

Minutes of the Audit and Risk Committee

06 June 2022 at 10:30 hours

Conducted as a public meeting at Headquarters and digitally via Microsoft Teams

Present: Councillor Miks (Chair), Councillor Padda, Councillor Barrie

Virtually: Councillor Spence, Councillor Miller, Mr Mike Ager, Kal Shoker, Peter Farrow (Internal Audit), Avtar Sohal (Grant Thornton), Harkamal Vaid (Grant Thornton), Neil Chamberlain (Chair of Pension Board), Satinder Sahota, Kash Singh

Officers: Gary Taylor, Martina Doolan, Mike Griffiths and Kirsty Tuffin

Observers: Steven Price-Hunt, Alan Tranter

67/22 **Apologies for Absence**

There were no apologies for absence received.

68/22 **Declarations of Interest**

There were no declarations of interest registered.

69/22 **Minutes of the Audit and Risk Committee held on 21 March 2022**

Resolved:

1. That the minutes of the previous meeting, held on 21 March 2022, be approved as a correct record of proceedings.

70/22 **Request for a decision on action to be taken in respect of immediate detriment cases under the McCloud Sergeant Ruling**

Gary Taylor, SIRO – Assistant Chief Fire Officer, presented the Request for a decision on action to be taken in respect of Immediate Detriment cases under the McCloud Sergeant Ruling report.

The Committee were advised that although the report had not been an officer report but a report from the Committee itself in

their capacity as Pensions Scheme Manager under the Fire Authority Delegations, Gary Taylor would provide an overview of the report on behalf of CFO, who had prepared the information within the report to support the Committee review their current position on the processing of Pension Immediate Detriment payments.

On 7 December 2020, the Audit and Risk Committee, in its role as Scheme Manager for the Firefighters' Pension Schemes, took the decision to instruct the scheme administrator to act upon guidance issued by the Home Office in August 2020 to make payment to Immediate Detriment cases. Whilst payments were being made, there were still a number of outstanding technical questions being considered nationally. In October 2021, the Local Government Association (LGA) and the Fire Brigades' Union (FBU) signed a Memorandum of Understanding which provided a more substantial framework for the processing of cases. On 29 November 2021, the Home Office withdrew their guidance. The key reason for withdrawal of the guidance was uncertainty on the power of Section 61 of the Equalities Act 2010 and issues around tax relief on member contributions.

The withdrawal guidance highlighted financial risks for FRS's and quoted further concerns from Her Majesty's (HM) Treasury that Services would not be provided with additional funding for costs associated with Immediate Detriment, which are paid outside of the pension account and prior to secondary legislation being passed. As a consequence, the Audit and Risk Committee met on the 6 December 2021 and a decision was taken to pause the payment of Immediate Detriment cases whilst awaiting additional guidance and clarity.

In an attempt to support the Fire Sector, on 17 December 2021 the Chair of the Firefighters' Pensions Scheme Advisory Board wrote to HM Treasury asking for further clarification on the tax issues highlighted by the Home Office. HM Treasury responded to this letter on 23 March 2022 and reinforced the uncertainty cited by the Home Office and stated that, "the Government's view remains that processing Immediate Detriment cases before all the necessary legislation is in place, could give rise to

significant consequences for schemes and members, although that ultimately is a decision for individual Scheme Managers”.

The Public Service Pensions and Judicial Offices Bill had now received royal assent and had been made into an Act and will come into force no later than 1 October 2023 and will remedy the discrimination between 1 April 2015 and 31 March 2022. The Act will be supported in due course by Treasury directions which was the responsibility of the Home Office to draft and lay these regulations by 1 October 2023. The HM Treasury letter referenced a set of principles which appeared to relate to clauses within the Public Service Pensions and Judicial Offices Act 2022 and its interaction with section 61 of the Equality Act. The clauses, which may allow for some progress on this matter, were due to come into law from late May 2022. It is therefore possible but in no way certain, that the Home Office may issue updated guidance later in the year but there was no guarantee that the Home Office would take any action and no further clarity had been received to date.

On behalf of the Fire Sector and in discussions with the FBU, the LGA was exploring whether any adjustments could be made to the framework to assist FRAs in being able to process Immediate Detriment cases under that framework. As an outcome of these discussions a joint letter was sent to the Home Office and HM Treasury from the FBU and the LGA, seeking a resolution on immediate detriment issues.

In addition to this joint letter, the NFCC and LGA are also seeking clarity to enable cases to be progressed. Clarity had not yet been provided but work had been undertaken to develop an option to make payments to affected members prior to 23rd October 2023 which could be adopted by the sector. Whilst this would not remove all of the risks and uncertainties, it would provide a consistent framework across the sector and potentially identify a lower scale of financial exposure if cases were progressed.

The Authority seeks to avoid discrimination in the work place and had a legal duty to give due consideration to the impact of any policy decision in respect of Equality Act.

If the Committee decided to process Immediate Detriment claims and lift the current 'pause', the disadvantage to affected Scheme Members would be reduced but not fully removed until the relevant tax legislation is introduced in October 2023.

A legal risk does exist due to ongoing disadvantage. If Employment Tribunal claims were received from affected Scheme Members, the Service would seek a 'stay' or 'suspension' of these claims until the legislation comes into force in October 2023. These ET claims would be for ongoing disadvantage by affected Scheme Members. It is likely the Employment Tribunal would agree to this approach of a 'stay'.

It is open to the Committee to resolve the ongoing disadvantage suffered by affected Scheme Members by lifting the current pause and processing Immediate Detriment payments. Any such decision to lift the 'pause' would need to be balanced against the uncertainties relating to this matter and the associated difficulty in accurately forecasting the financial liability the Fire Authority would incur in advance of the Finance Act 2022 and tax regulations due in October 2023.

Should the Committee decide to maintain the pause in processing pensions ID payments until the legislation was in place October 2023 or there is prior agreement, there would be no additional costs incurred.

The Authority had 37 pensioners who are affected by this situation, and it was predicted that approximately a further 100 members would retire before the new regulations were in place. There would be potential for legal cases to be brought against the Authority if the pause in processing ID payments remained and the cost of legal action was estimated at circa £25K.

An exercise has been undertaken to forecast the potential scale of the financial risk if the Authority were to proceed with remedy prior to the legislation being in place by October 2023 or there is prior agreement. The scale of impact has been estimated at circa £2 million based predominantly on the tax related issues associated with pension contributions but it must be highlighted that there are significant legal and financial uncertainties relating to this matter and so a high degree of caution should be applied

to this indicative figure. No funding is in place to meet costs of this nature and so General Balances would need to be used if payments were made at this stage.

Following discussions, Gary Taylor advised the Committee that due to the growing complexity around pensions governance and management and the proposal to review our current arrangements in Policy Planning Forum, if the Committee wished to change the way these matters are processed in the future and strengthen the governance arrangements, the committee could make a recommendation to place the Chief Fire Officer as the Pensions Scheme Manager which could be considered as part of the current review of delegations. The Chair advised that more information would need to be provided before a decision could be made.

Steve Price-Hunt and Alan Tranter, requested to ask questions on the report, as members of the public. The Chair of the Committee advised that no questions would be allowed.

Resolved:

1. That it be agreed that in its role as scheme manager, the committee approved to resume making payments on Immediate Detriment Cases.

71/22 **Corporate Risk Update**

Gary Taylor, SIRO – Assistant Chief Fire Officer, presented the Corporate Risk report that summarised the corporate risks for quarter 3 2021/22 and quarter 4 2021/22 covering a 6month period.

The Committee were advised that each corporate risk had been assigned to a Strategic Enabler as its risk owner. The risk owner would have full responsibility of each risk and would monitor the progress made in managing each risk on a monthly basis. The key risks highlighted, as per the report, were:

1. Risk 5.2 – a result of staffing levels. Recruitment had now occurred to mitigate this risk and a review of fire control would take place.
2. Risk 6.1 – would continue to be reviewed but confidence was given that the arrangement in placed would be resilient.

3. Digital and data risks 7.1 and 7.2 – had been a global risk and an additional risk on cyber-attacks would be addressed in the next report on the agenda.

Gary Taylor advised the committee that some of the risks in red had been resolved and the next report would be more positive.

Resolved:

1. That it be agreed that the Corporate Risk summaries (quarter 3, 2021/22 Appendix 1 and Quarter 4, 2021/22 Appendix 2) be approved.
2. That it be agreed that the management of corporate risk through and emerging from the business continuity arrangements be noted.

72/22 Creation of Additional Corporate Risk Related to Cyber Security

Gary Taylor, SIRO – Assistant Chief Fire Officer, and Martina Doolan, Data and Governance Manager, presented the Creation of Additional Corporate Risk Related to Cyber Security report that outlined the rationale for the inclusion of a separate distinct category within the current corporate risk report related to cyber security.

The Committee were advised that following discussions around the concerns were raised at the last Audit and Risk Committee, regarding the risk of cyber security attacks increasing, it was proposed to create a corporate risk 7.3 to govern and manage this significant risk. Martina Doolan advised the committee that, as per the report, national cyber security guidance had been issued to help assist organisations with the increase of cyber-attacks and the service had been following all national guidance and best practice to build its defence. The following elements of Corporate Risk 7.1 would be merged with the new 7.3 Cyber Attack risk:

1. 7.1.1 – appropriate cyber security governance processes are not in place
2. 7.1.7 – highly privileged accounts are compromised by a common cyberattack
3. 7.1.8 – common cyberattack is undetected

4. 7.1.9 – the organisation does not have a defined, planned and tested response to cyber security incident that impact sensitive information or key operational services
5. 7.1.10 – the organisation does not have well defined and tested processes in place to ensure the continuity of key operational services in the event of failure or compromise.

The Committee were advised that senior individuals would receive appropriate training and guidance on cyber security and risk management. Following queries, the Committee were advised that the main focus had been the Russia/Ukraine crisis however, passage from other countries had still been monitored and blocked if required.

Resolved:

1. That it be agreed that the change to corporate Risk 7, with the additional of a distinct category for Cyber Risk 7.3 to provide greater focus and assurance, be noted.

73/22 **Internal Audit Annual Report 2021-22**

Peter Farrow, Internal Auditor, presented the Internal Audit Annual Report 2021-22 that outlined the work of the internal auditors throughout 2021-22 and provided an opinion on the adequacy and effectiveness of the authority's governance, risk management and internal control processes.

The Committee were advised that based upon the work conducted and the implementation by management of the recommendations made, the internal audit provided a reasonable assurance that the Fire Authority had adequate and effective framework of governance, risk management and control. The key issues that arose during the year, as per the report, were:

1. Management of fuel
2. Environmental protection targets
3. Absence management follow up
4. Workforce planning
5. Governance
6. Risk management

Peter Farrow advised the committee that no negative opinions had been given. No questions were raised.

The Chair of the Committee thanked the internal audit team for all their hard work and contributions.

Resolved:

1. That it be agreed that the Internal Audit Annual Report be noted.
2. That it be agreed that an update regarding the Fire Authorities plan and the workforce planning issues be provided at the next Audit and Risk Committee meeting.

74/22 **Governance Statement 2021-22**

Mike Griffiths, (WMFS) Section 151 Officer, presented the annual Governance Statement 2021-22 report that outlined identified risks faced by the Authority in its achievement of the Authority's policies, aims and objectives and the likelihood of those risks and how they would be managed.

The Committee were advised that the governance statement would coincide with the Statement of Accounts and would be taken to the next Fire Authority meeting. The Governance Statement would require the signature of the Chair of the Authority and the Chief Fire Officer.

Mike Griffiths advised the Committee that the Authority had produced a Corporate Strategy that set out objectives and provided regular performance monitoring to measure the Authorities objectives. The Audit and Risk Committee provided the independent assurance to the Authority for the risk management and internal control. The excellent relationship with both internal and external auditors was also highlighted.

No questions were raised.

Resolved:

1. That it be agreed that the Governance Statement 2021-22 be approved.

752/22 **Audit Plan 2021-22**

Harkamal Vaid, Grant Thornton – External Auditor, presented the Audit Plan 2021-22 report that outlined the work Grant Thornton would undertake in respect of the audit of the authority's financial statements and delivery of its value for money conclusion.

The Committee were advised that the external audit would commence in July 2022, with the audit planning having taken place between February and March 2022. The significant risks identified that required special audit consideration were:

1. Management override of controls
2. Valuation of land and buildings
3. Valuation of net pension fund liability
4. Implementation of a new ledger system

The materiality had been approximately 2% of the authorities your gross expenditure for the year, as per the appendix to the report, but would be subject to the accounts. No risks had been identified with the value for money, but the committee would be kept up to date throughout the audit process through the risk assessment report. The deadline for the external audit had been extended to 30 November 2022.

Resolved:

1. That it be agreed that the Audit Plan 2021-22 be approved.

76/22 **Monitoring Policies on Raising Concerns at work – whistleblowing standing orders 2/20 and regulation of investigatory powers act 2000**

Satinder Sahota, Monitoring Officer, presented the Monitoring Policies on Raising Concerns at work – whistleblowing standing orders 2/20 and regulation of investigatory powers act 2000 report that outlined (if any) whistleblowing allegations reported through the whistleblowing policy for the periods from 1 April 2019 – 31 March 2022.

The key figures highlighted were:

1. 1 April 2019 to 31 March 2020 – There were no whistleblowing allegations received.

2. 1 April 2022 to 31 March 2021 – there was 1 whistleblowing allegation received.
3. 1 April 2021 to 31 March 2022 – there were no whistleblowing allegations received.
4. 1 April 2019 – 31 March 2022 – there were no requests to enact the Regulation of Investigatory Powers Act 2000.

Gary Taylor advised the Committee that the authority had been in a positive position and reflected good governance.

Resolved:

1. That it be agreed that the period 1 April 2019 – 31 March 2022 be noted.
2. That it be agreed that the period 1 April 2022 – 31 March 2021 be noted.
3. That it be agreed that the period 1 April 2021 – 31 March 2022 be noted.
4. That all three periods that did not receive requests to enact the Regulation of Investigatory Powers Act 2000 be noted.
5. That it be agreed that the content of the Whistleblowing Standing Order 2/20 (appendix 1) and the Management of Information Framework, standing order 1/5, appendix 4 (appendix 2 of the report) be noted.

77/22 Annual Report of the Audit and Risk Committee 2021-22

The Chair of the Committee presented the Annual Report of the Audit and Risk Committee 2021-22 that outlined the work conducted by the Committee throughout 2021-22.

The Chair thanked Members for their participation, attendance and hard work over the last year.

Resolved:

1. That it be agreed that the Annual Report of the Audit and Risk Committee be noted and submitted to the next Authority meeting.

78/22 Pension Board Minutes – 10 December 2021

Neil Chamberlain, Chair of Pensions Board, presented the Pension Board minutes for the meeting that took place on Friday 10 December 2021.

The committee were advised that the Board had met on Friday 10 December 2021 and 28 March 2022 and would be meeting on Friday 10 June 2022. All meetings had been well attended and supported by both employee/employer representatives. Some concerns had been raised by its members on the administration of a new system and the affects this had on pensioners. A discussion had been held between Neil Chamberlain, as Chair of the Board and Mike Griffiths as Section 151 Officer, and a report would be going to Pension Board on Friday 10 June to discuss the concerns further. An update would be provided to Audit and Risk Committee if necessary, following this meeting.

Neil Chamberlain advised the Committee that he would be retiring at the end of June and therefore stepping down as Chair of the Board. His replacement had been determined as Pete Gillett. Thanks was given to Neil for all his hard work and dedication to the Board over the years.

Alan Tranter, with the Chairs approval, advised the Committee that members of the Pension scheme had submitted an IDPR that had been going through the organisations process and highlighted action 6 under resolved in item 7 of the Pension Board Minutes.

Resolved:

1. That it be agreed that the pension board minutes – 10 December 2021, be noted.

79/22 Audit and Risk Committee Work Plan 2021-2022

Tom Embury, Deputy Clerk, presented the Audit and Risk Committee Work Plan for 2021-2022 that outlined the planned agenda items for future scheduled Audit and Risk Committee meetings.

The Committee were advised that following the Fire Authority Annual General Meeting on Monday 27 June 2022, the dates of Audit and Risk Committee would be agreed and the workplan would be updated for 2022-23 accordingly.

Resolved:

1. That it be agreed that the Audit and Risk Committee work plan 2021-22 be noted.

80/22 **Update on Topical, Legal and Regulatory Issues**

Mike Griffiths advised the Committee that the government were looking at making the membership of an Independent Member of Audit and Risk Committee a mandatory obligation instead of good practice.

81/22 **Exclusion of press and public**

Resolved:

1. That it be agreed that Members of the press and public were excluded from the remainder of the meeting.

82/22 **Workshop for Members on 2021/22 Statement of Accounts**

Members attended a workshop relating to the draft statement of accounts.

The meeting closed at 16:11 hours.

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