# Injury Awards: Interim Report

## Introduction

1. I have been asked to undertake an investigation by Graham Britten, Monitoring Officer at Buckinghamshire and Milton Keynes Fire Authority ("**BMKFA**") into issues relating to the payment of injury awards by BMKFA since 2006.

2. I have been asked to address the following issues set out in my terms of reference:

    2.1. A clear account of how these events transpired.

    2.2. An account of what happened in other combined fire and rescue authorities and other fire and rescue authorities.

    2.3. Details of the scale and depth of the financial problem and an informed account of what the Authority's liabilities and future costs might be.

    2.4. An analysis of the opportunities to uncover this issue that might have been missed and whether due to managerial actions, controls, practices and/or processes and the role and adequacy of internal and external audit.

    2.5. Other relevant issues relating to the on-going service related injury payments.

3. I am asked to make recommendations as well as findings in my final report.

4. I have been asked to produce this interim report to provide information about the progress of the investigation to date, and so far as I can, to set out my interim findings.

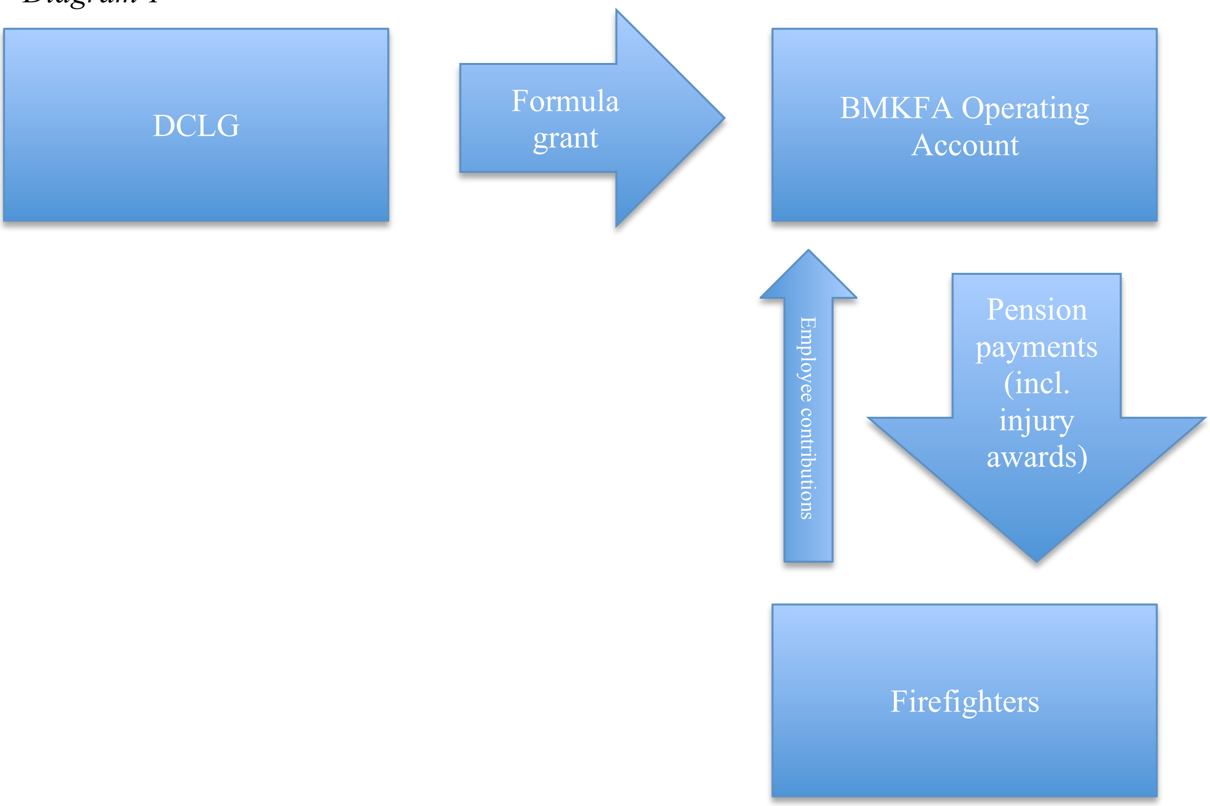
5. I emphasise, at this point, that a number of important matters that I will address in my final report cannot be addressed in this interim report. That is because, as set out in my terms of reference, the individuals involved in the investigation process are to be given a fair opportunity to comment on certain findings of the report that concern them prior to the report being finalised. Consequently, my interim findings are largely confined to paragraphs 2.2 and 2.3 above.

6. I take my terms of reference in turn.

## A clear account of how these events transpired

7. An injury award is series of payments made to a firefighter who retires or dies as a result of a service-related injury.[1] Prior to 1 April 2006, an injury award was, in effect, a type of pension (see further the discussion below). In order to understand the issue with injury awards, therefore, it is important to understand the financial arrangements for firefighters' pensions. Diagram 1 summarises the system prior to 1 April 2006:

*Diagram 1*




8. Prior to 1 April 2006, as illustrated by Diagram 1, responsibility for making pension payments rested directly[2] with Fire Authorities ("**Authorities**"). In other words, Authorities made pension payments to retired firefighters directly from

[1] DCLG state this includes injury payments to retained firefighters in respect of their protected rights on ill-health pensions, and both injury awards and injury gratuities paid to retained fire-fighters who were employed before 6 April 2006 and who retired on ill-health grounds due to a qualifying injury.
[2] See *e.g.* Rule L1 of Schedule 2 to the *Firemen's Pension Scheme Order 1992.*

their operating accounts.[3] To support Authorities to make those payments, part of the formula grant made to Authorities by the Department of Communities and Local Government ("**DCLG**") was provided for the purpose of funding pension payments to firefighters.[4] Firefighters paid their employee contributions towards their pensions directly into Authorities' operating accounts. Compared with the new financial arrangements outlined below, the system was relatively simple.

9. From 1 April 2006, the financial arrangements for firefighters' pensions changed. Instead of making payments directly from an Authority's operating account, pension payments had to be made from a separate 'pension fund'. Diagram 2, explained below, illustrates the new arrangements. The pension fund was Authority-specific; there was required to be one pension fund per Authority. The arrangement was that an Authority would pay employer contributions into its pension fund, and employees would also pay employee contributions into the pension fund. If there was not enough money in the Authority's pension fund to pay for pension payments to firefighters, DCLG would make a 'top-up grant' to the 'local' pension fund to fund the deficit. The norm was that a top-up grant would be made.

10. At the same time as the new financial arrangements for firefighters' pensions were introduced, a change was made to injury awards. Prior to the change, injury awards were made under the same legal instrument as that under which all other pension awards were made: the Firemen's Pension Scheme Order 1992 (the "**1992 Pension Scheme**"). Injury awards under the 1992 Pension Scheme included an injury gratuity component and, under certain conditions, an injury pension component.[5] In effect, as injury awards were made under the 1992 Pension Scheme, injury awards were a type of pension. In other words, an injury was simply one of a number of grounds on which a series of payments could be awarded under the 1992 Pension Scheme.

11. The reason for the changes to injury awards were related to changes in taxation law.[6] The effect of those changes was that from 1 April 2006 the government could no longer support firefighters who had been injured in the line of duty through the pension system. Injury awards were instead to be made through a new compensation scheme that was entirely separate from the pension arrangements.[7] In the event, no BMKFA firefighters received an injury award under the new compensation scheme, and in fact, no injury award has been made to a BMKFA firefighter since 2004. However, crucially, under the changes that applied from 1 April 2006, injury awards that had been made prior to 1 April 2006 (under the 1992 Pension Scheme) were required to continue being paid from the operating account of the Authority. In other words, injury awards could no longer

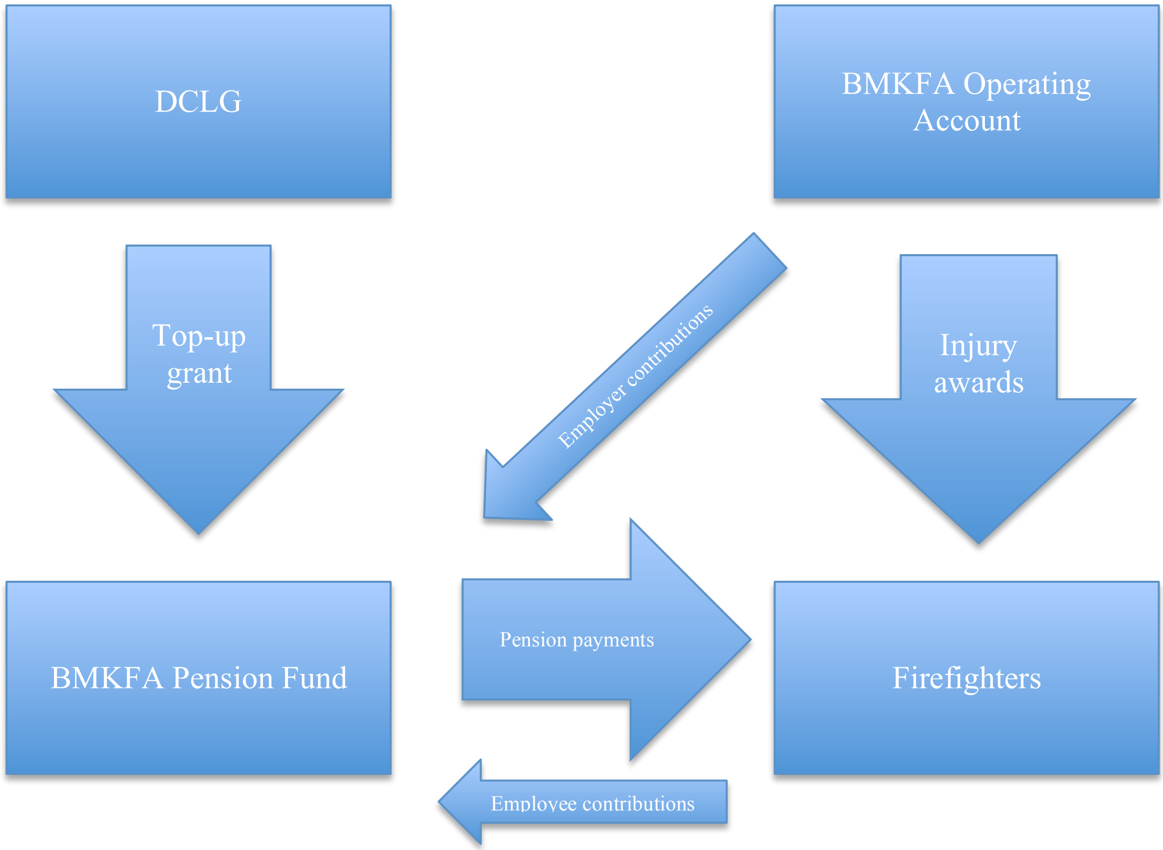
[3] See the Parliamentary written answer: HC Dec 29 Nov 2005, cc 5WS-6WS. See here (last checked 27 October 2014): http://tinyurl.com/pwgkx4p
[4] *Ibid*. Under the new financial arrangements, that element of the formula grant was removed. Its effective replacement was the 'top-up' grant for the pension fund.
[5] See rule B4 of the 1992 Pension Scheme.
[6] See paragraph 2.2 of the Explanatory Memorandum to the Firefighters' Compensation Scheme (England) Order 2006/1811.
[7] The Firefighters' Compensation Scheme (England) Order 2006.

be treated as pensions, and so injury awards could not be paid from the pension fund under the new financial arrangements for firefighters' pensions.

12. It is important to appreciate that prior to 1 April 2006, under the old financial arrangements, injury awards were already being paid from the operating account. Under the new financial arrangements, injury awards were to continue to be paid from the operating account. In that sense, it could be said that there was little 'to do' as regards injury awards: they were required to be paid from the operating account, as they always had been.

13. The new financial arrangements, including the changes to injury awards, are illustrated by Diagram 2. Diagram 2 shows the flows of payments between firefighters, the DCLG, the pension fund and the operating account of BMKFA. As can be seen, the pension fund receives employee and employer contributions, and a top-up grant from the DCLG. The payments to firefighters of their pension monies are paid from the pension fund. Injury awards, however, are paid from the operating account of BMKFA.

*Diagram 2*




14. Unfortunately, at BMKFA, from 1 April 2006, injury awards were not paid from the operating account. Rather, injury awards were paid from the pension fund. The problem was identified following an email from Anthony Mooney of the

Firefighters' Pension Scheme section at the DCLG to all Authorities on 4 July 2014. Mr Mooney asked, in his email, for Authorities to confirm that injury awards were being paid from each Authority's operating account and not its pension fund. Following Mr Mooney's email, it was discovered that from 1 April 2006, injury awards at BMKFA had been paid from the pension fund, contrary to the requirements of the new financial arrangements.

15. It appears, therefore, that *all* pensions payments were moved from the operating account to the pension fund, including injury awards (which should have continued to be paid from the operating account). How exactly this occurred, and why, will be addressed in my final report.

16. What occurred at BMFKA from 1 April 2006 to July 2014 may be illustrated by Diagram 3 below.

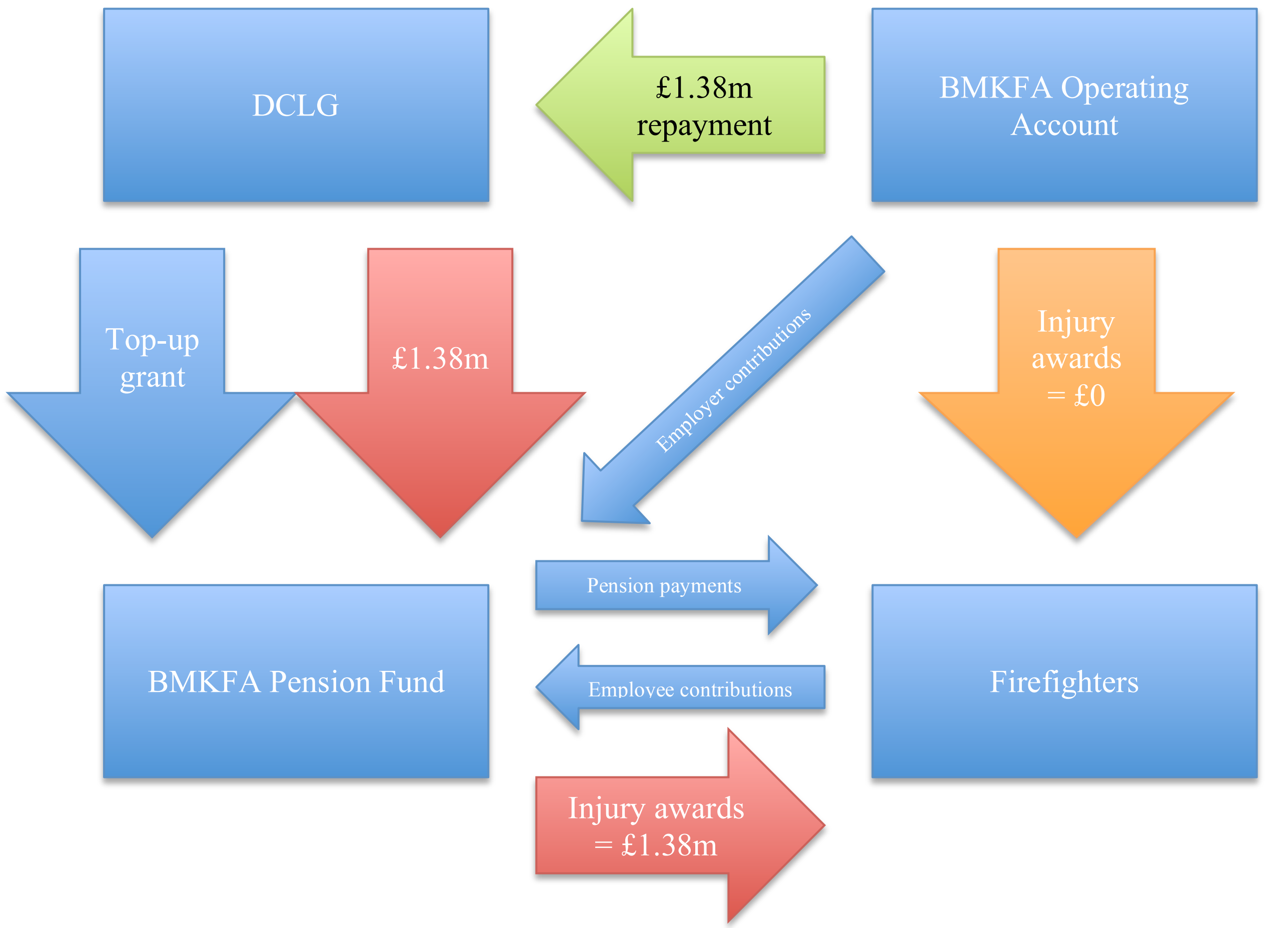
17. The red arrows in Diagram 3 show the erroneous payments that took place. In particular, approximately £1.38m of injury awards were paid to firefighters from the BMKFA pension fund (for further details of the sums involved please see the sections below). Consequently, over that period the pension fund was in deficit by £1.38m more than it would otherwise have been. As a result, DCLG sent BMKFA's pension fund £1.38m more by way of top-up grant than BMKFA was entitled to during that period.

18. As I emphasise above, the £1.38m in injury awards paid from the pension fund should, in fact, have been paid from the operating account of BMKFA. The orange arrow, labelled 'Injury awards = £0', shows how the injury awards should have been paid, but were not in fact paid.

19. The green arrow in Diagram 3 represents the potential demand by DCLG for repayment of the £1.38m that was erroneously paid to the BMFKA pension fund.

20. DCLG have not yet set out the legal basis upon which they propose to make the demand represented by that green arrow. It is also unclear whether the payment will be made directly to DCLG, or whether a virement to the pension fund will be required (it is possible that the payment may be made directly to the pension fund and recouped by the DCLG under its existing powers to recoup a surplus in the pension fund). I have not been asked to examine the DCLG's legal powers to recover the sum under discussion, and so I say no more on the matter.

*Diagram 3*




**<u>An account of what happened in other combined fire and rescue authorities and other fire and rescue authorities.</u>**

21. In relation to this issue, I have spoken in particular to Anthony Mooney of the DCLG, and Kieran Timmins in his capacity as the Chair of the Fire Finance Network. Mr Timmins is Deputy Chief Executive at Merseyside Fire and Rescue Authority, and he has kindly put me in touch with other individuals responsible for finance matters at other Authorities.

22. I spoke to Anthony Mooney at DCLG on 17 October 2014. He told me that approximately 20% of the 46 Authorities in England have had a problem relating to the miscategorisation of injury awards, and consequently face at least some financial issue. I spoke to Kieran Timmins on 31 October 2014. Mr Timmins told me that he was aware of 10 Authorities that have a problem with injury awards, which is roughly the same proportion as that reported by Mr Mooney.

23. Those number have increased slightly since August. I have seen a set of minutes distributed amongst the Fire Finance Network on 28 August 2014 (the "**Pensions Meeting Minutes**"). The Pensions Meeting Minutes are a record of a meeting between Kieran Timmins, Andrew Cornelius of DCLG, and David Aldous of the

Audit Commission.[8] In that meeting, a somewhat lower figure of 7 authorities (15%) was discussed as having been identified as having an issue with injury awards. The Pensions Meeting Minutes record the total estimated over-claim by Authorities as being approximately £30m, not including previously identified problems which are discussed below.

24. According to the Pensions Meeting Minutes, the issues faced by other Authorities in respect of injury awards are varied. They include:

    24.1. Charging all injury awards to the pension fund;
    24.2. Charging part of the cost of injury awards to the pension fund, and part to the operational account;[9]
    24.3. Charging historic injury awards to the pension fund, but charging injury awards made post-2006 to the revenue account;
    24.4. Other systems or procedural errors, including differences in the types of injury award that was mistakenly paid from the pension fund.

25. BMKFA falls within the first category, in that all injury awards were charged to the pension fund.

26. Mr Mooney told me that the financial issue at BMKFA is smaller than at some other Authorities, but for various reasons was unwilling when I spoke to him to go into greater detail as to how exactly BMKFA's financial issues compare. He also told me (on 17 October 2014) that the national picture remained unclear.

27. I asked Mr Mooney how DCLG discovered that there was a problem with injury awards. Mr Mooney told me there were two events that led to the discovery of the problem:

    27.1. First, in 2014, an Authority noticed an error in its accounts, by unspecified means, and contacted the DCLG. It is unclear whether this refers to Essex Fire Authority, who on 12 August 2014 announced that £15m would be paid to the government on account of miscategorised injury award payments. Essex set up an independent external inquiry under the Treasurer and Finance Director of the neighbouring Kent Fire and Rescue Service.[10]

    27.2. Second, in 2014 the government introduced reforms to the pension and injury compensation arrangements for retained firefighters. In the process of making arrangements for those reforms, DCLG became aware of the errors relating to injury awards.[11]

---

[8] I have assumed, on what are I believe reasonable grounds, that Andrew Cornelius was representing DCLG in that meeting. I asked Kieran Timmins whether the Audit Commission representative was David Aldous (who I have also spoken to), and Mr Timmins told me that he believed so.

[9] Kieran Timmins told me that Essex Fire Authority had been making some payments from the correct account, but the level of payments was insufficiently high.

[10] See here: http://www.essex-fire.gov.uk/news/Reserves_to_fund_pensions_injury_deficit/

[11] Retained firefighters were retrospectively given the right to participate in the 1992 Pension Scheme, so as to avoid discriminating against retained firefighters. As part of that process, retained firefighters lost their 'protected right' to full-time equivalent benefits in respect of injury awards. See *Retained Firefighters' Pension Settlement: A consultation to provide access to a modified pension scheme: Summary of responses to the consultation* (March 2014, DCLG).

28. There is only one example of an over-claim on the pension fund relating to injury awards that was discovered prior to 2014. That was at Cheshire Fire Authority,[12] in which an over-claim of approximately £1m was discovered in 2010/11 (relating to the years 2006/07 to 2010/11). The Finance Director of Cheshire Fire Authority, Paul Vaughan, told me that the error was discovered internally by the Cheshire Fire Finance Team in the Autumn of 2011. The Pensions Meeting Minutes state that DCLG considered this to be a one-off error at the time, and not something requiring further review, on the grounds that there was no other evidence of a problem.

29. The Pensions Meeting Minutes also state that there was another similar error at Staffordshire Fire Authority in 2006/07, the first year of the operation of the scheme. The Pensions Meeting Minutes state that the error was discovered during an audit of the accounts, and the value of the over-claim was approximately £1m. They also state: "*DCLG do not believe they were explicitly aware of this issue*". However, David Greensmith, the current Director of Finance at Staffordshire Fire Authority told me that this description of the events is not entirely correct (although he cautioned that he was not employed by Staffordshire at the relevant time). Mr Greensmith told me that there was no over-claim from DCLG by Staffordshire; the error was a failure to make provision in the budget for the relevant payments, rather than an accounting error. Accordingly, it was an internal problem at Staffordshire. This would also explain why DCLG expressed some doubt about whether it was aware of this issue.

30. It is relevant that there is a great deal of variability across England in the prevalence of injury awards, as measured by the proportion of the total budget taken up with injury award payments. Table 1 and Graph 1 below were complied by Mr Timmins, and they illustrate the range of injury award spend by different Authorities.

31. It should be noted that Table 1 and Graph 1 do not contain a complete list of Authorities. However, they appear to use up-to-date data that reflects the actual spend by Authorities on injury awards. Given the current uncertainties amongst Authorities about injury awards, however, I would caution against too heavy reliance on such figures. Nevertheless, in my view two points may be drawn from the data. The first is the variability across Authorities in the injury award spend referred to above. Of those shown in Table 1 and Graph 1, the percentage of the total Fire Authority budget taken up by injury awards varies from 0.28% to 3.73%. The second point is that, as can be seen, BMKFA has a relatively small proportion of its overall budget taken up by injury award payments as compared with other Authorities.

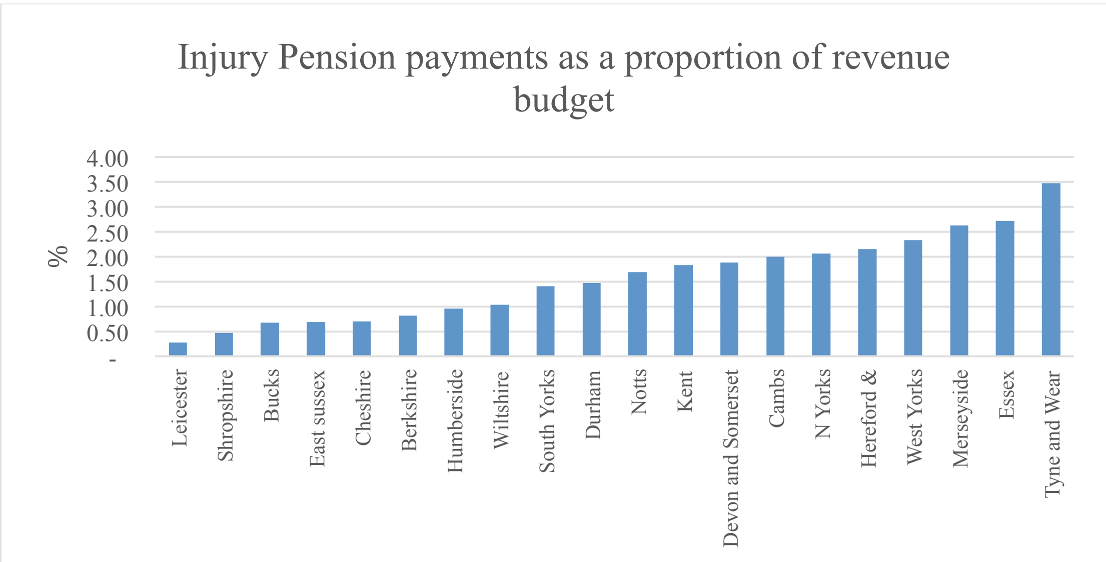
[12] Kieran Timmins told on 31 October 2014 me that the Fire Authority referred to in the Pensions Meeting Minutes, which is not named in those minutes, was Cheshire Fire Authority.

*Table 1: Selected Authorities' expenditure on injury awards (£m)*

| | Injuries | Budget | % | Proportion of average |
|---|---|---|---|---|
| Leicester | 0.106 | 38.35 | 0.28 | 0.18 |
| Shropshire | 0.1 | 21.4 | 0.47 | 0.30 |
| Bucks | 0.193 | 28.8 | 0.67 | 0.43 |
| East Sussex | 0.264 | 38.775 | 0.68 | 0.44 |
| Cheshire | 0.3 | 43 | 0.70 | 0.45 |
| Berkshire | 0.27 | 33 | 0.82 | 0.52 |
| Humberside | 0.443 | 46.4 | 0.95 | 0.61 |
| Wiltshire | 0.257 | 24.804 | 1.04 | 0.66 |
| South Yorks | 0.744 | 52.7 | 1.41 | 0.90 |
| Durham | 0.433 | 29.336 | 1.48 | 0.94 |
| Notts | 0.723 | 42.9 | 1.69 | 1.08 |
| Kent | 1.3 | 70.9 | 1.83 | 1.17 |
| Devon and Somerset | 1.4 | 74.58 | 1.88 | 1.20 |
| Cambs | 0.579 | 29.093 | 1.99 | 1.27 |
| N Yorks | 0.633 | 30.7 | 2.06 | 1.32 |
| Hereford & Worcester | 0.7 | 32.5 | 2.15 | 1.38 |
| West Yorks | 2 | 86 | 2.33 | 1.49 |
| Merseyside | 1.694 | 64.356 | 2.63 | 1.69 |
| Essex | 1.995 | 73.3 | 2.72 | 1.74 |
| Tyne and Wear | 1.8 | 51.9 | 3.47 | 2.22 |
| AVERAGE | | | 1.56 | |

32. Graph 1 illustrates the data in the table.

*Graph 1: selected Authorities' injury pension payments as a proportion of revenue budget*



33. Mr Timmins told me that there does not appear to be a pattern to the variations in injury award expenditure by governance type or region, which (it was noted in the Pensions Meeting Minutes) suggests that the differences may be accounted for by different management practices across authorities.[13]

34. National data on injury awards was also provided to me by BMKFA. That national data appears to pre-date that used in Table 1 and Graph 1 above. The national data records seven Authorities as having no expenditure on injury awards whatsoever as at 31 March 2013. Those Authorities were Durham, Cleveland, Cambridgeshire, BMKFA, Avon, Surrey, and Northamptonshire.

35. I have also been provided with the results of a survey of other Authorities' experience of injury awards using the Freedom of Information Act 2000 ("**FOIA**"). I have been asked to produce the results of that survey in a separate exempt Appendix, which is Appendix 1. I am, however, able to note in this document that whilst the FOIA survey provides details in relation to the injury award issues at particular Authorities, the results of the survey do not change the overall national picture described above.

**<u>Details of the scale and depth of the financial problem and an informed account of what the Authority's liabilities and future costs might be.</u>**

36. There are three aspects to the financial issue facing BMKFA as a result of the miscategorisation of the injury payments:

    36.1. The capital sum;
    36.2. Interest on the capital sum; and,
    36.3. On-going liabilities.

37. The capital sum is the amount that DCLG paid to BMKFA in error due to the miscategorisation of the injury awards, which is represented by a red arrow in Diagram 3 above. The capital sum is £1.38m. As discussed below, DCLG may seek to charge interest on that capital sum, which is the second problem identified above. Finally, the on-going liability is the Authority's unanticipated liability to pay injury awards from its operational account in the future. In 2013/14, the injury awards that BMKFA should have paid from its operational account amounted to approximately £193,000.

38. For accounting purposes, the capital impact and on-going liability would be accounted for in the 2013/14 accounts. However, the 'cash position' may differ from the accounting impact, depending on whether DCLG permit BMKFA to pay back the capital sum (and, if applicable, interest) by instalments.

[13] On this point, I note the implicit suggestion at paragraph 3.3 of the Parliamentary research note entitled "*Firefighters' Pension Scheme – Background*" (15 August 2013) that there may have been some 'gaming' of the system prior to the reforms introduced in 2006.

*The capital sum*

39. The total amount paid in error from the pension fund since 2006 is £1,380,069.63. That £1.38m sum is the starting point for considering the financial problem BMKFA faces, and is the 'presumed baseline virement' from BMKFA's general funds to the pension fund and/or thereby DCLG.

40. To put the £1.38m figure into context, the total annual budget for BMKFA in 2013/14 was £38,987,650. The £1.38m figure is therefore about 3.5% of BMKFA's annual budget.

41. Table 2 provides the summary accounts for the BMKFA pension fund.

*Table 2: Summary accounts of the BMKFA pension fund, £000s*

| **Year** | **Income to pension fund**[14] | **Fund expenditure**[15] | **'Top-up grant' from central government** | **Injury award payments** |
|---|---|---|---|---|
| 2006/07 | 3,668 | 4,013 | 345 | 152 |
| 2007/08 | 3,993 | 4,263 | 270 | 159 |
| 2008/09 | 3,849 | 4,555 | 706 | 164 |
| 2009/10 | 3,816 | 5,587 | 1,771 | 165 |
| 2010/11 | 3,928 | 4,989 | 1,061 | 170 |
| 2011/12 | 3,650 | 6,231 | 2,581 | 179 |
| 2012/13 | 3,643 | 5,642 | 1,999 | 191 |
| 2013/14 | 3,773 | 7,172 | 3,399 | 193 |
| **Totals:** | **30,320** | **42,452** | **12,132** | **1,380** |

42. As can be seen from Table 2, the DCLG has paid a total of £12.1m to the BMKFA pension fund since 1 April 2006. The total injury award payments of £1.38m are around 11.3% of the total top-up grant provided by central government since that date.

43. Table 2 also shows that each year the total injury award payments are less than the top-up grant that was required; in other words, in each year a top-up grant would have been required even if injury payments had been paid from the correct account (if it were otherwise, the potential liability to central government would be smaller than £1.38m).

44. It may be that DCLG will accept repayment over a number of years. If DCLG permit BMKFA to do so by means of equal annual instalments, that would be helpful to BMKFA.[16] Table 3 sets out the size of those instalments.[17]

[14] This include employee and employer contributions to the pension fund, but not the top-up grant from DCLG.

[15] The figures on the expenditure from the fund include (a) expenditure on pension awards and (b) expenditure on injury awards, which were erroneously paid from the pension account.

[16] I was provided with models for a deferred lump-sum payment of the whole amount, using the Treasury discount rate. However, I consider it unlikely that the government will permit the lump sum payment to be simply deferred; part-payment over time seems far more plausible an outcome.

*Table 3: Size of annual repayment by permitted number of years of repayment*

| Number of years of repayment | Annual repayment (nearest pound) |
|---|---|
| 1 | 1,380,070 |
| 2 | 690,035 |
| 3 | 460,023 |
| 4 | 345,017 |
| 5 | 276,014 |
| 6 | 230,012 |
| 7 | 197,153 |
| 8 | 172,509 |

45. The longer the period over which repayment is permitted, the better for BMKFA, because it would permit BMKFA to hold a potentially large quantity of money for a period of time. There are two reasons for this. First, it would allow for flexibility in the accounts. For example, the timings of various expenditures could be moved to minimise the impact of the repayment to DCLG. Second, BMKFA would receive interest on the money held in its bank account during the period of repayment.

46. Table 4 shows, by way of illustration, the cash sums BMKFA would hold were BMKFA permitted to pay back the capital sum over a period of eight years rather than being required to repay the sum immediately.

*Table 4: Cash held by BMKFA, assuming repayment over an 8-year period*

| Year (assuming repayment by equal instalments over an 8-year period) | Cash held compared with immediate full repayment (nearest pound) |
|---|---|
| 1 | 1,207,561 |
| 2 | 1,035,052 |
| 3 | 862,544 |
| 4 | 690,035 |
| 5 | 517,526 |
| 6 | 345,017 |
| 7 | 172,509 |
| 8 | 0 |

47. Clearly, the longer the timescale for repayment, the more cash BMKFA will hold in the short-term. Table 5 shows the total interest receivable on the cash held by BMKFA by the period over which BMKFA is permitted to repay the capital sum.

[17] In other words, repayment by equal installments over a period of 8 years would entail 8 payments of £172,509. Repayment by equal annual installments over a period of 5 years would entail 5 payments of £276,014.

*Table 5: Total interest received by BMKFA by years over which repayment is permitted*

| **Years over which repayment is permitted** | **Total interest received by BMKFA (nearest £)** |
|---|---|
| 1 | 0 |
| 2 | 4,189 |
| 3 | 8,363 |
| 4 | 14,577 |
| 5 | 24,778 |
| 6 | 39,434 |
| 7 | 58,536 |
| 8 | 80,994 |

48. Table 5 shows that the interest earned by BMKFA will be relatively small unless repayment is permitted over a significant period of time. As I set out above, there may nevertheless be a benefit in respect of the timings of expenditures that minimises the impact of the repayment to DCLG.

*Interest on the capital sum*

49. It is currently uncertain is whether the DCLG will require interest to be paid on the capital sum. The argument would be that BMKFA has held monies (and received interest on those monies) when it should not have held those monies, and DCLG has lost out by not receiving that interest. It is, however, unclear what interest rate the DCLG might demand.

50. Two scenarios have been modelled for the interest that DCLG might charge in respect of the relevant monies held by BMKFA.

51. The first model applies an interest rate of 2.5%. In that case, the total interest charged by DCLG would be £139,256.23, which would increase the total sum recoverable by DCLG from £1.38m to £1.52m.

52. The second model applies a punitive interest rate of 8.5%. In such a case, the total interest charged by DCLG would be £540,315.76, which would increase the total sum recoverable by DCLG from £1.38m to £1.92m.

53. Both models apply interest only to the sums held by BMKFA, rather than simply applying interest to the capital sum of £1.38m. That is because BMKFA did not hold the entire £1.38m sum for the whole period; the £1.38m was received in staged payments, and so interest was only earned on those payments after they were received by BMKFA. Table 6 illustrate this point by showing the calculations for the amount owing as of 30 September 2014, assuming an interest rate of 2.5% being applied throughout.

*Table 6: Interest received by BMKFA on over-payments from DCLG*

| Date of DCLG over-payment | Sum of DCLG over-payment | Interest incurred | Cumulative balance of over-payments, plus interest owing to DCLG |
|---|---|---|---|
| 31 March 2007 | 152,204.35 | 3,815.53 | 152,204.35 |
| 31 March 2008 | 158,914.09 | 7,873.35 | 314,933.97 |
| 31 March 2009 | 164,292.12 | 12,177.49 | 487,099.97 |
| 31 March 2010 | 171,054.86 | 16,758.29 | 670,311.79 |
| 31 March 2011 | 170,491.08 | 21,498.27 | 857,581.16 |
| 31 March 2012 | 178,587.75 | 26,441.68 | 1,057,667.18 |
| 31 March 2013 | 191,241,55 | 31,883.76 | 1,275,350.41 |
| 31 March 2014 | 193,283.83 | 18,807.86 (to 30/9/14) | 1,500,518.00 |
| 30 Sept 2014 | | | 1,519,325.86 |

54. As stated above, it remains to be seen whether DCLG will apply interest to the sums owing.

*The on-going liability*

55. The on-going liability to make injury awards is in respect of 29 firefighters who received an injury award under the 1992 Pension Scheme. There were 32 firefighters in receipt of injury awards as at 1 April 2006, but three have since passed away.

56. I have been provided with three models of BMKFA's likely financial liability to pay injury awards in the future.[18] Each model is, in effect, an illustration of what might happen if certain events occur. The models are comparable to weather forecasts: some are more reliable than others, but all are merely predictions. Consequently, none of the models should be relied upon completely. Table 7 summarises the predicted expenditures on injury pensions over the next five years, under the three models.

*Table 7: Models of the on-going liability of BMKFA to pay for injury awards (to the nearest £)*

| Year | Liability of BMKFA[19] | | |
|---|---|---|---|
| | Model (1) | Model (2) | Model (3) |
| 2014 | 193,284 | 193,284 | 253,524 |
| 2015 | 157,408 | 184,542 | 262,458 |
| 2016 | 148,134 | 167,061 | 271,417 |
| 2017 | 151,097 | 163,767 | 280,351 |
| 2018 | 154,119 | 154,119 | 289,285 |

[18] There are no other costs or liabilities other than the obligation to pay the injury awards.

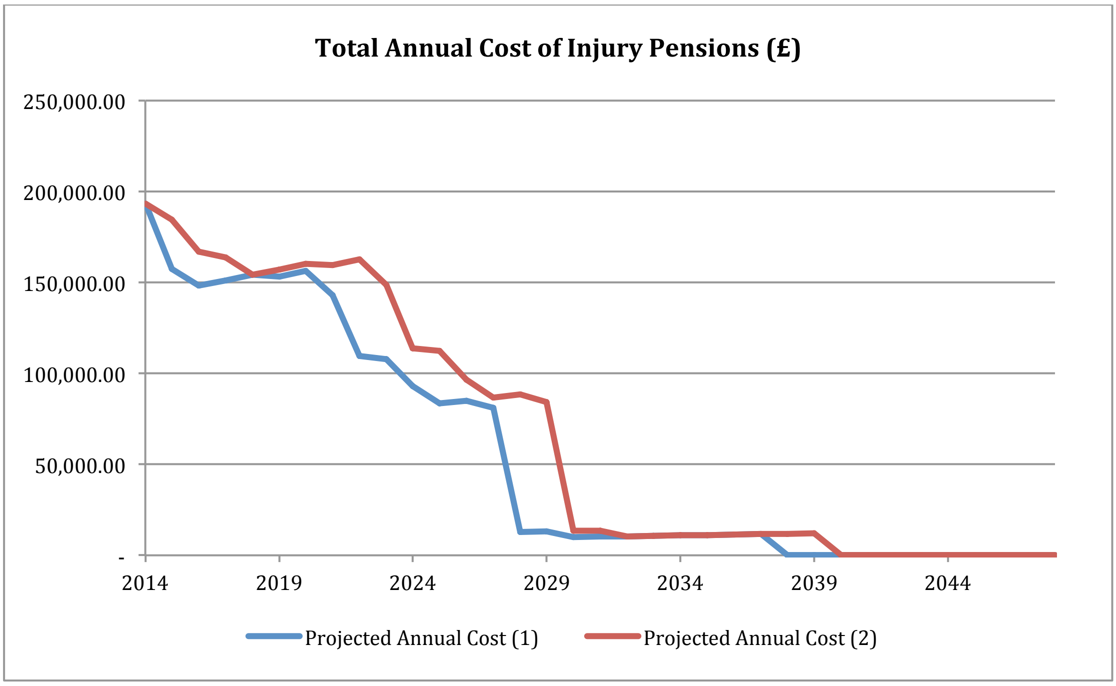
[19] Note that the liability rises each year as injury pensions are increased in line with inflation. However, (save under Model (3)), as servicemen pass away, the total liability falls. This is why the liability falls then rises.

57. Model (1) and (2) are very similar. They both assume that there will be no new injury awards made to firefighters, and then use population averages of life expectancy to predict the expenditure BMKFA will face until all the firefighters currently in receipt of injury awards have passed away. The assumption that no further injury awards will be made is, of course, questionable. However, there have been no injury awards since 2004, so it seems sensible to see what might occur if that trend continues.

58. Model (3) assumes that there will be more injury awards, and specifically, that the rate of injury awards in the future will be the same as that seen during the 1980s and 1990s. Model (3) relies on local data – *i.e.* injuries at BMKFA – rather than national data as to injuries, I am told because of the difficulties in acquiring reliable national data. There are two implausible assumptions made by Model (3). The first is that none of the firefighters currently in receipt if injury pensions will die in the next five years; in reality, some of the firefighters in receipt of injury pensions are likely to, unfortunately, pass away between now and 2018. The second is that rate of injury awards seen in the 1980s and 1990s continued during the period 2004-2014, which did not in fact occur. Nevertheless, despite these fundamental problems with Model (3), it is a helpful illustration of what could have happened had the rate of injury awards seen in the 1980s and 1990s continued.

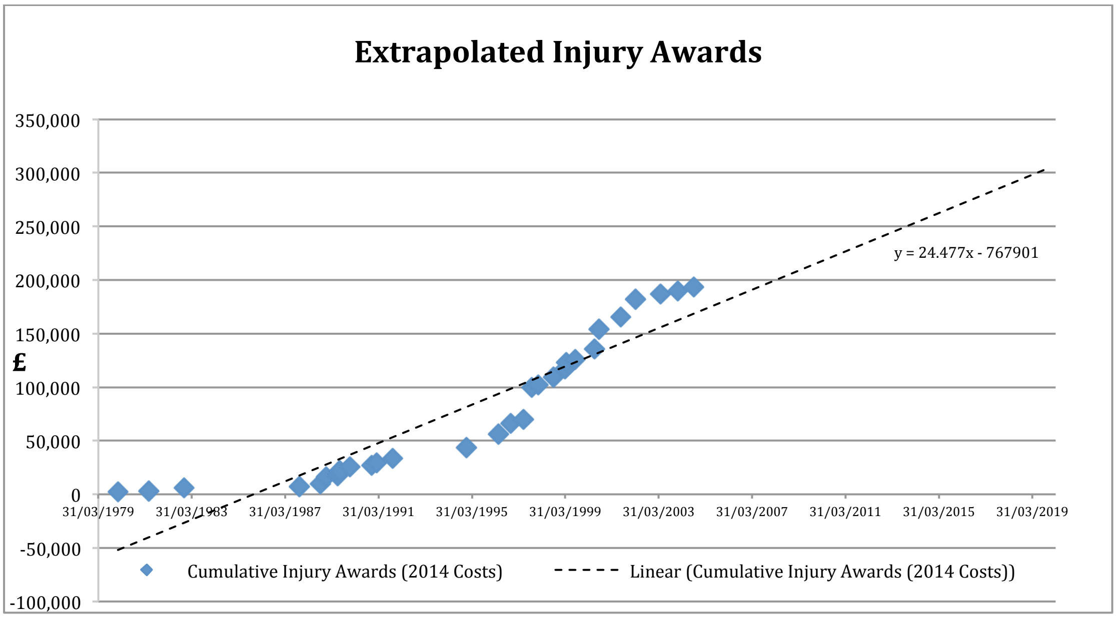
59. The expenditure predicted by Model (1) and (2) are shown on Graph 2 below. The liability for BMKFA to pay for injury pensions will run until 2037 until Model (1), and 2039 under Model (2). Model (1) assumes that the average life expectancy of the injured servicemen is 68, whereas Model (2) assumes more conservatively that the average life expectancy is 70 years of age. Both Model (1) and (2) assume that inflation will run at 2%, and so that each injury award increases at that rate each year.

*Graph 2: Total annual cost of injury awards under Model (1) and (2)*



60. Model (3) is shown on Graph 3 below. It shows the linear trend of the cumulative cost of injury awards at 2014 prices.

*Graph 3: Total annual cost of injury awards under Model (2)*




61. The likely trajectory for the actual injury award expenditure will be somewhere between Models (1)/(2) and (3). If it is correct that the reason why there have been fewer injury awards is that health and safety standards have improved, perhaps particularly at BMKFA, then Model (1)/(2) may best approximate the actual path of future expenditure. However, to the extent that the low numbers of injury awards in recent years (none since 2004) is down simply to good fortune, which may change, then the actual expenditure may to a small degree approach that of Model (3). I emphasise again, though, that Model (3) as an outcome is very unlikely given its questionable assumptions. I am told that the Authority's current expenditure on injury awards is some £65,000 less than the £253,524 predicted for 2014 by Model (3).

62. In my view a prudent budget would put aside a greater sum of money than would be required under Model (2), but only by a small amount. A sum that is 5% greater than that required under Model (2) may be appropriate, but that is a judgment that is best made by the finance team at BMKFA.

*The scale and depth of the financial problem (1): introduction*

63. Above, I analysed the financial problem facing BMKFA in three parts. For the purposes of considering the scale and depth of the financial problem, however, it is convenient to consider the capital sum and interest together because they are likely to be treated as a single liability. Consequently, there are two financial problems that I will consider in this section. Those two financial problems will be addressed by payments from different BMKFA accounts:

63.1. The capital sum (and any interest payable on that sum) will be met by a payment from the reserves. The relevant portion of the reserve that will be used is the 'Revenue Contribution to Capital' portion of reserves.

63.2. The on-going liability will be met by the operational account. It will take up a proportion of the contingency put aside for unexpected events (discussed below).

*The scale and depth of the financial problem (2): the capital sum and the reserves*

64. Table 8 below reproduces parts of Appendix C to BMKFA's Medium Term Financial Plan ("**MTFP**"), dated 14 February 2014. Table 8 shows that there were total reserves of £12.8m available on 1 April 2013, and the total useable reserves was estimated to be £13.3m on 31 March 2014. The MTFP describes the level of reserves as 'limited', by which I understand the reserves were of a moderate level (neither dangerously small nor very substantial).

*Table 8: Reserves as set out in the MTFP (£000s)*

| Reserve | Balance at 1 April 2013 | Estimated Balance at 31 March 2014 | Estimated Balance at 31 March 2015 |
|---|---|---|---|
| General Fund | 3,700 | 3,700 | 3,700 |
| Fire Control Reserve | 150 | 150 | 0 |
| Invest to Save Reserve | 500 | 500 | 500 |
| Moving Forward Agenda Reserve | 617 | 0 | 0 |
| s.31 Grant – New Dimensions (USAR) Reserve | 1,000 | 1,000 | 1,000 |
| Asset Management Reserve | 124 | 0 | 0 |
| Redundancy & Early Retirement Reserve | 180 | 320 | 320 |
| Vehicle Replacement Reserve | 51 | 69 | 76 |
| Funding Pressures Reserve | 2,000 | 717 | 717 |
| Control Room Reserve | 684 | 1,351 | 0 |
| RDS Contribution Reserve | 650 | 650 | 0 |
| Continuing Projects Reserve | 300 | 300 | 230 |
| **Total Revenue Reserves** | **9,956** | **8,757** | **6,543** |
| Usable Capital Receipts Reserve | 40 | 46 | 0 |
| Control Room Capital Grant Unapplied | 800 | 800 | 0 |
| Other Capital Grants Unapplied | 51 | 380 | 0 |
| Revenue Contribution to Capital | 1,936 | 3,357 | 3,419 |
| **Total Capital Reserves** | **2.827** | **4,583** | **3,419** |
| **Total Useable Reserves** | **12,783** | **13,340** | **9,962** |

65. Table 8 shows the different potential risks and expenditures that the reserves are earmarked for. The default category is the General Fund, which stood at £3.7m in 2013. However, another category of reserves, the 'revenue contribution to capital' ("**RCC**") has been chosen to fund the repayment to DCLG.[20] RCC is the proportion of revenue income each year that is diverted to the reserves and earmarked to pay for capital projects. The RCC stood at £1.9m in April 2013.

[20] I gather this decision was taken at the 22 October 2014 CFA meeting.

66. I discussed at length with David Skinner, Director of Finance at BMKFA, whether it made any difference that the £1.38m payment would constitute a large proportion of the £1.9m RCC ‘pot’. I accept that it does not: the appropriate sum to consider is the total useable reserves (*i.e.* £12.8m to £13.3m). Accordingly, the £1.38m payment to DCLG will use approximately 10% of the total reserves available.

67. I was told by Mr Skinner that the payment from the reserves will not put any pressure on existing capital commitments or envisaged capital projects over the next five years. He told me that no financial plans are being amended because of the discovery of the liability to pay the capital sum, because it can be funded from the existing reserves. I accept that analysis.

*The scale and depth of the financial problem (3): the on-going liability and the contingency*

68. I was told by Mr Skinner that there is a contingency in the revenue budget of around £1m. The on-going liability to pay for injury awards is likely to be around £200,000 in 2014/15, and so this means that approximately 20% of the Authority’s revenue contingency will be used for the purpose of making injury award payments. The change would be a ‘permanent virement’; in other words, the revenue contingency would be permanently reduced and the monies allocated in the budget for injury awards.

69. The contingency in the revenue budget is often used for matters as pay rises (the extent of which each year is uncertain), and uncertain weather-based events such as snow, ice, flooding, and wildfire. Table 9 below summarises the extent to which the contingency has been used.

*Table 9: BMKFA contingency fund budget and usage, £000s*

| Year | Budgeted Contingency | Transfers out of contingency |
|---|---|---|
| 2006/07 | 130 | 130 (100%) |
| 2007/08 | 63 | 13 (21%) |
| 2008/09 | 153 | 27 (18%) |
| 2009/10 | 295 | 54 (18%) |
| 2010/11 | 596 | 18 (3%) |
| 2011/12 | 576 | 266 (46%) |
| 2012/13 | 977 | 614 (63%) |
| 2013/14 | 1112 | 456 (41%) |

70. Putting aside 2006/07, Table 9 shows that from 2007/08 to 2010/11 there has been relatively little use of the contingency as compared to the budgeted contingency. However, in 2011/12 to 2013/14 there has been greater use of the contingency. I was told by Mr Skinner that the greater use of the contingency was, to an extent, a deliberate policy of utilising the contingency when particular risks crystallise. For example, in 2012/13, an ICT review, and senior officer cars, were one-off costs

for which the contingency was utilised. In 2013/14, a cost relating to industrial action and certain property projects were one-off costs charged to the contingency. Overall, I consider that BMKFA has been fortunate since 2007 in its modest use of the contingency.

71. It is temping to compare the 20% figure (that injury awards take up 20% of the budgeted contingency of £1m) with the percentages in Table 9. Compared with the percentages in Table 9, the 20% figure is not high. However, the use of the contingency shown in Table 9 has largely been in relation to one-off costs, and so those percentages are not strictly comparable to the 20% figure for injury awards. This is because the virement required to fund the injury award payments will not be a one-off cost but an on-going liability in the future. In other words, the contingency will be permanently reduced by 20% in every year going forward as a result of the virement.

72. It is, however, important to put the on-going c£200k liability in the wider context of BMKFA's financial affairs. The total budget for 2014/15 according to the current MTFP is some £28.8m, and so an on-going liability of approximately £200k constitutes about 0.7% of that total budget. Whilst hardly a small sum in absolute terms, the on-going liability is a small sum compared to the overall annual budget.

*The scale and depth of the financial problem (4): conclusion*

73. Overall, in my view, the discovery of the financial problem relating to injury awards has somewhat reduced what was previously a substantial financial cushion held by BMKFA. Mr Skinner agreed that were a financial problem of a similar magnitude discovered, then certain financial plans would have to change, at least as regards their timing. For example, future savings plans might have to be brought forward, or BMKFA might have to borrow to finance aspects of the capital programme, or other make changes. However, Mr Skinner emphasised to me that, were a similar problem discovered, the financial situation is nevertheless sufficiently positive that no additional savings plans would have be to put in place.

74. Consequently, I consider that a fair summary of the scale and depth of the financial problem relating to injury awards is that it is a moderate financial problem that somewhat reduces the financial resilience of BMKFA over the medium term. It is not, however, a significant problem with serious short-term consequences, as may be the case in other Authorities.

**An analysis of the opportunities to uncover this issue that might have been missed and whether due to managerial actions, controls, practices and/or processes and the role and adequacy of internal and external audit.**

**Other relevant issues relating to the on-going service related injury payments.**

75. These headings of my terms of reference will be addressed by my final report. I have under consideration a range of potential opportunities to uncover the issue. I am also considering a number of recommendations in relation to managerial practices / processes. I will set out my analysis of those opportunities and those managerial practices / processes in my final report.

76. I also take this opportunity to outline the work that I have undertaken on the investigation so far. The individuals that I have spoken either by email or in person include:

    76.1. Ali Chart, Health and Safety Manager, BMKFA;
    76.2. Andy Hickmott, formerly Director of Human Resources at BMKFA;
    76.3. Anthony Mooney, DCLG;
    76.4. Carol Culling, Employee Services and Payroll Manager, BMKFA;
    76.5. Cynthia Changer, formerly Director of Finance at BMKFA;
    76.6. David Aldous, Audit Commission;
    76.7. David Greensmith, Director of Finance at Staffordshire FRA;
    76.8. David Skinner, Director of Finance at BMKFA;
    76.9. Faye Mansfield, Human Resources, BMKFA;
    76.10. Gerry Barry, Governance and Compliance Manager, BMKFA;
    76.11. Graham Britten, Director of Legal and Governance, BMKFA;
    76.12. Ian Dyson, Head of Internal Audit, BMKFA;
    76.13. Jacqui May, former Head of Finance, BMKFA;
    76.14. Jason Thelwell, Chief Operating Officer, BMKFA;
    76.15. Julie Edwards, Pensions Team, Buckinghamshire County Council;
    76.16. Kieron Timmins, Fire Finance Network;
    76.17. Lynne Swift, Director of Human Resources at BMKFA;
    76.18. Mark Ridder, Employee Relations Manager at BMKFA; and,
    76.19. Mick West, External Auditor, Ernst & Young.

77. In the course of my investigation I have considered more than 1,500 pages of evidence, and undertaken a review of BMKFA's electronic records of emails and other documents that are relevant to the investigation. I have concentrated particularly on the 2006/07 period in which the new financial arrangements were implemented, in relation to which I will make findings in my final report.

78. The next stages of the investigation entail the production of a draft final report, and then I will permit certain of the witnesses set out above an opportunity to comment on relevant parts of my findings. Once that process is completed, I will present my final report.

2 December 2014

Thomas Ogg
11KBW

11 King’s Bench Walk
Temple, London
EC4Y 7EQ