

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

26 JUNE 2023

1. INDEPENDENT INVESTIGATION INTO PENSIONS ISSUES

Report of the Monitoring Officer

RECOMMENDED

- 1.1. THAT Members note the content and findings of the Independent Investigation into issues with the West Midlands Firefighters' Pensions Scheme; and
- 1.2. THAT Members accept all the recommendations within the Independent Investigation report and task officers and the delegated Scheme Manager with implementing the required improvements to the management and administration of the scheme.

2. PURPOSE OF REPORT

- 2.1. To provide Members with background to the issues with the administration and management of the West Midlands Firefighters' Pension Scheme which occurred between November 2021 and June 2022.
- 2.2. To provide Members with a summary of the findings and recommendations of the Independent Investigation commissioned by the Chair of the Audit and Risk Committee and Vice-Chair of the Authority into these issues.
- 2.3. To provide Members with a link to the full investigation report for their consideration.
- 2.4. To set out steps for improvement going forward, including delivery against all the recommendations made within the investigation report.

3. **BACKGROUND**

- 3.1. Between November 2021 and June 2022, a number of specific issues arose with the administration and management of the West Midlands Firefighters' Pension Scheme that resulted in errors in payment, incorrect information sharing and a data breach in relation to ex-employees/pensioners belonging to the relevant Scheme. These errors/issues covered four main areas or themes, as reported to the Audit and Risk Committee in July 2022 (a link to full A&R report can be found in the background papers section). These four themes are also set out below:

3.2. **PAYE**

Two errors with submitting details of payments made and associated tax and NI deductions to HMRC, caused by errors with the service's ORACLE system resulted in a failure to submit relevant Monthly returns. As a result, pensioners were treated by HMRC as if they were no longer scheme members, and a proportion of pensioners underpaid tax as a result. This was later rectified meaning pensioners were required to make additional tax payments to make good the underpaid tax.

3.3. **Calculation of April Payments**

A change to the means of calculating annual pension increases for most categories of pensioner, as a result of the new ORACLE system, led to a lower overall increase than in previous years. Following review, it was agreed to reinstate the previous calculation method.

3.4. **May Payslips Data Breach**

Following the above issues, it was agreed to send a payslip via post to all pensioners. As ORACLE is not designed to provide printed payslips, there was an error in the printing and envelopes used that led to some sensitive data being visible, which constituted a data breach. Members were provided with access to a credit checking service to check for potential fraud and the matter was referred to the Information Commissioners Office.

3.5. Incorrect Figures communicated to members

In a letter sent to pensioners following the above errors, to provide confirmation of ongoing pensions and dates of payment, some pensioners received incorrect figures. This was corrected via e-mail the same day.

4. INVESTIGATION COMMISSIONING

- 4.1. In July 2022, the Chair of the Audit and Risk Committee (which acts as Scheme Manager) and Chair of the Fire Authority requested an independent investigation into the issues with the administration and management of the Scheme identified in Section 3 above.
- 4.2. The Chair of the Authority recused himself from direct involvement in the investigation as he is a member of the Firefighters' Pension Scheme and asked the Vice-Chair of the Authority to lead on commissioning an independent investigation alongside the Chair of Audit and Risk.
- 4.3. The Monitoring Officer was tasked with supporting the commissioning of the report, the Vice Chair and the Chair of Audit and Risk.
- 4.4. Members requested the support of the Authority's Internal Auditors (provided by Sandwell MBC) to determine a Terms of Reference for the independent investigation and to identify a suitable independent person to undertake the investigation. This Terms of Reference has been published on CMIS and a link can be found in the background papers section. It is important to note that the Terms of Reference of the Investigation **did not include** reporting on matters or making recommendations related to individual employment or personnel matters.
- 4.5. Following an unsuccessful approach to the Local Government Association, Members approached West Midlands Employers at the recommendation of the Authority's Internal Auditors.
- 4.6. Members reviewed the CVs of a number of potential investigators and selected Louise Wagstaff FCIPD, an experienced HR professional with a background in investigations within the Fire and Rescue sector and significant experience of similar financial process or pension related investigations, to conduct the

investigation.

- 4.7. Ms Wagstaff was contracted in October 2022 and undertook the investigation between November 2022 and March 2023. In total, 17 interviews were conducted with a wide range of stakeholders including Pension Board members, three active Scheme member pensioners, and several Authority employees. Ms Wagstaff was also given full access to relevant documents and communications at her request. Additionally, Ms Wagstaff, at the request of the Vice Chair and Chair of Audit and Risk, provided regular updates on the progress of the investigation.

5. **INVESTIGATION FINDINGS**

- 5.1. The Investigation drew conclusions in a number of key areas. These are included in full below.

5.2. **PAYE/HMRC Errors**

- 5.2.1. User Acceptance Testing was in place in line with expectations for a systems project of this scale. Some of those interviewed were able to give anecdotal examples of activities being correct on the test system which subsequently needed adjustment on 'go live'. It is reasonable to conclude that it would not have been possible to upload 'test' data such as the monthly data return into the HMRC system and therefore unlikely this issue could have been identified in advance.
- 5.2.2. Attempts could and should have been made to contact HMRC to advise them of the failure to upload particularly when more than one month's data was being held awaiting resolution of the issue. It may have then been possible to understand or anticipate any implications for individuals.
- 5.2.3. The opportunity to initially create a helpdesk ticket early in December 2021 or escalate the helpdesk tickets raised in December 21 and May 22 from high priority to urgent was not taken. This appears to be due to those involved feeling they were being dealt with and the resulting impact experienced at the change of the tax year not being anticipated in advance. It could also relate to a lack of knowledge or awareness of the means by which to escalate a ticket. The tickets themselves do indicate ongoing

activity/dialogue to resolve but it is likely that escalating them to urgent would have led to an earlier resolution.

- 5.2.4. The Pension Board Risk Register and the Oracle Fusion project Risk Register had been subject to review and update over the relevant period and a full Data Protection Impact Assessment (DPIA) for both the system and modules had been completed. It is however essential that relevant risks are flagged by all parties when anticipated or known and the new Oracle Governance Board should assist with comprehensive logging in future.
- 5.2.5. Had the demonstration of the new system planned at the Pension Board in September 2021 subsequently taken place in December 2021, it may have assisted in raising awareness of the use and parameters being applied, improving understanding for all.
- 5.2.6. The sequencing of the Audit and Risk Committee a week before the Pension Board in March 2022 meant that the Scheme Manager was not able to receive the minutes of the December 2021 Pension Board, which included reference to the new system implementation and a delay in payments. Had this happened it may have provoked further dialogue. The fact that the March Pension Board did not receive an update as per the resolutions of the previous meeting also meant continuity of scrutiny lapsed. This was further compounded by the Audit and Risk Committee scheduled for May being postponed until 06 June, by which time matters had escalated.
- 5.2.7. When giving his verbal report on 06 June the Pension Board Chair advised the Scheme Manager that the matters of concern they raised, were to be discussed via a verbal report at the Pension Board meeting on 10 June 2022. This did not occur due to the meeting being inquorate and all business being deferred to the next scheduled meeting on 20 September 2022. As a result, the opportunity was lost for the Pension Board to meaningfully understand or scrutinise the issues and potentially report concerns to the Scheme Manager as required by their Terms of Reference. Instead, a report went direct to the Scheme Manager on 18 July 2022 but that meeting was inquorate meaning that no decisions could be taken.

- 5.2.8. Fundamentally, WMFS did not anticipate early enough the impact on tax codes resulting from the HMRC upload failure and did not escalate the issue in a timely way via either line management or ticket escalation mechanisms.
- 5.2.9. The implementation of technical solutions on this scale will commonly encounter 'teething problems' and unforeseen issues are likely which is why such projects usually include additional support such as the Hypercare service offered in this case. However, a lack of a 'Governance Board' approach and an apparent lack of awareness internally about the potential implications meant early technical support was not sought and nor was the issue escalated via the ticket management machinery as early as should have been the case. Senior managers were not made aware of issues until they had been ongoing for some time. They readily contributed to achieving resolution when they were made aware and would have benefitted from being closer to the detail of the implementation throughout.
- 5.2.10. Had this issue arisen earlier in the year, the impact would have been absorbed within the same tax year meaning that no bill for outstanding tax due would have been issued, however, the fact of the time taken to resolve the issue meant that two tax years were straddled and underpaid tax bills resulted.
- 5.2.11. The underpaid tax demands received by pensioners were at best inconvenient and avoidable. The opportunity to communicate early with the pensioner cohort was missed due in part to a lack of awareness or understanding of the potential implications and the potential numbers involved along with an apparent reluctance to generate 'bulk' postal mailings.

5.3. Calculation of April Payments

- 5.3.1. Testing and modelling could and should have been undertaken in relation to the application of the April 2022 uplift, comparing the previous and proposed methods of calculation. This would have ensured any variation and potential impact and communication needs for pensioners could be considered and understood and could be

explained prior to payment and prior to any announcement of efficiency.

- 5.3.2. The misunderstanding relating to the generation of efficiencies and the resulting erroneous communication caused pensioners concern and affected their confidence in the management of their pension payments. This communication also used a channel not owned or controlled by WMFS.
- 5.3.3. Pensioners should have been communicated to regarding the change in the payment system and about the delay in updating HMRC tax codes.

5.4. Data Breach

- 5.4.1. The mailing of pay slips was well-intentioned but lacked a clear plan and there was no cohesion between team managers to scope and prepare the task and identify and assess any risks associated prior to deployment. Teams 'lent a hand' willingly but this required more oversight than it received.
- 5.4.2. Staff involved in the generation and mailing exercise appear to have lacked sufficient training and/or knowledge of data protection legislation to recognise a potential breach and take action to avoid. Those who did query it were instructed to proceed.
- 5.4.3. Having considered the reports made to them, both the Information Commissioner's Office (ICO) and HMRC closed matters taking no further action and the Service appears to have reflected appropriately determining ways to prevent such potential breaches from happening again.

5.5. Pension Board/Scheme Manager/Fire Authority Reporting

- 5.5.1. As the Scheme Manager, the Audit and Risk Committee could and should have been advised of the issues as they were emerging/becoming understood and particularly when the level of pensioner contact with the Service became noticeable. The duties of the Scheme Manager include internal controls and risk management along with communication to members and both were relevant in this

scenario.

- 5.5.2. The Pension Board and Audit and Risk Committee scheduling and non-concurrence affected the ability to raise awareness in a timely way using the normal mechanisms and therefore more deliberate attempts to flag issues using written rather than verbal communication would have assisted in managing the issue proactively and making all relevant parties aware. This is in keeping with the recommendations of The Pension Regulator as set out in their Supervisory review report of September 2022.
- 5.5.3. As set out in Article 6 of the Constitution, the Fire Authority must ensure compliance in the management and administration of the Pensions Board. It is clear that the delegation of the role of the Scheme Manager to the Audit and Risk Committee does not preclude reference of matters by a committee to the Authority. For clarity and completeness, the Fire Authority should have been advised of the issues and given the issues with Pension Board and Committee schedule, a report direct to the Fire Authority in February 2022 may have offered a route to raise awareness of some of the issues known at that time and determine a route map for resolution.
- 5.5.4. An update should have been provided at the March Pension Board meeting regarding the delays to payments as discussed and agreed at the December meeting and shown in the minutes.
- 5.5.5. The sequencing of the Pension Board and Audit and Risk Committee in March combined with the postponement of the May Audit and Risk Committee followed by the lack of quorum for the scheduled Pension Board on 10 June 22 and Audit and Risk Committee on 18 July 2022 are likely to have impacted on reporting/visibility and scrutiny of the issues of concern.
- 5.5.6. An update could have been given to the Audit and Risk Committee on 06 June 2022. An internal news item was published on 02 June 2022 indicating there was a known issue that pensioners needed to be aware of.

- 5.5.7. The general reliance on verbal reporting to the Pension Board resulted in little opportunity for Pension Board members to consider material or raise questions in advance, or, to identify any matters not covered within the reporting that they wished to scrutinise further. It also inhibited effective action tracking and agenda management.
- 5.5.8. The whole situation has had a damaging effect on the Pension Board affecting cohesion and resulting in the loss of reciprocal chairing arrangements with a partner organisation and an ongoing vacancy for an independent chair.
- 5.5.9. The (Pensions) Scheme Manager is designated as the Audit and Risk Committee of West Midlands Fire and Rescue Authority. This is relatively unusual as the Scheme Manager role commonly falls to a single individual rather than a group or Committee. Nomination of a Committee can lead to a time lag in the identification/consideration of matters due to the meeting schedule.

6. **INVESTIGATION REPORT PUBLICATION**

- 6.1. The full investigation report and appendices contains personal data (as defined within the GDPR), including names, email addresses and other identifying information, which makes it unsuitable for full public release. However, its conclusions are summarised within this report and the full set of recommendations are published in **Appendix A**.
- 6.2. The full investigation report has been shared with Authority Members in advance of this meeting. The full report has also been shared with the Strategic Enabling Team and the Pension Board on a confidential basis.

7. **EQUALITY IMPACT ASSESSMENT**

- 7.1. An initial Equality Impact Assessment has not been carried out with regards to this report. It may be necessary to undertake EIAs when implementing the recommendations of the independent investigation and these will be undertaken as required.

8. **LEGAL IMPLICATIONS**

- 8.1. The Fire and Rescue Authority is defined by legislation as the Scheme Manager for the West Midlands Firefighter Pension Scheme. Although the Authority chooses to delegate this role, responsibility to ensure the scheme is managed within the rules of the scheme rests with the Fire Authority, and any fines resulting from errors are the responsibility of the Fire Authority.
- 8.2. The Pension Regulator is the statutory regulator for the pension sector, established as a non-departmental public body with a range of enforcement powers. They have been kept informed of the progress of the independent investigation and have received a full copy of the investigation report.

9. **FINANCIAL IMPLICATIONS**

- 9.1. The cost of undertaking this investigation was met from within the Authority's overall revenue budget. The Independent Investigator was employed via West Midlands Employers at a public sector contracted daily rate.

10. **ENVIRONMENTAL IMPLICATIONS**

- 10.1. There are no environmental impacts associated with this report.

11. **BACKGROUND PAPERS**

- [Independent Investigation Terms of Reference](#)
- [July 18, 2023 – Audit and Risk Committee report – Pensions Administration Issues](#)
- [West Midlands Employers website](#)

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Satinder Sahota
MONITORING OFFICER

APPENDIX A – Investigation Recommendations

It is recommended that WMFRA/Scheme Manager consider:

Governance

- R.1 Reviewing the designation of the Audit and Risk Committee as the Scheme Manager assessing the risk, the effectiveness and timeliness of communication and any mitigations needed
- R.2 Reviewing the format of the minutes and actions for Pension Board meetings, creating an action log with dates and accountable officers to assist with both tracking actions to completion and setting future meeting agendas.
- R.3 Making verbal reports to Pension Board the exception to improve the ability for members to prepare questions and scrutinise detail in advance.
- R.4 Requiring that the Pension and Payroll Manager's report to each Pension Board contain a return (including a nil return) referencing any system issues noted in relation to the processing of employee or pensioner payroll
- R.5 Ensuring minutes of Pension Board meetings are available to pensioners as per the Pension Board terms of reference.
- R.6 Scheduling of meetings for the Pension Board and Audit and Risk Committee in the round and set dates in a complementary manner. This should ensure that the Audit and Risk Committee follow the Pension Board allowing reporting time between and timely receipt or minutes.
- R.7 Implementing annual skills gap analyses for Members of the Pension Board providing training to meet identified need. It is understood that this is planned for March 2023.
- R.8 Revisiting the Core Code of Ethics and Service values to clarify expected behavioural standards, in person and in written communication, with Pension Board members.

Performance

- R.8 Defining operational KPIs to be regularly monitored by the Payroll and Pensions Team and reported against to the Scheme Manager. It is acknowledged that this point has been reflected in the recent TPR report.
- R.9 Requiring automatic notification to HMRC (and Pension Board) of any payroll-related issues along with follow-up with logged updates and anticipation of any potential consequences.
- R.10 Establishing a Scheme Data Improvement Plan with objectives, to add to the mitigations listed in the Risk Register.
- R.11 Implementing a generic pension queries inbox to enable effective monitoring of contact volume and allocation and to improve resilience within the team during periods of absence.

Communication

- R.12 Taking steps to clarify the responsibilities and expectations on both sides at the point an employee retires (or during pre-retirement input) to improve query management and escalation. This should include the pensioner's responsibility to notify change of details which should be regularly reminded via other communications as the opportunity arises.
- R.13 Developing and implementing a Pensioner communications plan to regularise dissemination of, and requests for, key information; specify/establish key channels for communication; and clarify responsibilities and service levels. It is understood that action is being taken on communications planning.
- R.14 Utilisation of a professional mail management service to facilitate mass mailings such as may have been useful in contacting and advising pensioners of the matters considered within this review.

Systems

- R.15 Clarifying with relevant team members of the appropriate categorisation for raising helpdesk tickets and the means by which they can/ should be escalated when necessary.
- R.16 Automatic allocation of payroll-related tickets as Priority 1 via the helpdesk with regular monitoring for resolution or escalation, including reporting to the Senior Responsible Owner or equivalent
- R.17 Reviewing project governance and project management approaches to ensure close involvement of Project Sponsors and Senior Responsible Owners and Users. It is understood that this is underway.
- R.18 Testing and supporting the proposed move to online access and self-service for pensioners prior to deployment with a full communications plan developed in consultation with the Pension Board and Scheme Manager.