

SOUTH WALES FIRE & RESCUE AUTHORITY

MINUTES OF THE FIRE & RESCUE AUTHORITY MEETING HELD ON MONDAY 11 FEBRUARY 2019 AT SOUTH WALES FIRE & RESCUE SERVICE HEADQUARTERS

38. PRESENT:

Councillor	Left	Authority
D T Davies (Chair)		Caerphilly
S Bradwick (Deputy Chair)		Rhondda Cynon Taff
D Ali		Cardiff
K Critchley		Newport
D De'Ath		Cardiff
S Ebrahim		Cardiff
C Elsbury		Caerphilly
S Evans		Torfaen
A Hussey		Caerphilly
K McCaffer		Vale of Glamorgan
D Naughton		Cardiff
A Roberts		Rhondda Cynon Taff
A Slade		Torfaen
V Smith		Monmouthshire
H Thomas		Newport
J Williams		Cardiff

APOLOGIES:

L Brown		Monmouthshire
J Collins		Blaenau Gwent
R Crowley		Vale of Glamorgan
L Davies		Merthyr Tydfil
S Pickering		Rhondda Cynon Taff
R Shaw		Bridgend
D White		Bridgend

ABSENT:

J Harries		Rhondda Cynon Taff
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OFFICERS PRESENT:- CFO H Jakeway, DCO S Chapman – Monitoring Officer, ACFO D Rose – Director of Service Delivery, ACFO R Prendergast – Director of Technical Services, Mr M Malson – Acting Director of People Services, Mr C Barton – Treasurer, Ms S Watkins – Deputy Monitoring Officer, External Press Officer, Internal Media & Communications Officer

39. DECLARATIONS OF INTEREST

Each Member declared a personal non-prejudicial interest in each agenda item which affected their Authority.

With reference to agenda item 7.i, the Deputy Chief Officer reminded Members from RCT Council that they should declare a personal interest but this was not prejudicial due to the exemption in paragraph 12(2) (2) (a) (i) of the Code of Conduct. Councillors Bradwick and Roberts declared a personal interest in agenda item 7i.

40. CHAIR'S ANNOUNCEMENTS

THIRD PARTY TRANSACTION FORMS

The Chair reminded Members to complete and sign the Third Party Transaction forms which would be collected at the end of the meeting.

RETIREMENT

As the Acting Director of People Services was due to retire at the end of March, the Chair of the Fire & Rescue Authority, and the Chair of the Local Pension Board Committee, both took the opportunity to thank him for all his hard work on behalf of Members and the Service, and wished him well in his retirement.

The Acting Director of People Services responded by thanking Members for their kind words.

41. MINUTES OF PREVIOUS MEETINGS

The following minutes were received and accepted as a true record of proceedings:-

- Finance, Asset & Performance Management Working Group meeting held on 8 October, 2018
- Local Pension Board meeting held on 22 October, 2018
- Finance, Audit & Performance Management meeting held on 3 December, 2018
- Fire & Rescue Authority meeting held on 17 December, 2018

42. UPDATE ON ACTIONS

The Deputy Chief Officer informed Members of actions undertaken since the last meeting, and provided an update on minute number 18/19 - 28.1.

43. REPORTS FOR DECISION

43.1 REVENUE BUDGET REPORT 2019/2020

The Treasurer presented a report to Members which outlined the responses received in respect of the recent consultation exercise, and the proposed Fire Authority revenue budget for the financial year 2019/2020.

The treasurer advised that the Revenue Budget needed to increase by 0.93% to meet required expenditure in 2019/20. He went on to explain that confirmation will still be received from Welsh Government that they would meet the additional pension liability as been the case in England. The treasurer advised that Members, therefore, needed to determine whether they set the 0.93% increase only with a reserve position that they could issue a supplementary contribution request of the funding did not transpire in Wales. Alternatively, Members could increase contributions to 5.0% to include the pension shortfall, and return unrequired expenditure to constituent councils if Welsh Government funding is received. A consultation of the 10 constituent councils on this issue resulted in 5 councils preferring the Fire & Rescue Authority to set the higher budget, and 5 councils preferring the lower budget. The Treasurer advised his recommendation was that the lower budget be set.

RESOLVED THAT

- 43.1.1 Following a question and answer session, and lengthy debate on whether to accept the higher 5.01% or lower figure 0.93%, Members voted by 8 votes to 7 to accept the higher figure, and to approve the Revenue Budget of £74,727,144 for the 2019/2020 financial year.
- 43.1.2 Following a request by Members, Officers agreed to inform Welsh Government officers of the decision made by Members regarding the Revenue Budget figures.
- 43.1.3 Members unanimously agreed to give delegated powers to the Treasurer to determine an amended budget should funding for employer pension costs be confirmed by Welsh Government.

43.2 TREASURY MANAGEMENT STRATEGY 2019/2020

The Treasurer submitted for Members' approval the Authority's Annual Treasury Management Strategy.

RESOLVED THAT

- 43.2.1 Members agreed to approve the following financial documents:-
- The Treasury Management Strategy Statement
 - Capital prudential indicators and Minimum Revenue Provision (MRP) policy.
 - Borrowing policy and treasury indicators / limits
 - Annual Investment Strategy
- 43.2.2 Members agreed that the Treasurer would provide an update on strategies and policies as necessary throughout the year.

43.3 PERFORMANCE INDICATOR TARGETS 2019/2020 REPORT

The ACFO Service Delivery presented a report for Members to consider the proposed Performance Indicator Targets for 2019/2020.

RESOLVED THAT

43.3.1 Following a question and answer session, Members agreed to endorse the Performance Indicator Targets proposed for 2019/2020:-

- Fires – 6,200
- False Alarms – 7,655
- Road Traffic Collisions – 1,074
- Other Special Service Calls – 2,048
- Deaths and Injuries from Fires – 66
- Deaths and Injuries from Accidental Fires – 60
- Dwelling fires which were contained in the room of origin – 85%

43.3.2 Members agreed to approve publication on to the South Wales Fire & Rescue Service internet site.

43.4 REPORT ON RESPONSES TO THE CONSULTATION ON THE STRATEGIC PLAN AND PRIORITY ACTIONS FOR 2019/2020

The Deputy Chief Officer informed Members that the Service had recently consulted with the public on the Priority Actions developed for 2019/2020. Members were asked to consider the responses received during the consultation that ran from 27 September, 2018, to 20 December, 2018.

RESOLVED THAT

43.4.1 Members agreed to approve the Strategic Themes and Priority Actions detailed in Appendix A attached to the report (collectively considered as the Service's improvement objectives).

43.4.2 Members agreed to note the consultation responses detailed in Appendices B, C, and D, attached to the report.

43.5 GENDER PAY GAP STATEMENT – 30 MARCH 2019

The ACO People Services informed Members that under the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 (the public sector Regulations), all public authorities were required to publish gender pay gap information by reporting the percentage differences in pay between their male and female employees.

Public authorities must publish the required information based on data captured on the snapshot date of 31 March, within 12 months. Accordingly the deadline for publication is 30 March, 2019.

The report detailed the legal background and requirements placed on the Fire & Rescue Authority to publish a Gender Pay Gap Statement, the reporting metrics set out in legislation, and the definitions for the relevant pay period, full pay relevant employee, ordinary pay and bonus pay.

The Gender Pay Gap Statement was attached to the report as Appendix 1.

RESOLVED THAT

Members agreed to approve the 2019/2020 Gender Pay Gap Statement to be published by 30 March, 2019.

43.6 SOUTH WALES FIRE & RESCUE AUTHORITY – ANNUAL PAY POLICY STATEMENT 2019/2020

The ACO People Services informed Members that South Wales Fire & Rescue Authority was required to publish a Pay Policy Statement for each financial year, which provided information for the following financial year.

Members were advised that at the Fire & Rescue Authority meeting held on 6 February, 2012, the Pay Policy Statement was adopted and published. The Fire & Rescue Authority also determined that the HR & Equalities Committee should review the Pay Policy Statement and report to the full Committee. In 2014 Welsh Government issued new guidelines with further amendments which determined the contents of the Pay Policy,

The 2019/2020 Pay Policy Statement had been drafted for Members, and was attached to the report.

RESOLVED THAT

43.6.1 Members agreed to review South Wales Fire & Rescue Authority's Pay Policy Statement 2019/2020.

43.6.2 Members approved the Pay Policy Statement 2019/2020 to be published by 31 March, 2019.

44. RESOLUTION TO EXCLUDE FROM PUBLICATION TO PRESS AND PUBLIC BY VIRTUE OF SECTION 100A AND PARAGRAPHS 12, 13 & 14 OF PART 4 OF SCHEDULE 12A OF THE LOCAL GOVERNMENT ACT 1972 (AS AMENDED)

A resolution to exclude the press and public by virtue of Section 100A and Paragraphs 12, 13 & 14 of Part 4 of Schedule 12A of the Local Government Act 1972 (as amended) was passed.

The external Press Officer and internal Media & Communication Officer withdrew from the meeting at 1145 hrs.

44.1 PART 2 REPORT – THE FIREFIGHTERS' PENSION (WALES) SCHEME (AMENDMENT) ORDER 2014

The ACO People Services informed Members that the Firefighters' Pension (Wales) Scheme (Amendment) Order 2014 came into force on 31 December, 2014, and made some retrospective amendments from 1 July, 2013. Included in the 2014 Order was an amendment to the FPS 1992, Rule B5C (additional pension benefit: continual professional development) that was replaced with Rule B5C – Additional Pension Benefit (APB).

It came to light at the Scheme Advisory Board (Wales) meeting on 27 November, 2017, that the three Fire & Rescue Authorities in Wales had not adopted the change in this Rule. All three Fire & Rescue Services in Wales continued to treat temporary promotions as pensionable pay under the old regulations, and included such payments in final salary for pension purposes where they had occurred within three years of retirement.

In March 2018 the Authority considered a report on this matter. The Authority concluded that the imperative was to correct the position going forward by implementing the new Rule B5C to prevent further miscalculations. Accordingly, the Authority agreed to implement the new rule with effect from 1 April, 2018, in a fair and ethical manner, taking into account the circumstances in which individuals would find themselves through no fault of their own.

The Authority had determined the following actions in respect of Rule B5C, and in respect of several groups identified in the report:-

- That temporary promotion was pensionable and that pension benefits were earned through an APB.
- That Rule B5C would be implemented with effect from 1 April, 2018, and not to apply the change retrospectively because it was through no fault of the Firefighters themselves that the change was not implemented. The expectations of the Firefighters affected should be honoured by leaving existing and future pension benefits in the position they were currently or were expected to be in at the point of retirement.

As part of the 2017/2018 audit of accounts, the Wales Audit Office (WAO) considered the report received by the Authority in March 2018. Wales Audit Office raised concerns around the impact of the failure to implement the rule change with effect from 1 July, 2013, and the subsequent decisions taken by the Authority to rectify the position going forward.

As a result of this information, and on the basis that the sums involved were below the materiality threshold applicable to the accounts, the 2017/2018 accounts were duly signed by the Auditor General for Wales in September 2018. The Auditor General had, however, not formally closed the audit having sought legal opinion in order to satisfy himself that on the basis of the decisions made by the Authority, the items of account in question were not contrary to law.

The Wales Audit Office took legal opinion from Temple Bright LLP, and provided it to the Authority. In essence the legal opinion was that the decisions taken by the Authority were unlawful in respect of the changes to Rule 5BC.

In considering this advice, the Authority had sought its own legal opinion jointly with Mid & West and North Wales Fire Authorities. This advice was provided by Veale Wasborough Vizards. The advice generally supported the conclusion of the Wales Audit Office advice, and accordingly the Authority had to reconsider its approach and previous decisions in respect of the implementation of Rule B5C.

In terms of the lawfulness of the previous Authority report, it was the decision to continue to make ongoing final salary based (and therefore miscalculated) pension payments to employees, which was fundamentally at issue. However, the Authority also had to address the treatment of incorrectly calculated payments already committed and made.

To correct the misapplication of Rule B5C, the Authority would have to take the following action:-

- Determine that temporary promotion payments were pensionable from 1 July, 2013.
- Recalculate the pension entitlement for each person affected, and recover any element of overpayment made.
- Amend ongoing pension payments to the correct level, and liaise with HMRC over any specific taxation impacts which may have occurred.

As the Fire Authority was responsible for the failure to implement the Rule B5C change, it was likely that those in receipt of miscalculated pensions could seek to challenge any attempt to rectify the pension payments arising from the miscalculation.

Individuals could appeal any change to pension entitlement through the Internal Dispute Resolution Procedures (IDRP) of the Fire Authority, a complaint to the Pension Ombudsman or Court action. In taking its previous decision, the Authority was mindful of the potential challenges that could be raised, and it was on this basis that it took the decisions it did.

The advice received in respect of historical overpayments was very salient.

Firstly, the ability to recover such historical overpayments would require the Authority to obtain a court judgement allowing recovery.

Secondly, there was already a precedent set in respect of recovering pension overpayments following an exercise undertaken in respect of the Guaranteed Minimum Pension. The general approach taken by public sector pension schemes to this issue had been to waive the repayment of any historic overpayments to avoid financial hardship for members but to reduce future pension payments to the correct level going forward.

Thirdly, the advice provided to the Service recommended that the likely costs and damage to the reputation of the Service made any attempt to recoup payments already made unattractive in view of the likely defences available to the affected individuals.

Given the potential unlawful issues raised, and the potential impact on the individuals concerned, detailed calculations in respect of each employee affected by the rule change as at 31 March, 2019, had been made. These calculations determined the amount of pension entitlement under the changed regulations, and consequently any overpayment that had resulted.

It was noted that figures were being verified.

The Chief Officer took the opportunity to convey his thanks to the ACO People Services and the Treasurer for all their hard work in meeting with the individuals and for repeatedly checking the data. He stressed that he felt personally and professionally disappointed with the errors that had been made, but advised Members that the Wales Audit Office had confirmed that the overpayments were illegal, and should not continue.

Following lengthy debate on trying to seek alternative solutions and routes to avoid detriment to the individuals concerned, Members accepted that the current position was unlawful and therefore had to be addressed, even though the decision they had to make was hard. They also acknowledged that the legal responsibility for pension figures sat with the employer.

RESOLVED THAT

- 44.1.1 Following a vote of 14 for and 1 against, Members agreed that temporary promotions were pensionable, and that the decision was applicable from the effective date of the new Rule B5C, i.e. July 2013.
- 44.1.2 Members agreed to adjust all pension payments made after 31 March, 2019, to ensure they were made on the correct APB basis.
- 44.1.3 Members agreed not to recover the overpayments made prior to 1 April, 2019, for the reasons outlined in the report.

45. RESOLUTION TO RETURN MEETING TO PUBLIC SESSION

A resolution to return the meeting to public session was passed.

The external Press Officer and internal Media & Communication Officer returned to the meeting at 1220 hrs.

46. REPORTS FOR DECISION

46.1 STATEMENT OF ACCOUNTS 2017/2018

The Treasurer informed Members that the Appointed Auditor was required to give his opinion on the financial statements for the year ended 31 March, 2018. The presented report considered the final statement of accounts.

RESOLVED THAT

Members agreed to note the amended audited Statement of Accounts (provided electronically)

47. REPORTS FOR INFORMATION

47.1 SUMMARY OF THE NATIONAL ISSUES COMMITTEE MEETING

The Deputy Chief Officer outlined for Members the key issues discussed at the National Issues Committee meeting dated 25 September, 2018.

RESOLVED THAT

Members agreed to note the content of the report.

47.2 WELSH GOVERNMENT WHITE PAPER – REFORM OF THE FIRE & RESCUE AUTHORITIES IN WALES

The Deputy Chief Officer advised Members of the consultation responses submitted by the South Wales Fire & Rescue Authority, and the South Wales Fire & Rescue Service in relation to the consultation.

Following detailed feedback from two Members of the Working Group, Members raised their serious concerns regarding the implications for front line services, which could put lives at risk.

RESOLVED THAT

Members agreed to note the content of the South Wales Fire & Rescue Authority and South Wales Fire & Rescue Service responses to the Welsh Government White Paper – Reform of the Fire & Rescue Authorities in Wales.

The Chair took the opportunity to thank Officers for their hard work and professionalism in responding to the Welsh Government White Paper on behalf of Members.

47.3 FORWARD WORK PROGRAMME

The Deputy Chief Officer presented the Forward Work Programme for 2018/2019.

RESOLVED THAT

47.3.1 Members agreed to note the Forward Work Programme for 2018/2019.

47.3.2 Members agreed to note that draft dates for the next Municipal Year's meetings would be presented at the next meeting.

48. TO CONSIDER ANY ITEMS OF BUSINESS THAT THE CHAIR DEEMS URGENT (PART 1 OR 2)

There were no items of business that the Chair deemed urgent.