



Buckinghamshire & Milton Keynes Fire Authority

Minutes of the Meeting of the EXECUTIVE COMMITTEE of the BUCKINGHAMSHIRE AND MILTON KEYNES FIRE AUTHORITY held remotely on WEDNESDAY 24 MARCH 2021 at 10.00 AM.

Present: Councillors Clarke OBE (Chairman), Hall, Hopkins, Lambert, Marland, McCall, McLean and Walsh

Officers: J Thelwell (Chief Fire Officer), M Osborne (Deputy Chief Fire Officer), G Britten (Director of Legal and Governance), M Hemming (Director of Finance and Assets) S Gowanlock (Corporate Planning Manager), F Mansfield (HR Advisory and Development Manager) and K Nellist (Democratic Services Officer)

Apologies: None

Live webcast broadcast:

<https://www.youtube.com/channel/UCWmIXPWAscxpL3vliv7bh1Q>

The Director of Legal and Governance confirmed the webcast was live.

The Director of Legal and Governance welcomed Members to the March Meeting of the Executive Committee of the Buckinghamshire & Milton Keynes Fire Authority and confirmed that the meeting was being live streamed on the Buckinghamshire Fire & Rescue Service YouTube channel. Following the meeting, a recording would continue to be available on this channel and it was also being recorded, should there be any technical difficulties.

EX43 MINUTES

The Director of Legal and Governance took Members through the matters arising from the last minutes:

EX32 – Christmas Floods – Verbal Update

Firstly, in respect of the debrief and the Thames Valley Local Resilience Forum (TVLRF), the debrief was attended by officers from the Authority, a report was being prepared by the TVLRF and the outcomes would be considered by the Service. Secondly, in connection with the report under Section 19 of the Flood and Water Management Act 2010 that was being complied by officers from Milton Keynes Council, officers from the Authority had contacted the Milton Keynes Council Environmental Lead and input had been provided into the report.

EX33 – Budget Monitoring Report April – November 2020

Regarding the Blue light Hub, the Director of Finance and Assets confirmed that potential recovery of costs from the Professional Advisors, in terms of a potential legal claim, were being evaluated. The final account was still being evaluated with the main Contractor of the scheme, the majority of the work packages had been agreed and the final ascertainment was looking to finalise the evaluation of the extension of time requests and that would allow the Director of Finance and Assets to evaluate the value of the legal claim. The final date for the final ascertainment was the end of April 2021. Once this was completed, a potential legal claim would be considered. The Director of Finance and Assets would update Members in due course.

RESOLVED –

That the Minutes of the meeting of the Executive Committee held on Wednesday 10 February 2021, be approved and signed by the Chairman as a correct record.

EX44 DISCLOSURE OF INTERESTS

The Chief Fire Officer and Deputy Chief Fire Officer both declared they were Members of the Firefighters Pension Schemes.

EX45 RECOMMENDATIONS FROM COMMITTEES –

OVERVIEW AND AUDIT COMMITTEE – 17 MARCH 2021

CORPORATE RISK MANAGEMENT POLICY

The Lead Member for Health and Safety and Corporate Risk advised that given the events of the last year, Members would appreciate the importance of maintaining a robust and up-to-date approach to identifying, evaluating, and controlling risks that could potentially compromise the Authority's ability to maintain its services to the public. This update to the Corporate Risk Management Policy and Guidance was therefore timely and welcome. As Lead Member for Health and Safety and Corporate Risk, I have been consulted during its development and support the changes and updates to the preceding policy and guidance that are presented here. The document had also been reviewed by our colleagues on the Overview and Audit Committee and they have recommended it to us for approval today.

The Corporate Planning Manager advised Members that the last update to the Corporate Risk Management Policy was approved by this Committee in March 2015. Although there wasn't anything fundamentally wrong with that policy, it had become overdue for review and therefore undertook to update it before the end of this financial year. Members would see from the cover paper, the opportunity had been taken in this review to look at recent good practice guidance from authoritative sources, in particular, the relevant International Standards Organisation (ISO) Standard, and used this to strengthen and supplement what was contained in the previous policy documentation. It had also been updated to reflect

recent changes to the Service's internal governance arrangements, particularly in relation to improvements to its project control environment. Updates and changes relative to the preceding guidance were shaded grey in the document.

The Corporate Planning Manager advised Members that before publication, and following feedback from the Chairman, arrows would be added to indicate the upward escalation process through the governance of corporate risks structure (6.1). There were also a couple of small typographical adjustments that would be made to the document before publication.

RESOLVED –

That the Corporate Risk Management Policy set out at Annex A and Guidance at Annex B, be approved.

EX46

GENDER PAY GAP REPORT 2020

The HR Advisory and Development Manager advised Members that the Authority was advised on 23 February 2021, that due to the continuing impact of the Coronavirus pandemic, the Equalities and Human Rights Commission (EHRC) announced that employers would have an additional six months after the current reporting deadline to report their gender pay gap information. All employers now have until 5 October 2021 to report their gender pay gap information and no enforcement action would be taken if they report by then.

Notwithstanding the suspension of the compulsory reporting of the gender pay gap for the second year, for openness and transparency the intention was for this data to be published once approved. As an organisation, the Authority had a duty to carry out gender pay gap reporting, and to annually publish six pieces of prescribed data about the pay and bonuses of male and female employees. The snapshot date for public sector employers was 31 March each year, and the data presented within the report was based on data as at 31 March 2020.

The gender pay gap shows the difference between the average earnings of males, compared to females, irrespective of role or seniority. It examined the difference in the average pay gap, expressed as a percentage of male earnings. It was important to note that a gender pay gap was not unlawful and the presence of a gender pay gap did not mean the Authority was discriminating against groups of individuals. A gender pay gap was a reflection of a workforce profile at a specific time, i.e., the snapshot date. This was the fourth year of undertaking gender pay gap reporting, and for 2020 the gender pay gap had increased by 3.7 percentage points to 18.8 per cent. This increase took the Service 3.3 percentage points above the UK average, which was 15.5 per cent for April 2020. In comparison, for 2019, the Service

was 2.3 percentage points below the UK average. For 2020 the Service's median gender pay gap had also increased, by 4.9 percentage points, from 10.4 per cent in 2019 to 15.3 percent in 2020.

The HR Advisory and Development Manager advised Members that the action plan detailed key areas of activity to lower the gender pay gap. Whilst the foundations for improvement had been laid through these initiatives, and progress was being made, it would be several years before there was a significant impact on gender parity within pay. The Authority would continue to strive to increase gender diversity in all areas of the organisation and lowering the gender pay gap.

RESOLVED –

That the content of the Gender Pay Gap Report 2020 be noted and approved for submission to the Government's Website (Gov.UK) as per reporting requirements.

EX47

FIREFIGHTERS' PENSION SCHEME – AGE DISCRIMINATION REMEDY AND EMPLOYMENT APPEAL TRIBUNAL JUDGEMENT

The Director of Finance and Assets advised Members that the purpose of this report was to present the latest legal advice the Authority had received in relation to the Firefighters Pension Scheme age discrimination remedy, and the recent Employment Appeal Tribunal judgment. The background to this and genesis to all the changes in public sector pensions, was part of the Lord Hutton review which led to the Public Service Pensions Act 2013 and regulations made under primary legislation. There were a number of changes and primary legislation required the restriction of existing final salary schemes. However, within this, certain members could be protected and retain the rights to their previous scheme, under what was known as transitional arrangements, which were undertaken in order to protect those closer to retirement.

Within the Firefighters Pension Scheme, there was protection to all members of the scheme who would be 55 by 31 March 2022. It also provided for tapered protection, which meant that members were protected in their original scheme on a tapered basis depending on age until 31 March 2022. Anybody who did not qualify for protection or tapered protection was immediately moved into the 2015 scheme. A legal challenge was bought by the Fire Brigades Union (FBU) on behalf of members on whether these protections constituted direct age discrimination, and indirect race and sex discrimination.

The Director of Finance and Assets advised Members that this led to a tribunal and a number of appeals, culminating in the Court of Appeal in December 2018. Essentially, this found that the transitional protection element of the 2015 public service pension reforms constituted

unlawful age discrimination. It was important to note that only the transitional protection was unlawful, moving all members to the 2015 scheme on 1 April 2022 wasn't discriminatory. In order to remedy age discriminatory treatment across public sector schemes by removing the discriminatory treatment while protecting members who may have been better off in the reformed schemes, the Treasury committed to launching a formal consultation in 2020. The remedy period was defined as between 1 April 2015 and 31 March 2022. The remedy only applied to members who were in service on or before 31 March 2012 and on or after 1 April 2015, including those with a qualifying break in service of less than five years.

The Director of Finance and Assets advised Members that in advance of the consultation being issued, there was also something known as immediate detriment guidance from the Home Office. Immediate detriment in this context referred to those who were due to retire in the very near future, and by extension, those who would retire before the necessary changes in legislation to remove the discrimination were made. This guidance should not be applied to scheme members who had already retired and were in receipt of their pension payments. These cases were more complex to address, especially due to complexities in rectifying the member's tax position. It was important to note that all cases processed using this guidance would need to be revisited once the Government's approach to removing the age discrimination had been finalised. This was likely to be after April 2022, possibly as late as October 2023.

The Government consultation proposed two options for removing the discrimination between scheme members, the two options were immediate choice or deferred choice underpin. In October 2020 the response to the consultation was brought to the Authority, setting out the pros and cons of each approach without stating a preference of one over the other. Subsequently, some additional guidance was issued in October 2020, Appendix D in the pack.

The Director of Finance and Assets advised that on 12 February 2021, the Employment Appeal Tribunal (EAT) gave judgment which held that fire and rescue authorities should have overruled the Government legislation on discrimination. Before this judgment was given, the Authority had commissioned some legal advice jointly with Royal Berkshire Fire and Rescue Authority following the Court of Appeal's ruling on the arrangements and were waiting on the outcome of this EAT before that advice could be finalised. The legal advice was that the Authority was now entitled to act on the basis of the judgment. Since this paper was published, the Local Government Association (LGA) had decided not to appeal the ruling against the judgment. Legislative changes would not be in place until April 2022, but it was imperative

that the Authority took action now. To highlight some of the risks, some of the guidance on some technical aspects does not yet exist. In some cases, there may be insufficient information to be able to calculate benefits. If the Authority does nothing, this would risk further challenge by the FBU and/or others.

A Member asked that if members of the scheme sign the document, it wouldn't be detrimental if things changed going forward and was advised that it wouldn't prejudice them at all, the Authority had a duty to make members aware that best endeavours were being used to calculate their pension and try to make it as accurate as possible.

A Member asked if the Authority would be helping members of the pension scheme with pension advice and was advised that to the extent it was able to, but the letter would also recommend that members get their own independent financial advice.

A Member said it was mentioned that there was a number of potential issues involved in processing immediate detriment cases, and that in some cases it may not be possible to calculate benefits due under the old scheme. The Director of Finance and Assets advised that each case would be looked at on a case-by-case basis. For example, a firefighter who has been in the same role for the whole period and has relatively simple personal circumstances would be easier to calculate benefits for (relatively speaking, albeit there would still be uncertainties around interest and tax relief in relation to employee contributions). Someone else for example, who had changed roles a number of times, would be entitled to a split pension and a contribution holiday, had divorce debits and had already breached their annual and lifetime allowances may find that the combination of factors makes it impossible to reliably calculate the benefits as per their old scheme. As well as having asked the QC to draft letters for those individuals where it was possible to calculate benefits, the QC would also draft a letter to those where it had not been possible to provide a reliable calculation, explaining why it had been possible to resolve other cases but not theirs.

A Member stated that the recommendations don't apply to those members that had already retired. The Director of Finance and Assets advised that currently it was not possible to remedy these cases, as the process for adjusting employee and employer contributions and associated tax implications retrospectively was even more complex, and as noted in the Home Office guidance, there were outstanding issues that were still to be resolved. The Authority was keeping a close eye on guidance as and when it was issued. The Authority recognised that many of those currently in receipt of pensions were not receiving their full entitlement and would look to correct this as soon as possible.

A Member asked if the Authority was expecting to see any increases in

the charges from the pensions administrators due to the added complexity they would have to undertake and was advised that there had not been any at present as the Authority was still within the contractual rates. If recalculations need to be made, there may be an additional charge as pensions were becoming more and more complex to administer.

A Member asked how the Authority would ensure that the letters drafted on behalf of the Authority by the QC would be received by the individual pension members and was advised that there were a limited number of cases who fell under the immediate detriment (approximately 15), so the members could be contacted on an individual basis to really emphasise the importance of this and spoken to on an individual basis.

A Member asked if a pensions officer had been employed to help the Authority get through this additional work and was advised that the Authority would shortly be going out to advertisement, collaboratively with Royal Berkshire Fire and Rescue Service as the Authority worked closely with them on the legal advice and shared the same pensions administrator.

A Member asked if the Authority knew the number of staff who had already retired and would need to be contacted and was advised that the numbers were not currently to hand.

RESOLVED –

That the Executive Committee, on behalf of the Authority (the Scheme Manager of the Authority's firefighter pension schemes):

- 1) Note the contents of the report;
- 2) Resolve that all firefighters who were members of the FPS 1992 or NFPS 2006 ("their old schemes") who:
 - (a) belonged to those schemes at 1 April 2012; and
 - (b) continues to do so on 31 March/1 April 2015; and
 - (c) who did not qualify for full protection from being transferred into the new 2015 Pension Scheme under the Public Service Pensions Act 2013 and the transitional regulations made thereunder; and
 - (d) who have been transferred, or are liable to be transferred at the end of their tapered protection, into the new 2015 Scheme;

are now deemed to be members of their old schemes and if still on tapered protection are no longer liable to be transferred; and

- (3) Resolve, in regard to those who were transferred into the 2015

Scheme and are not still on time limited tapered protection from such a transfer, they are deemed not to have left their old schemes as a result of any compulsory transfer; and

- (4) Resolved those members now deemed to be restored into their old schemes as set out above, or no longer liable to be transferred out of their old schemes as identified above, are to receive pension benefits under, and are to be treated as being subject to, the terms of their old schemes.

Before closing the meeting, the Chairman thanked all Members and officers for their hard work over the year and also thanked Councillor Douglas McCall, who would not be standing for re-election in May this year.

The Group Leaders also gave their thanks to Councillor McCall.

EX48 EXCLUSION OF PUBLIC AND PRESS

It being moved, it was

RESOLVED –

That the Press and Public be excluded from the meeting by virtue of Paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972, as the minutes contain information relating to any individual; and Paragraph 3 of Part 1 of Schedule 12a of the Local Government Act 1972 as the minutes contain information relating to the financial or business affairs of a person (including the Authority); and on these grounds it is considered, at this moment in time, that the need to keep information exempt outweighs the public interest in disclosing the information.

The Chairman advised viewers of the live webcast that the meeting would now go into private session.

EX49 EXEMPT MINUTES

RESOLVED –

That the Exempt Minutes of the meeting of the Executive Committee held on Wednesday 10 February 2021, be approved and signed by the Chairman as a correct record.

THE CHAIRMAN CLOSED THE MEETING AT 11.10 AM.