ESSEX POLICE, FIRE AND CRIME COMMISSIONER
FIRE & RESCUE AUTHORITY
Essex County Fire & Rescue Service

Classification	**Official (Sensitive – Commercial)**		
Meeting	**Service Leadership Team**	**Agenda no.**	**6c B**
	Strategic Board		**11**
Date	**29 August 2024**		
	19 September 2024		
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Presented By	**Neil Cross, Chief Financial Officer**		
Subject	**Matthews pension remedy report**		
Type of Report	**Information**		
Action Point No.	**NA**	**For Publication**	**Yes**

RECOMMENDATION(S)

That SLT notes

- The progress made so far in relation to the Matthews remedy,
- Work is undertaken to forecast when the £9.9m grant will be depleted and a further update paper is provided when this is known.

EXECUTIVE SUMMARY

This report discusses the progress made by ECFRS on the Matthews pension remedy, highlighting issues that have hindered progress.

A grant of £184,179.16 to cover additional administrative costs was received on 12 June 2024. This was followed by a payment of an additional £9.9m as part of the pension top-up grant to cover expenditure of pension benefits under the Matthews remedy. So far, £1.03m has been paid as pension benefits under the Matthews remedy, to 42 pensioners. A total of 251 individuals may join as pensioners.

BACKGROUND

Matthews & others v Kent & Medway Towns Fire Authority & others ("Matthews") concerns the application of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 to On-Call duty system employees. Following a protracted legal process up to and including the House of Lords judgment, this led to those who were serving during the period 1 July 2000 (the date the Regulations came into force) to the date on which they elected to join the 2006 Scheme, to have special provisions which generally reflect the rules of the FPS 1992.

A time-limited options exercise took place between 2014 and 2015 to allow eligible individuals to join the FPS. While the benefits awarded to special members largely mirrored the benefits under the FPS 1992, the FPS 2006 was amended as the FPS 1992 was closed.

This was followed by the European Court of Justice's decision in O'Brien v Ministry of Justice concerning fee paid judges in the Judicial Pension Scheme. The judgment held that remedy could extend back before the Part-time Workers Directive was required to be implemented on 7 April 2000. As a binding judgment, that finding applies across all such claims and therefore the UK Government recognised the right applies to on-call firefighters' claims or potential claims. Remedy for on-call firefighters affected by the O'Brien judgment is provided by the Firefighters' Pension Schemes (England) (Amendment) Order 2023 which provides a second options exercise allowing in-scope individuals the opportunity to purchase pension entitlement as a special member of the FPS 2006.

The following individuals are in scope for the second options exercise:

1. On-Call firefighters employed on any date between 7 April 2000 and 30 June 2000 (inclusive).

2. On-Call firefighters employed on any date between 7 April 2000 and 30 June 2000 (inclusive) as well as on any date between 1 July 2000 and 5 April 2006 (inclusive).

3. On-Call firefighters employed on any date between 1 July 2000 and 5 April 2006 (inclusive) who were eligible to take part in the first options exercise but were not given opportunity to do so.

OPTIONS AND ANALYSIS

A considerable amount of work has been undertaken to implement the second options exercise. Our Service has 691 individuals in scope. A tracing exercise was undertaken for 439 individuals that our Service could not be certain that they were still living at the address held, i.e. as they were not still employed by us or were not being paid a pension by our pension administrators. Whilst 98 individuals were living as stated, 224 were traced to a new address, but 90 could not be traced and 27 were reported as deceased.

321 expressions of interest have been received, all of which were interested in receiving a quotation. 214 quotations have been issued, of which 155 have been returned accepted. 117 of these members are eligible to join as pensioners, and 42 members have been paid the benefits due and this amounts to £1.03m. A total of 251 individuals may join as pensioners. 38 of the 155 who have joined are either still employed in that on-call role, or have left but have not reached the age at which the pension benefits are payable (deferred pensioners). To support the individuals in scope, prospective members have been offered a meeting at HQ or one of four stations, or online to talk through the options. These have proven very popular. The exercise will run until 31 March 2025, but we understand that due to some Authorities having a lack of resource to deal with the volume and complexity of the project, together with the overlapping McCloud remedy, it is likely that this deadline will be extended. This may require an amendment to the regulations.

If, despite the use of reasonable endeavours to contact eligible individuals, such an eligible individual did not receive notification before 31 March 2025, an election can be made as reasonably practicable after they have received a notification. For those ECFRS has not been able to contact, further tracing activity will be undertaken to locate individuals to conclude the process. ECFRS will also consider sending reminder letters followed by a recorded delivery final reminder letter to those it has not received responses from.

A grant of £184,179.16 to cover additional administrative costs was received on 12 June 2024. This was followed by a payment of £24,940,477 in respect of the pensions top-up grant for 2024-25 received on 25 July 2024. This is approximately £10m higher than expected, because an additional £9.9m has been provided to cover expenditure of pension benefits under the Matthews remedy. The total Matthews grant across all FRA's is £266m. The Government Actuary Department (GAD) estimated the distribution of eligible members split between FRAs based on estimates of eligible current and former firefighters in a 2023 survey completed by FRAs, however this forecast has been prepared by GAD with assumptions, rather than actual data on how many of our 690 eligible members are eligible to join as pensioners (and so due to be paid money if they join), their age, length of service, pay and therefore size of pension and lump sum payable. GAD consider their forecast is not inappropriate and is proportionate for the purpose intended. Should our total pension scheme expenditure for 2024-25 not exceed the total grant, the Authority will be required to return the surplus. We are currently calculating when we expect that this grant will be exhausted so that if we expect that the grant will not be sufficient, we can request additional funding.

We have been made aware of an issue regarding the correct tax treatment for individuals who elect for the Matthews exercise. Three issues were being discussed between HMRC, Home Office and the Local Government Association's Firefighter Pensions team:

1. Treatment of Tax on interest.

HMRC have been asked to confirm whether the treatment of tax on interest should be in line with the treatment for the McCloud remedy. HMRC have responded and confirmed that:

- Arrears of pension are to be taxable under PAYE (Pay As You Earn).

- Any interest associated with the arrears of pension is deemed 'authorised' and the tax treatment of such interest will be determined by the member's individual savings allowance. Because of this, interest should be paid gross.

- Interest paid on a lump sum that is an authorised lump sum can be taxed in the same way as that lump sum (i.e. tax free) if it is paid both:

    - together with the lump sum as one payment,
    - together with the lump sum and it doesn't exceed the maximum limit for the lump sum to remain an authorised payment (i.e. doesn't exceed PCLS).

With regards to the discussion with HMRC on how the member declares any interest received, HMRC have been asked whether Fire Authorities can adopt a similar process which is in place for the banking sector. In essence, the administrator would alert HMRC to any interest the member has received and HMRC would then automatically check the members savings tax position to establish whether they have breached their individual savings allowance for that year and, in the circumstance whereby the member has breached, their tax code for the following tax year will be adjusted accordingly.

This issue has not held up making such payments, and ECFRS treated the payments as set out above, informing the member that discussions remain ongoing with HMRC and that they will be contacted again once a resolution has been agreed.

On 9 August 2024, HMRC confirmed that Fire Authorities must inform members of the interest they have been paid and issue a factsheet so that members can assess if they have exceeded their personal savings allowance and the action they need to take if they think they have.

2. <u>Pension arrears arriving in a single year.</u>

As mentioned above, pension arears are taxed using PAYE at the date awarded. We have several cases whereby an individual is due a significant amount of arrears (upwards of £100k), which will, in most cases, put them into a higher tax bracket.

This is contrary to the position that the member would have found themselves in if the benefits were paid at the correct time i.e. at the point that they became due. HMRC have confirmed that a mechanism to spread the amounts over the tax years that the payments relate to, negating the impact of a member being artificially put into higher tax bracket, will not be possible.

The LGA will discuss a compensation solution with the Home Office.

This issue will not hold up making payments. ECFRS applies the current tax treatment to the arrears i.e. tax using PAYE. The LGA are in discussions with Home Office about a compensation solution which could be used to spread the contributions over appropriate tax years. Members have been informed of this and that they will be contacted again once progress on this matter has been agreed.

3. <u>Additional lump sum paid outside 12 months.</u>

Our final issue was in relation to individuals who, due to their eligibility for the second options exercise, will be eligible to give up part of their pension to receive a lump sum.

Lump sums are unauthorised payments for tax purposes if they are paid outside of 12 months from the ‘relevant date’. The issue is when the ‘relevant date’ is for this. This could be the date the person left the scheme if they were over the age of 55 at the time or reached the age of 60 when their pension comes into payment.

Alternatively, it could be viewed that the pension benefits were not ‘due’ until regulations were in place to allow them to be paid. This was with effect from 1 October 2023, so 12 months have not yet passed since that date. Or it could be determined that a person is not entitled to these benefits until they sign the form electing to join the scheme.

LGA asked HMRC to provide clarity on whether the lump sum is deemed ‘authorised’ and therefore paid without the need to deduct tax or whether it is ‘unauthorised’ and will result in the additional lump sum being subject to 40% tax and a Scheme Sanction Charge of 15% passed onto the FRA.

As with item 2, there would be a need for the Home Office to provide a compensation mechanism should the lump sum be deemed unauthorised and subject to tax.

Whilst discussions were ongoing, ECFRS were to hold off making payments to members who fall into this category. This did not prevent ECFRS from engaging with members and asking them if they would like to purchase rights under the second options exercise. If a member makes a positive election, a holding communication was sent to them explaining that further tax considerations are needed in respect of their case, discussions with HMRC are ongoing, and the top-up pension and lump sum payment will be made as soon as clarity has been received. The Authority has had to pause 39 cases who are caught by this.

On 9 August 2024, the LGA confirmed that HMRC's position is that as the entitlement to benefits does not arise until the member has settled their contribution deficit and has met the criteria for payment i.e. attained relevant age etc., any top-up lump sum should be treated as authorised. This means that there is no 40% Unauthorised Payment Charge payable by the member nor is there a 15% Scheme Sanction Charge payable by the employer. Our 39 cases will no longer be paused and will be processed for payment.

RISKS AND MITIGATIONS

Failure to meet the required deadline in the Firefighters' Pension Schemes (England) (Amendment) Order 2023, will mean ECFRS has breached the law and must report itself to the Pension Regulator if it is considered materially significant to the Pensions Regulator.

Making payment of the benefits without having the correct tax treatment runs the risk of making an incorrect payment to the member. If a member has been overpaid, ECFRS will need to recover this amount which may cause distress to the member and be reputationally damaging.

If ECFRS failed to communicate with its members over the delays caused by the tax issues this would also cause distress and confusion amongst its current and former employees. This may also lead to complaints under Internal Dispute Resolution Procedure.

LINKS TO FIRE AND RESCUE PLAN

The report supports the following priorities of the Fire and Rescue plan:

- Promote a positive culture in the workplace.
- Be transparent, open, and accessible.
- Make best use of our resources.

FINANCIAL IMPLICATIONS

£24,940,477 in respect of the pensions top-up grant for 2024-25 was received on 25 July 2024, which is approximately £10m higher than expected, because an additional £9.9m has been provided to cover expenditure of pension benefits under the Matthews remedy. So far £1.03m has been paid as pension benefits under the Matthews remedy to 42 pensioners. The Authority's pensions team is currently analysing whether the £9.9m will be sufficient for 2024/25 and when it is anticipated that this will be depleted. A further update report will be provided once this is completed. Should the Authority require more funds, it must inform the Home Office as early as possible. Should the additional funding be more than required, the Authority will be required at a later date, to return any surplus to the Home Office.

Amount of Matthews grant received	Amount of Matthews grant spent
£9.9m	£1.03m

A grant of £184,179.16 to cover additional administrative costs was received on 12 June 2024.

LEGAL IMPLICATIONS

The activities discussed in this paper are in accordance with the Firefighters' Pension Schemes (England) (Amendment) Order 2023.

STAFFING IMPLICATIONS

The tax issues explained in this paper relate to former employees and has no effect on current employees.

EQUALITY AND DIVERSITY IMPLICATIONS

The actions being taken will not have a disproportionate impact on individuals with protected characteristics (as defined within the Equality Act 2010), when compared to all other individuals and will not disadvantage people with protected characteristics.

Race	N	Religion or belief	N
Sex	N	Gender reassignment	N
Age	N	Pregnancy & maternity	N
Disability	N	Marriage and Civil Partnership	N
Sexual orientation	N		

The Core Code of Ethics Fire Standard has been fully considered and incorporated into the proposals outlined in this paper.

HEALTH AND SAFETY IMPLICATIONS

No health and safety implications are anticipated.

CONSULTATION AND ENGAGEMENT

ECFRS' Pensions Manager has discussed the issues with the Local Government Association's Senior Pension Advisor and a few other Fire & Rescue Authorities.

FUTURE PLANS

All Matthews activity must be concluded by 31 March 2025. However, it is expected that the Matthews remedy will be extended.

LIST OF BACKGROUND PAPERS AND APPENDICES

None.