

To: Chief Fire Officer
Subject: Loss of Protected Pension Age
Date: January 2015

1 Introduction

- 1.1 We have audited the arrangements established by management to prevent a recurrence of the tax penalties incurred following the loss of protected pension age for firefighters in the 1992 Pension Scheme with dual contracts.
- 1.2 Two firefighters with dual contracts (wholetime and retained) retired from their wholetime posts, but continued their employment as retained firefighters. Following the Finance Act 2004, an arrangement was made with HMRC for members of the 1992 Firefighters' Pension Scheme, to be given a protected pension age of 50 and retain their entitlement to a tax free lump sum. However this protected pension age will be lost if firefighters are subsequently re-employed without a break in service. The Service did not consider the firefighters to be re-employed as they had two separate contracts for their wholetime and retained roles. HMRC took the view that there are tax implications for employees with dual contracts. If a firefighter retires from their wholetime contract, but carries on working on their second retained contract, they are deemed to have been in breach of the protection arrangements and their lump sum and pension payments are subject to taxation and the Service is liable for a scheme sanction charge.

2 Audit opinion

- 2.1 In the areas examined, we have assessed the controls in place to determine the level of assurance is provided that risks are mitigated.
- 2.2 Following this audit, in our opinion the level of assurance we can provide is: -



Limited assurance



Reasonable Assurance



SUBSTANTIAL ASSURANCE

Risk levels are low

3 Risk areas examined

- 3.1 We would highlight the key risks as: -

<i>Risk description</i>	<i>Significance</i>
Protected pension age is lost if firefighters with dual contracts are allowed to continue in their retained employment following retirement from their wholetime employment without the required break in employment	The Service will be liable for scheme sanction charges and the firefighters will be liable for tax on their lump sum and pension payments.
Firefighters in the 1992 Pension Scheme are not informed of the potential tax penalties if they continue in their retained employment	The Service may be liable to compensate firefighters
The Service is not aware of current legislation with regard to pensions	Penalties may be incurred if the Service contravenes legislation

3.2 The scale of the area reviewed is: -

<i>1992 Firefighters Pension Scheme</i>	<i>2011-12</i>	<i>2012-13</i>	<i>2013-14</i>
<i>Benefits paid (net of transfers in) (£'000)</i>	<i>13,326</i>	<i>13,047</i>	<i>14,005</i>

4 Audit findings

4.1 We consider the controls to be effective in the following areas: -

- The letter sent by HR to retirees has been amended to contain a paragraph advising the retiree of the tax penalties of holding dual contracts and continuing to be employed as a retained firefighter. Employees are advised to seek further advice from an independent taxation advisor.
- The 'procedure-wholetime leaver' form used by HR now documents whether retirees are less than 55 years of age with dual contracts who are remaining in their retained role.
- A separate Retirement Policy for the Firefighters Pension Scheme was completed in September 2014 and advises members of the 1992 Pension Scheme of the tax implications if they retire before the age of 55 and commence employment with any Fire and Rescue Service in a similar role to their previous role within six months of retirement. The policy also states the Service will not employ retired members of the pension scheme within six months of retirement into an operational role, including the Retained Duty System, unless they agree in writing to be bound by the tax liability and the sanction charge applied to the Authority as a condition of their new employment.
- Pre-retirement courses are held twice a year and include advice on dual contracts and their tax implication.
- The Service has informed the Fire Brigade Union who will advise their members of the loss of protected pension age for retirees with dual contracts.
- The re-engagement policy 2006 was rescinded and removed from the intranet during the summer 2014.
- Leicestershire County Council was appointed as the Pensions' Administrator in April 2013 and hold quarterly meetings with the three Fire and Rescue Services they provide the service to. Guidance is issued regularly by the Administrator, including a briefing paper issued on the 1 October 2013 regarding loss of protected pension age.
- A technical expert has recently been appointed by the Local Government Association to provide advice and support on fire service specific pension issues. The post will be funded by Fire Authorities in England and Wales.

- HR receives advice and training on changes to employment law and HR issues.
- The Strategic Director of Finance and Resources liaises with other Fire Authorities and obtains financial and legal updates. Tax updates issued by HMRC with regard to payroll are received and HMRC or an accountancy firm have been consulted for tax advice.

4.2 However, there were some control weaknesses. The attached Action Plan sets out these weaknesses and our recommendations to address them.

4.3 A summary of the recommendations made, together with a brief summary of the high and medium risk areas, is set out below: -

<i>Control risk – by category</i>	<i>Number of Recommendations</i>	<i>Recommended speed of attention</i>
High Risk		Immediate
Medium Risk	1	Within two months
Low Risk	4	Within six months
Value for money		As soon as practicable

Medium risk areas:

- The Pensions' Administrator had documented one of the pensioners affected was continuing with his retained post, but there is no record of them providing the Service with the necessary advice with regard to the loss of protected pension age. (See Action Plan 1)

Audit conducted by: C Buckley ACA

Audit supervised by: J M Bailey CPFA

J M Bailey CPFA, Head of Internal Audit

Audit Finding	Recommendation	Management Response
Medium risk areas (highly desirable for effective internal control, should implement recommendations to improve existing control arrangements)		
<p>1. Pensions' Administrator advice</p> <p>We were advised by NFRS staff that they rely on the Pensions' Administrator for advice on pensions. However, as the Administrator was unaware the pensioners affected had dual contracts due to them not being in the pension scheme for their retained post, they were unable to offer advice with regard to dual contracts.</p> <p>We examined the records maintained by Nottinghamshire County Council who were the Pensions' Administrator until April 2013.</p> <p>We found the checklist for one of the pensioners affected (PH) documented he was continuing with the concurrent employment of his retained post. This form had been completed by one member of staff and independently checked.</p> <p>However there is no record of the Fire Service being advised of the loss of protected pension age if the pensioner continues with his retained post without a break in service. The letter to the pensioner from the administrator referred to the lump sum as being tax free.</p> <p>The checklist for the other pensioner (WPB), which included a box to document whether or not the retiree was continuing with the concurrent employment, had not been fully completed.</p> <p>Risk: <i>the Pensions' Administrator did not advise the pensioners and Fire Service of the implications of continuing in their retained posts</i></p>	<p><i>The Fire Service should examine whether the Pensions' Administrator is liable for the costs incurred from its failure to advise the Service and pensioner of the loss of protected pension age and resulting tax implications if he continues in his retained post.</i></p>	<p><u>Response of Chief Fire Officer</u></p> <p>Discussions are currently taking place between the Director of Finance and Resources and the County Council with a view to resolving this and other issues connected with administrative issues.</p> <p><u>Date for implementation</u> Way forward to be agreed by April 2015</p> <p><u>Officer responsible for implementation</u> Director of Finance and Resources</p>

Audit Finding	Recommendation	Management Response
Low risk areas (desirable for effective internal control, may implement recommendations to improve existing control arrangements)		
<p>2. Notifying the Pensions’ Administrator of all employees with dual contracts</p> <p>The ‘procedures-whole-time leaver’ form has been amended to include a check box to document whether a retiree is a dual employee under the age of 55 but remaining in retained role.</p> <p>We were informed the Pensions’ Administrator would be informed by email that a whole-time retiree has a dual contract. However we were unable to test the procedure as there had been no retirees with dual contracts since November 2013, when the two retirees with dual contracts for whom there was the loss of protected pensions age, were identified.</p> <p>The Pensions’ Administrator was unaware the two retirees had dual contracts as they were not in a pension scheme for their retained employment. Reliance is currently placed on the Administrator being informed of the dual contract in the email sent by HR informing them of a retiree. The Pensions Act 2008 requires all firefighters to be automatically enrolled in the pension scheme or formally opt out. We were informed once this has been introduced, the Pensions’ Administrator should therefore be aware of all dual contracts.</p> <p>The report to members on the Loss of Protected Pension Age dated 31 January 2014 stated “an audit of dual contractors would take place and the information passed to the new Pensions’ Administrator so that they are aware as well”. We were informed details of dual contractors had not been sent to the Pensions’ Administrator.</p> <p>Risk: <i>The Pensions’ Administrator is unaware a retiree has a dual contract</i></p>	<p>There should be a standard form issued by HR to the Pensions’ Administrator which would document whether the retiree has a dual pension or not.</p> <p>The Pensions’ Administrator should be provided with details of all employees in the 1992 Scheme with dual contracts as stated in the report to members on the “Loss of Protected Pension Age” dated 31 January 2014.</p>	<p><u>Response of Chief Fire Officer</u> Agreed</p> <p><u>Date for implementation</u> Completed</p> <p><u>Officer responsible for implementation</u> Both recommendations have now been completed.</p>

Audit Finding	Recommendation	Management Response
Low risk areas (desirable for effective internal control, may implement recommendations to improve existing control arrangements)		
<p>3. Letter sent by HR to retirees</p> <p>The letter sent by HR to retirees has been amended and includes the following paragraph: 'from 6 April 2010, those employees who have not already retired and taken their pension benefits before the age of 55 become subject to significant tax penalties if they are subsequently re-engaged in the same or similar role with the Fire and Rescue Service.'</p> <p>We consider the letter adequately advises the retiree that if they retire as a wholetime firefighter but continue to work as a retained fire fighter they are liable for tax on their pension benefits. However the criteria when the loss of protected pension age occurs are unclear.</p> <p>Risk: <i>Firefighters may not consider the advice applies to them and may continue with their retained employment</i></p>	<p>The letter issued to retirees should be amended to make it clear that the loss of protected pension age may occur for firefighters in the 1992 Pension Scheme with a protected pension age of 50 who wish to retire before the age of 55 years.</p>	<p><u>Response of Chief Fire Officer –</u> Agreed</p> <p><u>Date for implementation</u> Completed</p> <p><u>Officer responsible for implementation</u> Action implemented.</p>

Audit Finding	Recommendation	Management Response
Low risk areas (desirable for effective internal control, may implement recommendations to improve existing control arrangements)		
<p>4. Retirement Policy A new Retirement Policy for Uniformed Employees dated September 2014 was written by the Manager HR. The Policy adequately details the loss of protected pension protection for members of the 1992 Scheme who retire before the age of 55 and commence employment with any Fire and Rescue Service within six months of retirement. It also states the Service will not employ retired members of the pension scheme within six months of retirement, into an operational role, including the Retained Duty System, unless they agree in writing to be bound by the tax liability and the sanction charge applied to the Authority as a condition of their new employment.</p> <p>The policy does not make clear that firefighters employed as wholetime and retained firefighters when they retire, will also be subject to the tax liability if they continue their retained job.</p> <p>Risk: <i>The Service may not be aware of loss of protected pension age and tax penalties may occur for firefighters with dual contracts</i></p>	<p><i>The Retirement Policy should clearly state that firefighters with dual contracts when they retire, will be subject to a tax liability on their wholetime firefighter pension benefits if they continue in their retained role.</i></p>	<p><u>Response of Chief Fire Officer –</u> Agreed</p> <p><u>Date for implementation</u> Jan 2015</p> <p><u>Officer responsible for implementation</u> A draft Retirement Policy has been developed and includes reference to the tax liability for dual contract employees. Consultation on the revised policy will commence with the representative bodies as soon as possible.</p>
<p>5. Letter to retirees issued by the Pensions' Administrator There is no mention in the correspondence between the Pensions' Administrator and the retiree of the tax implications of dual contracts or re-employment.</p> <p>Risk: <i>Firefighters may be unaware of the tax implications of the loss of protected pension age from dual contracts</i></p>	<p><i>The pensions letter issued by the Pensions' Administrator to retirees should enquire whether a firefighter has a dual contract and ensure the retiree understands the implications of continuing in this employment.</i></p>	<p><u>Response of Chief Fire Officer –</u> Agreed</p> <p><u>Date for implementation</u> This is currently being dealt with the pensions administrator.</p> <p><u>Officer responsible for implementation</u> The pensions administrator (Leicestershire County Council) have been informed that this is required.</p>