



Internal Audit Report

Modified FPS 2006 for Retained Firefighters 2018/19

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[OFFICIAL – SENSITIVE]

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1. Introduction

- 1.1 Surrey County Council (SCC) is the statutory body responsible for administering the Surrey Fire Pension Fund (SFPF) on behalf of Surrey Fire and Rescue Services (SFRS). It has to carry out this function in accordance with the rules of the Fire Pension Scheme (FPS).
- 1.2 Retained firefighters (RFF) employed by SFRS do not work whole-time but can provide cover at set times as they may have full-time jobs outside of the fire service. They are trained by the SFRS and get paid for being on-call to respond to emergencies through the Retained Duty System (RDS).
- 1.3 Historically RFFs had been precluded from membership of the FPS 1992 but have been entitled to join the 2006 Scheme since 6th April 2006. Following the introduction of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the RFFs in England won an Employment Tribunal in a high-profile test case *Matthews v Kent and Medway Towns Fire Authority* on the basis of equal treatment with whole-time regular firefighters. The Employment Tribunal decided that the RFFs were entitled to equal treatment with whole-time members of the FPS 1992 on the pension aspects of the claim.
- 1.4 The legislation amended the 1992 and the 2006 schemes to provide RFFs employed by English Fire and Rescue Authorities (FRA) between 1st July 2000 and 5th April 2006 inclusive, with access to a modified section (the “modified scheme”) of the 2006 Scheme. It provides similar, albeit not identical, pension benefits as those provided under the 1992 Scheme.
- 1.5 The DCLG published a consultation document in July 2013 on the RDS Settlement. Subsequently, DCLG wrote to all Finance Directors requesting information to be completed by 7 February 2014 for a RDS Settlement ‘Options Exercise Table’. The enabling legislation required the FRAs to implement the Options Exercise between 1 April 2014 and 30 September 2015 with the first stage of the process was to identify the current and former RFF who were in employment between 1 July 2000 and 5 April 2006 inclusive, and to notify them of their entitlement to join the modified scheme.
- 1.6 This is a special review undertaken at the request of the Assistant Director of Commercial Operations following the discovery that the required Options Exercise for Surrey’s RFF to join the Modified Scheme did not take place. This was an unplanned review and thus not part of the agreed Internal Audit Plan for 2018/19.
- 1.7 This report has been prepared following the review of available evidence and speaking with key officers involved at the time who remain at the council. Our review brings together the key findings and conclusions from this approach.

2. Scope

- 2.1 The scope of this review was to identify the causes and control weaknesses which led to the failure of the SFRS and the Pension Administration Service in completing the Options Exercise work.

3. Audit opinion

Minimal Assurance is provided in respect of Modified FPS 2006 for Retained Firefighters 2018/19. This opinion means that the controls are generally weak or non-existent, leaving the system open to the risk of significant error or fraud. There is a high risk to the ability of the system/service to meet its objectives.

Appendix A provides a summary of the opinions, what they mean, and sets out management's responsibilities.

4. Basis of Opinion

- 4.1 We have only been able to provide **Minimal Assurance** over the controls operating within the area under review because:
- The Options Exercise required under the RDS Settlement for RFF was not even started – let alone completed by officers in SFRS and/or SCC within the stipulated timeframe of 1 April 2014 to 30 September 2015.
 - This failure can only be attributed to a complete breakdown of effective governance, management oversight, and personal accountabilities by a number of officers.
 - Many of the officers involved are no longer employees of SFRS or SCC. This includes the former Chief Fire Officer; Chief of Staff for SFRS; Chief Executive; Strategic Director of Business Services; Director of Finance; Head of Human Resources & Organisational Development; and two former Pensions Lead Managers. This has led to a loss of an effective audit trail to fully understand the events of this time, as historical emails are not retained on council systems and commensurate personal testimony is not possible to obtain. However, from the available material it is evident that a number of officers were aware of what

should have been done and failed to either deliver the work, or to escalate concerns about delays to senior managers.

- There was no effective external scrutiny in place, as the inaugural meeting of the Surrey Firefighters Pension Board was not until 16 October 2015 (after the closure of the Options Exercise). Even so, there was no discussion at all at this Board Meeting of the Exercise, suggesting that members were unsighted on its very existence and confirming that officers who attended failed to make members aware this pertinent matter.
- Any liabilities arising from the failure to allow Surrey RFFs to enter the Modified Scheme may well now fall onto the council to meet – this has yet to be determined. The breach has been reported to the Pensions Regulator and their decision is awaited - it is possible that the failure to act in accordance with legislation may result in a fine from the Pensions Regulator, along with other penalties.

5. Findings

- 5.1 The original deadline of 31 March 2015 set for completing the Options Exercise was extended by the DCLG by a further 6 months to 30 September 2015 following representations made by a number of FRAs and Pension Administration Authorities. At the same time, it was made clear that joining the Modified FPS 2006 by RFF would not be possible after the extended deadline of 30 September 2015. Despite the DCLG granting sufficient time and offering appropriate guidance, such as template letters and monthly calculators for SCC to complete this exercise, it was not done.
- 5.2 As noted above, the underpinning reasons for the Options Exercise not being completed are essentially due to poor governance and lack of accountability by officers. On the basis of our discussions with the few officers still employed who were involved at that time, and the review of limited documentation, we have determined that:
- The responsibility for the completion of the Exercise in our view fell ultimately to the Pensions Administration Service who were initially within Human Resources and Organisational Development Service until 1 October 2014 and thereafter moved to Business Operations, though no correspondence between SCC and DCLG has been found to confirm this. The accountable manager for this task is believed to have been the then Pension Lead Manager, with delegation of actions to staff under his management.

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- The DCLG's timetable, advice, and supporting documentation (such as template letters, monthly calculators for use in the Exercise) were received within the Pensions Administration Service, and based upon subsequent correspondence that we have seen we believe the contents were fully understood.
- We believe it is likely that key initial DCLG communications would have been received by the former Chief Fire Officer and then delegated to his then Chief of Staff, before being communicated to SFRS Human Resources Team. Both of these officers are no longer employees.
- Support from SFRS Human Resource Team was limited to a list of all RFF being sent to colleagues within Pensions Administration. This list would have needed further filtering to identify the correct cohort of eligible RFF.
- We know that some enquiries (via email) from RFF members interested in joining the Modified Scheme were received by officers in SFRS and Pension Administration before the September 2015 deadline, and indeed after the deadline had passed. The response to RFF from both services was to note that the exercise was yet to be completed and that they (the RFFs) would be contacted in due course.
- We could find no evidence of effective planning by officers to complete the work before the deadline, leading to some of these RFF enquiries becoming complaints. Even then, none of the officers involved seemingly took responsibility for escalating the issue to the Assistant Director of Commercial Operations (Head of Service) when they knew that their line manager, the former Lead Pensions Manager, was not taking any action to resolve it.
- Significantly, we have found no evidence that RFFs complained to SFRS management about the delay, or involved their union representatives (even though this was a national scheme, the unions did not apparently lobby management about the lack of activity). However, the lack of available evidence does not prove such complaints were not raised with former managers.
- Even after the absolute deadline for the Options Exercise had passed, officer emails within Pension Administration referred to the need to start and complete this work, despite the knowledge that it was not possible as the window from DCLG had already closed.
- There is no available evidence to demonstrate if the former Lead Pensions Manager escalated this issue to his line manager, the Assistant Director of

Commercial Operations. The Assistant Director has confirmed that 30 September 2017 was the first occasion when he was made aware of the outstanding work – two years after the deadline – and it only arose as part of a summary of ‘current’ projects passed to him by the former Lead Pensions Manager during a supervision session.

- The Surrey Firefighters Pension Board was formed on 1 April 2015. They met for the first time on 16 October 2015 (2 weeks after the deadline) when the Board’s Terms of Reference was agreed. It is understood that during the lead up to the first meeting, Members of the Board were provided with training sessions and other relevant material to make them aware of the issues in the area. It is a serious failure in governance that the issues around the Options Exercise were not brought to the attention of Board Members either before the deadline, or at its first meeting.
- Although the Surrey Options Exercise was left incomplete, the same officers supported East Sussex Fire and Rescue Services (ESFRS) with its Exercise. Unlike SFRS which is part of SCC, the ESFRS is a separate entity from East Sussex County Council (ESCC) and the Pension Administration services provided are paid for by ESFRS. It is not clear why the then Lead Pensions Manager chose to prioritise this in such a manner.
- Indicative of poor governance arrangements, numerous notifications and chasers about the outcome of the Exercise from the Local Government Association (LGA) and Her Majesty’s Revenue and Customs were received by SCC Finance and Pensions officers in 2016 and 2017. HMRC requested details of RFF members who had joined the Scheme and their contribution payment arrangements so as to compute their tax relief entitlements. Despite this, we have found no evidence of responses from the council being provided or of Finance/Pensions officers escalating the matter as a result.
- It is the view of some of those interviewed during this review (although have not found physical evidence to corroborate this) that nil returns for RFF joining the Scheme were made to the DCLG by the former Lead Pensions Manager, despite not undertaking the Options Exercise and therefore having no data to hand on RFF interest in joining the Modified Scheme.
- We have found evidence to show one particular RFF member (who had persistently raised concerns over many years with Pension Administration) was apparently admitted to the scheme by the former Lead Pensions Manager in September 2017 – there is a letter to the RFF member from the former Lead Pension Manager stating this. However, it is unclear how this decision could have been made being after the deadline as the window had

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closed. This matter will need to be resolved as we do not believe that this particular member to be in the Modified Scheme despite the letter that he had received.

- 5.3 We understand that at the time that the Options Exercise was supposed to have been planned and completed there was significant additional pressure within Pensions Administration through other developments, which include its move into the South-East Shared Services in October 2014; the contracts to provide pension administration for London Borough of Westminster in September 2014 and two bi-boroughs (Kensington and Chelsea and Hammersmith and Fulham) in September 2015; and the inception of the Orbis Partnership in April 2015. These changes were compounded by staff turnover and physical office moves.
- 5.4 Despite this, however, it is of significant concern that such an important exercise was not completed, especially given the potential impact on the RFF it affected. It is also alarming that SCC officers should have completed the Exercise for ESFRS and not for the council's own Fire and Rescue Service.

Action Summary

Risk Priority	Definition	No	Ref
High	Major control weakness requiring immediate implementation	3	1, 2, 3
Medium	Existing procedures have a negative impact on internal control or the efficient use of resources	-	
Low	Represents good practice but its implementation is not fundamental to internal control	-	
Total number of agreed actions		3	

As part of our quarterly progress reports to the Audit and Governance Committee we track and report progress made in implementing all high priority actions agreed. Medium and low priority actions will be monitored and re-assessed by Internal Audit at the next audit review or through random sample checks.

Acknowledgements

We would like to thank all staff that provided assistance during the course of this audit.

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Ref	Finding	Potential Risk Implication	Priority	Agreed Action
1	<p>It is recommended that a review of the overarching governance arrangements surrounding the administration of Fire Pensions by the Pension Administration Team is undertaken. Accordingly, we have scheduled time in Quarter One of our 2019/20 Internal Audit plan to undertake such a review.</p>	Continuing poor governance which led to the failure to complete the required work may lead to reputational and financial damage to the council.	High	This will be undertaken as part of the RFF Remedy Project currently underway in Business Operations.
Responsible Officer:		Simon Pollock, Assistant Director of Commercial Operations Steve Owen-Hughes, Director of Community Protection and Emergencies	Target Implementation Date:	May 2019

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Ref	Finding	Potential Risk Implication	Priority	Agreed Action
2	A decision needs to be reached between Surrey County Council and Central Government about the next steps in whether Surrey RFF's can be admitted to the scheme in the light of the failures to act properly by the council, and if so who should be liable for any employee costs arising from retrospective admission to the Scheme (or a new, alternative scheme mirroring the Modified Scheme).	Unresolved issues arising from not offering RFFs the option to join a time limited scheme may lead to members taking legal action against the council.	High	This is a key output of the RFF Remedy Project currently underway in Business Operations
Responsible Officer:		Simon Pollock, Assistant Director of Commercial Operations Steve Owen-Hughes, Director of Community Protection and Emergencies	Target Implementation Date:	May 2019

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Ref	Finding	Potential Risk Implication	Priority	Agreed Action
3	The situation regarding the RFF member who was apparently admitted into the Modified Scheme in September 2017 (see paragraph 5.2, final bullet point) needs to be resolved to determine which pension scheme he is actually a member of, and whether his contributions have been correctly calculated.	The member may be in the wrong scheme through no fault of his and may not receive the correct benefits for which the council will become liable.	High	This will be investigated fully as there is contradictory information relating to the treatment of this individual
Responsible Officer:		Simon Pollock, Assistant Director of Commercial Operations	Target Implementation Date:	End February 2019

Appendix A

Audit Opinions and Definitions

Opinion	Definition
Substantial Assurance	Controls are in place and are operating as expected to manage key risks to the achievement of system or service objectives.
Reasonable Assurance	Most controls are in place and are operating as expected to manage key risks to the achievement of system or service objectives.
Partial Assurance	There are weaknesses in the system of control and/or the level of non-compliance is such as to put the achievement of the system or service objectives at risk.
Minimal Assurance	Controls are generally weak or non-existent, leaving the system open to the risk of significant error or fraud. There is a high risk to the ability of the system/service to meet its objectives.

Management Responsibilities

The matters raised in this report are only those which came to our attention during our internal audit work and are not necessarily a comprehensive statement of all the weaknesses that exist, or of all the improvements that may be required.

Internal control systems, no matter how well designed and operated, are affected by inherent limitations. These include the possibility of poor judgment in decision-making, human error, control processes being deliberately circumvented by employees and others, management overriding controls and the occurrence of unforeseeable circumstances.

This report, and our work, should not be taken as a substitute for management's responsibilities for the application of sound business practices. We emphasise that it is management's responsibility to develop and maintain sound systems of risk management, internal control and governance and for the prevention and detection of irregularities and fraud. Internal Audit work should not be seen as a substitute for management's responsibilities for the design and operation of these systems.