed for the Local Pension Board.

## **8. Financial and value for money implications**

8.1 Consideration should be given to the cost of the provision of democratic support. It is envisaged that this provision will be contained within existing resources and therefore will not be an additional cost to the Council. Any other additional expenses will be borne by the Scheme Manager.

## **9. Equalities implications**

9.1 The establishment of this Board is a statutory requirement. There are no specific equality implications arising from its appointment.

## **10. Risk management implications**

10.1 There are no risk related issues contained within the report's proposals.

## **11. Consultation**

11.1 The Cabinet Member for Business Services has been consulted on the proposed change and has offered full support for the proposals.

## **12. Section 151 Officer Commentary**

12.1 The Section 151 Officer (Director of Finance) is satisfied that all material, financial and business issues and possibility of risks have been considered and addressed, and that the paper's recommendations will place the scrutiny function pertaining to the fire fighters' fund in a good position to meet future regulations and ensure robust governance.

### **RECOMMENDATIONS:**

1. The Surrey Local Firefighters' Pension Board is established in accordance with the Public Services Pensions Act 2013 and the Firefighters' Pension Scheme Regulations 2014 (as amended) with all matters set out in Annex 1 as its terms of reference with effect from 1 April 2015.
2. Authority is delegated to an appointment panel of officers and members as set out in the report to oversee the Local Pension Board recruitment process and for the People, Performance and Development Committee to appoint members of the Local Pension Board following recommendations from the appointment panel.
3. The Terms of Reference (Annex 1) be approved for adoption by the Local Pension Board.
4. Authority be delegated to the Director of Finance in consultation with the Chairman of People, Performance and Development Committee to create such policies and documents to assist the Local Pension Board.
5. The Local Pension Board receive committee support from the Council's Democratic Services team.
6. Any consequential amendments are made to the Council's Constitution as required.

### **REASONS FOR RECOMMENDATIONS:**

1. To comply with pending legislation.
2. To conform with best local authority pensions practice.

**WHAT HAPPENS NEXT:**

Implementation of the recommendation with a deadline of 1 April 2015 for the new framework to be in place and the newly formed Local Pension Board's first meeting on a date in 2015 still to be decided.

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**Sources/background papers:**

None

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