

Meeting of the Board 25<sup>th</sup> September 2017

ITEM 11

## The Pension Ombudsman – Pensionable Pay Determination

### Background

1. Members will recall previous conversations about the determination of pensionable pay and in particular the interpretation of 'temporary' and its' application in line with the pension scheme rules and relevant case law, in particular Norman v Cheshire.
2. It has been brought to my attention that The Pension Ombudsman (TPO) is currently considering two cases with regards to the correct application of the rules and case law when determining pensionable pay.
3. The two cases are for
  - Wholetime firefighter with additional contract and allowances
  - Retained firefighter with various allowances
4. Ivan Walker acting on behalf of the FBU has requested that the TPO use their power under section [150(7)] of the Pension Schemes Act 1993 to refer the case to the High Court.
5. Principally this referral is being sought, as in the opinion of Ivan Walker there is a high chance of appeal either side of a TPO decision, and costs could be limited by referral to a high court of both issues.
6. However, it could also be considered a good opportunity to get a high court judgment on the general issue of 'temporary' were the cases heard together in a High Court.
7. In principle depending confirmation on how the costs would be treated, and further discussions with the parties involved, as the LGA Firefighters Pension Adviser, I support this approach as a welcome opportunity to gain clarity in this area.
8. However, other options are to let TPO make a determination and commission guidance following that determination.

**Actions for Board Members**

9. Members to provide a view of whether they support a request to TPO to use their powers under section [150(7)] of the Pension Schemes Act 1993 to refer the case to the High Court.

Board Secretary

25<sup>th</sup> September 2017